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Part 1

**TRAFFICKING IN BROADCAST STATION LICENSES
AND CONSTRUCTION PERMITS**

HEARINGS

BEFORE THE

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST AND SECOND SESSIONS

**ACQUISITION AND TRANSFER OF FIVE OVERMYER
TELEVISION CONSTRUCTION PERMITS**

DECEMBER 15, 1967; JULY 16, 17, 19, 31, AND AUGUST 1, 1968

Serial No. 90-50

Printed for the use of the Committee on Interstate and Foreign Commerce

UNIVERSITY OF GEORGIA

MAY 28 1968

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TRAFFICKING IN BROADCAST STATION LICENSES AND CONSTRUCTION PERMITS

FRIDAY, DECEMBER 15, 1967

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

I would like to welcome all of you gentlemen from the Federal Communications Commission and thank you for coming to see us this morning to answer questions that we wanted to ask.

On Monday of this week the Federal Communications Commission, by a 4-to-3 decision, issued an order which had the effect of authorizing the transfer by the D. H. Overmyer Co. and related interests of five permits previously issued by the FCC for the construction of television facilities in: San Francisco, Pittsburgh, Newport, Ky. (in the Cincinnati market), Atlanta and Rosenberg, Tex. (in the Houston market), plus an operating TV station in Philadelphia. (File Nos. BTC-5376, BTC-5377, BTC-5378, BTC-5379, BTC-5380, and BALCT-327.)

All of these stations are located in the top 25 TV market areas.

These transfers were made in a single transaction to the U.S. Communications Corp., a subsidiary of AVC Corp., a diversified investment company which has several thousand shareholders and whose stock is listed on the American Stock Exchange. According to the statements by members of the Commission who dissented from this opinion, and according to the information on file with the FCC, the D. H. Overmyer Corp. had incurred expenses, at the outside, of about \$1,300,000 to obtain and advance these construction permits.

The records of the Federal Communications Commission reveal that the Overmyer interests received the following amounts from AVC Corp. for the five construction permits:

Paid \$1 million for 80 percent of the stock of all the construction permit corporations.

Plus a so-called loan of \$3 million secured by the remaining 20 percent of the stock of the permit corporations (and other security).

AVC Corp. has the right, under a complicated formula, to purchase the remaining 20 percent of the stock of these corporations for not more than the \$3 million loan which it simultaneously made to the Overmyer interests.

The dissenting Commissioners have characterized the entire transaction as a sale by the Overmyer interests of their five construction

permits for a total of \$4 million. In any event, under the Commission's order, the AVC Corp. is empowered and authorized to become the owner of 100 percent of these construction permits in the top 25 market areas for \$4 million.

This decision and the procedures which the Commission followed, raise many questions, which this committee earnestly seeks to have answered now.

Today we will hear from members of the Federal Communications Commission. In the near future we intend to follow this up by hearing other witnesses including the principals in the transfer of these construction permits, D. H. Overmyer, the transferor, and U.S. Communications Corp., the transferee.

Before we start, on May 9, 1966, I wrote to the Chairman of the Federal Communications Commission, the Honorable Rosel H. Hyde. I might read my letter to you.

DEAR MR. HYDE: The trade press reports that a 12-year record of broadcast station trading (1954-1965) shows that the total dollar volume of transaction was \$1,400,323,051 and that the number of radio stations transfers was 4,002; combined radio-TV, 192; and TV only was 304 (Broadcasting, Feb. 21, 1966, pp. 58, 60).

I assume that the foregoing figures were computed from authentic sources.

For the period 1954-1965 will you kindly supply the Committee with the following information:

1. With respect to TV only and combined radio-TV stations now located in the top 50 TV markets a list showing:

(a) Names and location of stations transferred two or more times.

(b) Date of each transfer and names of transferors and transferees.

(c) Date of issuance of original license and to whom.

2. With respect to radio only stations now located in the metropolitan areas of New York, Chicago, Los Angeles, Philadelphia, Cleveland, Boston, and Detroit the same information requested in items (a), (b), and (c).

Will you also kindly supply us with a list of TV station transfers covered by the 50-market policy for which the Commission has waived a hearing.

I have a reply to that letter. It is very short and I might give it:

I am in receipt of your letter of May 9 regarding the requested information concerning the sale of TV and radio stations during the past 12 years.

The Commission staff is presently engaged in securing the information requested. However, the facts necessary to compile the requested report are not readily available. As a result, a lengthy search of the Commission files will be necessary.

You can be sure that a complete answer will be furnished you as soon as possible.

To my knowledge we have not received any of that information.

I believe that I am correct, am I not, Mr. Lishman, on this?

MR. LISHMAN. We have received no report.

THE CHAIRMAN. This was in May of 1966.

(A letter in reply, dated December 21, 1967, was subsequently submitted by Chairman Hyde, and appears on p. 593 of the appendix.)

THE CHAIRMAN. This transfer has taken place. It has brought on a lot of conversations and a lot of questions by members of this committee and by the public in general. That is the reason that we have asked you gentlemen to come here this morning.

Mr. Hyde, you may proceed as you see fit.

STATEMENT OF HON. ROSEL H. HYDE, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

MR. HYDE. Mr. Chairman, I regret very much there has been a delay in supplying information to the committee.

I was not aware that such a delay had taken place. If it had been brought to my attention I would have certainly done something about it long before this.

I grant you that it is perhaps my responsibility to follow through on it, and this I will do as expeditiously as I can.

I was called about this proceeding yesterday afternoon at approximately 3 o'clock. It is my understanding that you wished the Commissioners to be here.

We do not have a statement. There was no opportunity to prepare one.

As a matter of fact, we were told that the committee simply wished us to come here to meet you and discuss the matter as it suited the convenience of the committee.

I will state that this matter, this application which you have discussed, was filed with the Commission in accordance with the regular procedures. It had the usual public notice required in all such cases.

No opposition whatever was filed to it. The Commission nevertheless on its own initiative did study it very carefully. When we did act upon it, there was a division of opinion. The majority, which includes myself, issued an opinion which we will supply for the record.

(The opinion referred to appears in the appendix, p. 305.)

MR. HYDE. The essentials of that opinion are simply these:

We have here a group of UHF stations, some partly constructed, some in the just beginning stages, relating to an interest which, as everyone will concede, was proceeding in good faith to develop UHF operations in the several cities.

Because of untold financial difficulties, because of conditions beyond the control of this permittee, because of financial difficulties, it found itself in a position where it was unable to go ahead with the development of the stations; all UHF stations.

It did secure another interested party, AVC Corp., which does have funds, and is interested in the development of UHF stations. It is in a position to provide substantial economic support for it, and so the Commission was presented with an opportunity to authorize the transfer of these TV projects from an entity unable to carry forward with it, to an entity which is prepared to do so.

We found it in the public interest to authorize this transfer.

THE CHAIRMAN. Is there anyone else of the Commissioners who wants to make a statement?

MR. DINGELL. Mr. Chairman, it is not my purpose to create any dissension from the Commission on this matter, but I note, I believe that Commissioner Johnson, Commissioner Bartley, and Commissioner Cox presented some very excellent views with regard to this matter. I certainly would like to hear from any of them or each of them for such comments as they might choose to make to this committee, perhaps based upon the very excellent dissenting views that they presented.

STATEMENT OF ROBERT T. BARTLEY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. BARTLEY. Mr. Chairman, I think it may be of some assistance to the committee in connection with this subject to refer to the Senate Subcommittee on Communications of the Commerce Committee of the U.S. Senate, 89th Congress. The document that I have is Serial No. 89-18.

This subject of the top 50-market proposal is rather fully discussed there. I cannot find the page number. Yes, page 150. It would save considerable time if that could be reviewed.

Chairman Henry at that time gave the reasons why an interim policy had been established. I think he expressed the opinion of the majority at that time as to the reason for the proposal.

Following that, there was a discussion on the part of other members of the committee and the Commission on this matter, and I testified there beginning at page 185. I am attempting to save time. That is what I am attempting to do.

Give the chairman—

Mr. BROZMAN. I am not clear what you are reading from. Is that the Senate report?

Mr. BARTLEY. It is a Senate committee hearing, Subcommittee on Communications of the Commerce Committee, 89th Congress, dated February 25 or 26, 1965. The serial number is 89-18.

The CHAIRMAN. You may proceed, Mr. Bartley.

Mr. BARTLEY. The statements that I have indicated there more or less fully express my views on this. It refers back to my comments on some bills which were introduced by Chairman Harris at the Commission's suggestion, one of which was proposed by the majority of the Commission with respect to the amendment of section 310(b). The other was an amendment of section 310(b) which I proposed on my own.

He introduced both bills in that Congress, and they are referred to here. In the interests of saving time, and the time of the staff of the committee, I would have no more to say except one thing with respect to some of the reasoning in the majority opinion for allowing this transfer to take place.

One of the principal arguments, it seems to me that the majority has, is that if we open these channels up, open these permits up to other applicants, there will be long delays before they can be implemented.

The facts of the matter are that in a top market, not too long ago, Overmyer surrendered a permit and just Wednesday of this week we granted a new permit. There was no contest for it.

The CHAIRMAN. Excuse me. I did not hear that.

Mr. BARTLEY. I said some time back, a short time ago—I did not have time to get the date—Overmyer surrendered one permit in the Dallas market. It was for channel 27. That permit was granted to another applicant just this past Wednesday.

The CHAIRMAN. Thank you.

Mr. DINGELL. What was the time interval between the surrender?

Mr. BARTLEY. Mr. Dingell, I did not have time to look that up. We can find that out. My recollection is sometime last summer. Maybe we know here.

Do we have that here?

I will correct this if it is incorrect. My impression is it was only an application that was dismissed this year, in October. The grant was made in November.

The CHAIRMAN. I won't ask you any questions now. Proceed. Go ahead.

Mr. BARTLEY. That is all I have, Mr. Chairman.

Do you have any questions?

The CHAIRMAN. I would rather get all testimony in first from these other gentlemen.

Mr. Cox.

STATEMENT OF KENNETH A. COX, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. Cox. Mr. Chairman, I would, like Commissioner Bartley, prefer to let my dissents stand as a statement of my position. I would be happy to answer any questions about them. I have dissented not just to the grant of these applications; I also dissented to the Commission's approval of transfers of permits in contravention of the interim policy in Denver, in Cleveland, and with respect to two stations in Boston.

I would simply say in response to Chairman Hyde's comments that always in these situations we have to make a choice among interests. It is true that when someone has acquired a permit to build a station and then runs into difficulties and wants to sell the permit, you always have then the situation that it probably will expedite the construction of the station and putting it into service to allow the permit to be transferred to a stronger financial entity—which usually turns out to be a company owning other broadcast permits, or in this case, AVC, who has no prior broadcast experience but is acquiring almost the maximum allowable number of authorizations even under the old rule in one transaction.

On the other hand, I think we have to consider our well-established concerns about the long-range overall development of broadcasting, and historically—I think almost from the very beginning—the Commission has had a concern, and I believe Congress has shared this concern, about the dangers of undue concentration of control of these media.

Our history has been, and it is still reflected even in our interim policy, that once these concentrations develop, we have not moved to break them up.

Therefore, if in the period of this interim policy we continue to follow the road of granting waivers—or if when we finally come to a consideration of our proposed rule, the majority decide not to adopt a tighter policy on ownership with respect to the UHF portion of the television service that is now developing—I think we can look forward to a time when we will have across-the-board, in UHF as well as VHF, a degree of concentration which I, for one, find difficult to accommodate to the public interest.

So I think that if we simply are going to say that it serves the public interest to take the actions which will most quickly get broadcast stations on the air, then we might as well forget efforts to hold down developing concentration, because in the nature of things we

are almost always going to have this situation. I would be happy to supply for the record copies of my dissents in all of these matters, if the committee would like to have them.

(The material referred to appears in the appendix, p. 314.)

The CHAIRMAN. Thank you, Mr. Cox.

Mr. HARVEY. Mr. Chairman.

The CHAIRMAN. I would rather you hold questions just a minute.

Mr. Johnson, do you have any comments?

STATEMENT OF NICHOLAS JOHNSON, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. JOHNSON. Mr. Chairman, I would have only very brief remarks. Like Commissioners Bartley and Cox, I would rely principally, I think, on my statement and the citation there of some nine prior opinions in which I have spelled out my views on this subject more fully.

In fairness to my colleagues of the majority, I think that perhaps a rationale could be developed for their position, although I believe it has not been done in this case.

Needless to say, I do not believe it is my obligation to develop it. My concern really deals with very fundamental propositions, very simple propositions.

I think that there is nothing more important in our country today, in any free society, and to the political system of which you gentlemen are a part, than the greatest possible diversity of sources of information, opinion, ideas, entertainment. I think that is important to you. I think that is important to everybody in this country.

The other side of that coin is that I think there is nothing that is as potentially dangerous to our Nation than the concentration of power—concentration of control over the outlets of information and opinion and entertainment in a country like ours—in a few hands.

I think that was in the forefront of the thinking of those who began this country a good many years ago, and I think their judgement was sound, and I think that there is even more reason for concern today than there was then. I think that the Congress has given us responsibility for ownership and concentration of control in broadcast properties, and I think the Congress has been concerned about this.

In short, I think that the FCC could do a better job in this regard than it has been doing. I would conclude, however, once again with the observation that I think a rationale could be developed although it would not be one I would support. It would at least be a reasonable position for the end that the majority has here sought to follow.

The CHAIRMAN. Mr. Loevinger.

STATEMENT OF LEE LOEVINGER, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. LOEVINGER. Mr. Chairman, it might be appropriate for me to say a few words because I find myself in complete agreement with most of the general principles that have been stated by Commissioner Cox and Commissioner Johnson. Furthermore, I am unable to say, as they do, that I rest simply on the published opinions. This is due more to an accident of administrative procedure than to anything else.

Unfortunately, administrative agencies do not operate quite like courts, and for very good reason, because the volume or material they handle is so very much greater than any court in the country that they necessarily adopt shortcuts. In this case, what happened was that the order involved here, in the first place it came to the Commissioner Cox, as is evident from his opinion, prior to the time it was in its final form, and he wrote an opinion which he subsequently changed.

It came to me with Commissioner Cox's opinion and I thought that the majority order was slightly too short, so I wrote a brief page-and-a-half comment indicating my views, the reason I would concur, without joining in the order.

I then left for 1 day. The Commission order had been on my desk for less than 1 day. By the time I got back, the thing had issued with five pages of comment by Commissioner Cox on my page and a half of comment and an additional opinion by Commissioner Johnson, none of which I had seen prior to the time that this thing issued.

So that this is merely by way of explanation why it appears with what looks like a greater rationale for the dissent than for the majority opinion.

Basically, let me say a word about the underlying issues.

Commissioner Bartley has been consistent and very likely wise, although I may not necessarily agree with every view that he has. But he has been consistent in following the view that the law is wrong. He has asked for an amendment of the statute and he has continued to press for the objectives that he has sought in that amendment of the statute. I don't consider myself at liberty to follow a rule that might be established under a different statute if the statute were amended. If the question before us were whether or not section 310(b) should be amended, I would have to give consideration to it.

I might very well support a different statute. At the present, I am operating under the law as it now stands.

I agree completely with the need for both diversity and competition in broadcasting. I think, however, that both Commissioner Cox and Commissioner Johnson are dealing in generalities unsupported by the facts. The facts recited in the order, which is the basis of the present controversy—that is the June 21, 1965, order—show that during the period from 1956 to 1964 the total number of VHF stations in the top 50 markets increased. The number of separate owners of VHF stations in the top 50 markets increased. They further show that everybody who owns more than one station is called a multiple owner and that the average number of stations held by all multiple owners in those markets is two and four-tenths stations.

In other words, all of the multiple owners together average about two stations each.

Of the largest owners, the 28 largest owners, or approximately third largest owners, who are said to control 93 VHF stations or 60 percent of the total, these owners own an average of three stations apiece.

So that when we talk about concentration here we are talking about people that own three stations. The least number that you can own is one. So that the range here that we are talking about is from one to three stations.

This raises the fundamental question of what are the ultimate objectives; are we seeking the most atomistic possible organizations of

this industry or are we seeking something else? I don't believe that any serious economist or any serious anti-trust enforcer or any serious student of this subject has ever contended that we are or should be seeking an atomization or breaking up of this industry or business. What we are actually seeking is effective competition and effective diversity in it.

In the broadcasting business, particularly television, it requires a certain reasonable size in order to provide either effective competition or effective diversity in the sense of program origination. The cost of originating television programs is shockingly high. The experiment with the Public Broadcasting Laboratory, the recent evidence before Congress in connection with the authorization of the corporation for public broadcasting, both illustrate this.

The cost of television programming runs from \$100,000 an hour on up. It may go very far up if you are going to produce outstanding programs. You can not have little, tiny corner-grocery-store-type operations producing independent programming. I do not think that permitting owners to get as many as three stations and having as many as over 90 owners in the top 50 markets is what any responsible economist would call concentration in any significant sense. This is simply not concentration.

To the degree there is concentration in the broadcasting business, it is concentration in program origination principally with respect to networks. If we are to get more competition with respect to networks, what we have to have are strong, economically viable enterprises. It should not be overlooked that the Overmyer interests here are the interests which did undertake to start a new television network. They did in fact get so far as to actually start the network and get it on the air for a month. However, it failed because of lack of economic resources.

The notion that we are going to have a single-station operator or a two-station operator start a network seems to me to be unreal and quixotic. The one hope we have of getting competition in the concentrated sector of this business, that is, in program origination and in networking, is to permit reasonably sized enterprises with substantial economic strength to develop. I think that by permitting this group of stations which was interested in starting a network, and in fact did go so far as to undertake to start a network, to permit this group of stations to be given the economic strength that transaction now before us permits it, is not going to do anything by way of increasing significant concentration in the broadcasting business but may provide the basis for increased competition and increased diversity in program origination.

The CHAIRMAN. Thank you, Mr. Loevinger.

Does any other Commissioner have any statement to make?

Mr. HYDE. Mr. Chairman, I would appreciate an opportunity to just make a brief statement about the overall situation, that is, this:

As you know, the TV channels are divided into VHF and UHF. This is a matter which has been discussed frequently before this committee so I am sure that you are aware of that. The VHF assignments provide greater coverage. They are the first ones to be developed, but there are only 12 such channels.

The number of assignments would necessarily be limited.

In the interest of diversity, in the interest of competition, the Commission has sponsored the development of the UHF channels.

Congress has responded to this in enacting the all-channel legislation which requires that any consumer buying a TV set sold in interstate commerce must be given reception of UHF as well as VHF. Consumers are making their investments in UHF.

Consistent with that policy, the Commission must give encouragement to the development of the UHF stations.

In this situation here that we are reexamining, we have a proposal of the AVC Co., with the assets to do so, to put new life into stations which may otherwise fail completely. There is no stampede to get into UHF. There is no need for any conniving to attain the opportunity to challenge the multiple VHF stations and networks in these several markets. As a matter of fact, one of these stations which is the subject of the transfer has lost \$1 million in operation. I am referring to the Philadelphia station.

In the other instance, Overmyer, or the AVC Co. now with the UHF will be challenging network operations of well-established organizations with the challenge of making UHF competitive with them. This is going to limit competition. What we have here is a possibility of introducing some viable operations which will provide diversity. And back of the whole thing is the necessity, I believe, of giving every assistance possible, every encouragement possible to the development of 70 channels to be used in addition to the 12 VHF.

I think that the committee should have this perspective of it as you look at the problems related to this particular case, where as I pointed out in my first statement, the majority of the Commission found it appropriate to authorize the investment of new capital lest the UHF should fail completely.

Thank you.

The CHAIRMAN. I thank all of you for your presentation. I have a few questions I would like to ask and then I am sure members of the committee would like to ask some.

There was no hearing held?

Mr. HYDE. There was none.

The CHAIRMAN. There is a lot of money involved in these transactions, or will be ultimately?

Mr. HYDE. The consideration was \$1 million or 80-percent interest.

The CHAIRMAN. Does not the transaction call for \$4 million?

Mr. HYDE. No, sir.

The CHAIRMAN. What does it call for?

Mr. HYDE. The transferor has loaned \$3 million to the transferee.

I am sorry. The transferee has loaned to the transferor \$3 million on the security of its properties other than the broadcasting, although the 20-percent stock would be included with the security.

The CHAIRMAN. What will it involve?

Mr. HYDE. Eventually—

The CHAIRMAN. I want to know what is involved if everything goes through.

Mr. HYDE. If the UHF stations should prosper, if they should attain receipts of the order mentioned in the formula, the transferee would have the option of buying the additional 20 percent, and on that basis they would then have an investment of \$4 million.

The CHAIRMAN. \$4 million. That is what I was trying to get at. I have just one question. I shall try to make myself clear. If these permit transfers are granted, somebody will receive a \$3 million profit?

Mr. HYDE. There will not be a \$3 million profit.

The CHAIRMAN. The transferor would not have gotten any profit?

Mr. HYDE. I mean to be responsive to your questions, but the Commission has not approved a profit in the transfer.

The CHAIRMAN. I just wonder, if these permits came back to the FCC and had been reassigned, if action would have been as rapid.

Mr. HYDE. Chairman Staggers, we could not assume there would be immediate applications at all. I call to your attention that recently we have had applications dismissed by Harcourt Brace and World Book publishers, people of substance, who applied for stations at Rochester, Phoenix, and Portland, which they dismissed. They were no longer interested.

This week, as Commissioner Bartley has mentioned to you, we had occasion to examine an application for Dallas, Tex., an important market. There was no contest for that at all. This was available. Application was filed last March. No other interest.

The CHAIRMAN. If I may interrupt you, I do not want to talk about other markets or permits. We are talking about the 25 top markets of the Nation in which these are located.

Mr. HYDE. I believe Dallas, Portland, and Rochester would be there. I would have to check that for purposes of this statement.

The CHAIRMAN. I want to ask you this just as a matter of record. What requirements does the Federal Communications Act impose before the Commission can authorize the assignment of a construction permit? I am, of course, referring to the provisions of section 310(b) of the act.

Mr. HYDE. The act does require that the Commission find the public interest, convenience, and necessity would be served by approval.

The CHAIRMAN. Did you find that in this case?

Mr. HYDE. We did, sir. We did.

The CHAIRMAN. Did the majority of the Commission make a specific finding that the public interest, convenience, and necessity would be served by the transfer of all of these construction permits in a bundle to the AVC Corp., and did they state their reasons for that finding?

Mr. HYDE. My answer is "Yes." We are required to make our decision on the basis of the applications before us. The applications did include the several stations. We did give a reason.

The CHAIRMAN. I did not see it.

Mr. HYDE. Sir, it is in our opinion. I suggest, as I proposed at the time I made my initial statement, that I offer a copy for the record. It sets forth what I consider to be the essential reasons why the grant is in the public interest.

The CHAIRMAN. I would like to ask, did the Commission examine the competitive situation in each of the five areas where construction permits are available, to determine whether the transfer of each individual construction permit would, measured by the circumstances in each of these five market areas, be in the public interest?

Mr. HYDE. We did, sir. The analysis of the application that was before each Commissioner contained a résumé of the competitive situation in each market.

The CHAIRMAN. I could not find this information in your order.

Mr. HYDE. This was before the Commissioners when they acted.

The CHAIRMAN. Each individual market?

Mr. HYDE. Yes, sir.

The CHAIRMAN. I could not find it.

Mr. HYDE. This detail is not included in our decision, but it was in the information before the Commissioners when they acted.

The CHAIRMAN. As I say, I could not find it. Is it not a fact that when an application is made to transfer a construction permit, the Commission has its choice of holding a public hearing or waiving it?

Mr. HYDE. We always have the possibility of holding a hearing. The act provides that if the Commission is not satisfied from its examination of the application and supporting data, then before it would make a final decision it must give the interested parties an opportunity for hearing.

The CHAIRMAN. I should think in a transfer of this magnitude it would have been wise at least to have held a hearing.

Mr. HYDE. Chairman Staggers, I believe that the possibility of refinancing the UHF stations would have failed had we designated the matter for hearing.

The CHAIRMAN. It has been suggested that the Communications Act should be amended to provide that if a construction permit holder cannot fulfill his obligation to construct the station, the permit should automatically revert to the FCC and the permit holder's right should be terminated, so there is no opportunity for the permit holder to attempt to sell his permit to broadcast, which is really public property.

Mr. HYDE. I would be very doubtful of the wisdom of such an amendment, because I fear it would discourage investment and development of radio properties.

The CHAIRMAN. In a highly competitive thing such as this, and with the money that is involved in this and many other transfers, I think the public interest ought to come first. I am talking about the amendment suggested here. If we should do this, it would protect the public. A license or construction permit is not a property right. It is a public right, a public interest.

Mr. HYDE. What I wished to say in response to your question was that an amendment such as you describe would provide that if the applicant and grantee found himself in a position where he could not go forward with the development of the station, he must forfeit his permit to the Commission and not be allowed to assign it or transfer it. My suggestion is that this may very well discourage an applicant or an entrepreneur from undertaking such an enterprise because he would be on notice that if anything should happen, if his health should fail, if his financial position should suffer for some reason beyond his control, he could not get his capital investment back. I think that would be a discouragement to investment.

The CHAIRMAN. I do not think you can guarantee anybody will make money. You are not in that business.

Mr. HYDE. No, sir.

The CHAIRMAN. That is what I am talking about. Anybody who goes into this business takes a chance. This affects public interest. This is public property. You are down there to protect the public interest, not private interests. I am talking about public interest. You are discussing private interest.

I will have to turn this over to Mr. Moss at the present time. I am called outside. I will be back in a moment.

Mr. LOEVINGER. I would like to give you a little further answer to what Chairman Hyde has said.

The CHAIRMAN. If you will make it brief, yes; go ahead.

Mr. LOEVINGER. The point is simply this: If you say a person cannot transfer a construction permit—and there is good argument to be made for it—what you do is increase vastly the risk that anybody applying for a construction permit undertakes. When you increase the financial risk and the financial cost of applying for these things, what you do is raise barriers to individuals and to small enterprises, and insure that the applicants will only be the large, well-heeled corporations. So, the net effect of such an amendment, I am convinced, would be to increase concentration of holdings of construction permits and licenses in the large, wealthy corporations, and to discourage the smaller and less wealthy corporations from getting into the business.

The CHAIRMAN. That is where I must disagree with you. I think what you are trying to do is to let the wealthy boys take over. "We will give you a million dollars." Then they buy it up and away they go. You are not protecting the small person. You are just handing it over to the larger ones. "We can give you a million" or a couple of million or 4 million.

I will be back.

Mr. Moss (presiding). I have a few questions. Did the Commission make any finding in each of these instances of transferring of a construction permit or of any operating station, that the public interest would be served by that transfer?

Mr. HYDE. Our Opinion treats the matter as an application involving several stations in one transaction, and makes a finding applicable to all of them.

Mr. Moss. I might point out to you that your opinion does not do that. I will read the exact verbiage of that opinion.

The Commission is of the view that * * *.

That is not a finding. The Commission is of the view.

* * * That to grant the applications would foster the development of UHF TV stations. This would be consistent with the Commission's effort to provide * * *.

I am very conversant with the interest of both the Commission and the Congress to expand UHF. I also understand in this application we have one VHF, have we not?

Mr. HYDE. No.

Mr. Moss. No VHF?

Mr. HYDE. That is right.

Mr. Moss. But there were some operating and some construction permits.

Mr. LEE. One operating station.

Mr. Moss. That was put into the package in June, is that correct? The original application was for five in March.

Mr. HYDE. I think that is right. I will have to check that for you.

Mr. Moss. Has it been the established practice of the Commission on these transfers of construction permits that the only thing you permit the applicant to recover is out-of-pocket expense?

Mr. HYDE. It has been the general policy of the Commission, although there is no regulation on this and there is no provision in the act, to examine—

Mr. Moss. Mr. Chairman, I specifically stated, has it not been the policy? I did not ask about the act. You and I went over this. I believe that we have gone over this particular issue many times back in the days of the old Oversight Committee when we came up with the virtually unanimous finding in that committee that there was too much trafficking in licenses and we made some recommendations. Then by your own actions the Commission adopted an interim policy. This even goes contrary to that policy.

Mr. HYDE. Mr. Moss, there is no statement of policy so far as I am aware, but there is a large body of precedent under which the Commission does not approve the transfer of a bare permit for amounts above the out-of-pocket expense.

Mr. Moss. You did in this instance, did you not?

Mr. HYDE. No.

Mr. Moss. Where is a breakdown which would prove that the \$4 million here involved does not permit recovery of more than the out-of-pocket expense?

Mr. HYDE. The consideration for the transfer on which the Commission acted is not \$4 million.

Mr. Moss. All right. One million dollars with a \$3 million loan. Eighty percent of the stock was sold for \$1 million, and then a loan was given of \$3 million for the other 20 percent of the stock.

Mr. HYDE. May I—

Mr. Moss. Do you think that loan is going to be paid off? Does it draw interest? What are the conditions of the loan?

Mr. HYDE. The loan will either be paid off or the lender will undoubtedly realize on his security on the one hand, or the lender may see fit to buy the remaining 20 percent.

Mr. Moss. As far as the Commission is concerned, if the Overmyer Corp. decides not to pay off the loan, the 20 percent stock which is security for it would be picked up by AVC, would it not?

Mr. HYDE. That is only a small part, and inconsequential part, really, of the security.

Mr. Moss. \$3 million?

Mr. HYDE. This loan is secured by mortgages on 23 pieces of non-radio property. It is secured by the endorsement of Overmyer. There is other security which I cannot give you without referring to the documents. There are some guarantees. Before the loan was made on the securities, there was an appraisal by independent appraisers to find assurances that the securities were adequate to the loan. I understand that the securities are in the ratio of 2 to 1.

Mr. Moss. I think it would be interesting to supply the committee with a list of all of the collateral that backs this \$3 million loan.

Mr. HYDE. We will be pleased to do that.

(The information submitted appears in the appendix, p. 328.)

Mr. Moss. And give us a breakdown of what the sales price was and a breakdown of what the out-of-pocket costs were. It is out-of-pocket costs we are talking about.

(The information submitted appears in the appendix, p. 329.)

Mr. Moss. In this instance, you waived hearings on every one of these, and you also went contrary to your own rules in permitting

AVC to acquire stations in more than three of the top 50 markets. You permitted them to acquire six here in the top 25 markets.

Mr. HYDE. We granted a waiver of an interim procedural policy which provides on its face that the Commission may, where an appropriate or compelling showing is made, grant such a waiver. We felt, under the circumstances of this case, a waiver was justified.

Mr. KEITH. Mr. Chairman, how many stations does Overmyer have in his portfolio, other than those that are involved here?

Mr. HYDE. He would have one remaining. He would have a station in Toledo, a UHF station. All the rest of his broadcast interests are represented in this application here. He would retain a 20-percent interest, in which he would now have an investment of \$332,000, this being the amount above the \$1 million.

Mr. KEITH. He could show on his statement when he made a loan application elsewhere, a \$332,000 equity in this corporation?

Mr. HYDE. I believe so. Here is the situation. He received a million dollars, but his out-of-pocket expense was \$1,332,000. You will excuse me if I do not have the exact figures here.

Mr. KEITH. Surely. I am not interested in pennies, but I just want to have it—

Mr. HYDE. For the million dollars he transferred 80 percent of his interest, leaving him 20 percent. So, he has a 20-percent stock interest, and he also has an investment of \$332,000 for which he is not being compensated in this transfer.

Mr. KEITH. I will leave it to others to develop this particular point.

Mr. MOSS. Will you yield for one moment. I will ask Mr. Dingell to take the Chair. I have an appointment with our Ambassador to Brazil on a matter of foreign aid. I must now keep that appointment. Mr. Dingell will take the Chair.

Mr. KEITH. Going back to the circumstances prevailing at the time this man acquired the construction permits; you had to be certain that he had the capital with which to proceed.

Mr. HYDE. Yes.

Mr. KEITH. What was his net worth at the time he made the application for these five stations?

Mr. HYDE. I cannot give you that figure offhand. I will supply it to you. We had an analysis of his financial ability at the time he acquired the permit.

I am advised by my colleague it was in the area of \$11 million.

Mr. KEITH. Where did he make this \$11 million?

Mr. HYDE. He is basically in the warehouse business.

Mr. KEITH. So he had no expertise in this area?

Mr. HYDE. That is right. Congressman, in that connection we can put a lot of emphasis on past experience, but if we push that to the exclusion of other considerations, then we limit the field to those who are already in it. If you bring people in without experience in broadcasting but who are interested and who have funds to employ talent and expertise, then you can bring diversity.

In this particular case that we are considering, one of the reasons for the AVC Co. buying the Philadelphia one was to acquire the experience and talent that were available there.

Mr. BARTLEY. Mr. Keith, may I say that the point you are raising is extremely important. One of the responsibilities of the Commission in granting applications is to determine the financial qualifications of

the licensee. In this particular case, in the Overmyer case, I will have to go back and dig up the records, but I am sure that in certain of those cases I dissented because I felt that he did not have the financial qualifications to go ahead.

Mr. KEITH. This is a very important point. I asked you what his net worth was. This would mean assets over liabilities. Eleven million dollars is a good chunk of cash. Even so, it may be hypothecated or involved so that he does not have liquidity to move. Is this the point you were making?

Mr. BARTLEY. I wanted to make the point that at the time some of the applications were filed, the showing made as to how he intended to finance the stations led me to believe that he had not made adequate financial provision for them, and I voted against the grant on that basis.

Mr. KEITH. Had this gentleman any experience other than in the trucking business, which is notorious for its ability to operate on a shoestring?

Mr. HYDE. This applicant was a warehouseman, and he seemed to be eminently successful at the time. We did have economic and financial information about him. I will be glad to supply further information on that which I do not have immediately before me now.

(The information submitted appears in the appendix, p. 331.)

Mr. HYDE. Commissioner Lee.

Mr. LEE. I think perhaps I could give you just a description of what Mr. Overmyer was doing.

Mr. KEITH. I do not believe that it is necessary to expose all of that at this time for the purposes of this hearing, when so many others are interested in shedding light on the problem. Now we are talking about his financial situation. What about the financial situation of U.S. Communications Corp. and the interest controlling that organization? Did you talk with the principals of AVC?

Mr. HYDE. No, we did not. We did rely on an analysis of the written submissions and sworn statements submitted in the applications.

Mr. KEITH. Would you repeat that, please?

Mr. HYDE. We relied upon the written submissions which were submitted to the Commission. You asked me did I speak to the principals. No, I did not. I am not certain—members of the staff may have had some communications with them. The Commission in considering the applications relied upon the information that was submitted by applicants in their written file and on the analysis made by the staff.

Mr. COX. In this case I think I talked to two principals of AVC at one stage about their plans for taking over.

Mr. KEITH. Would you care to comment as to your reaction to this kind of owner as contrasted to others who might have taken up these franchises?

Mr. COX. I had some problem, although I did not dissent here on that count, with the ownership of broadcast facilities by a diversified investment company. I think there is a problem with these men having a wide range of concerns and a division of their responsibility for broadcast operations. I think in a corporation of this kind you have some difficulty in understanding who is responsible for what is going on. As I recall it, here I think the largest block of stock is held by the guardianship of an incompetent and by a very elderly woman, I

believe. Actually, control is in a family group. I assume it would be to them that you would look for responsibility here. We did not really go into this in talking to them. They were simply telling me of their interest in broadcasting and their hope to go ahead and become a significant part in it. We did not get into the details of the application because I was not familiar with it at that point.

Mr. KEITH. This will be my last question. What method does the Commission use to get a competitive situation in the acquisitions of such significant businesses? How do they make certain about the concern of Congress which was so eloquently stated by Mr. Johnson, that we do not have concentration but have competition, that whoever acquires these stations has the capital to make reasonably certain that they will be successful? How does the word get around so we get a truly competitive situation as far as possible?

Mr. Cox. As far as financial qualifications are concerned, our procedures require them to show that they have available liquid resources—

Mr. KEITH. I understand the individual buyers must do that, but I refer to efforts to find other buyers so it is not only an offer collected by an individual who is in hot water. Now that it is up for transfer, how does word get around?

Mr. Cox. We are pretty well barred by the present language of the act from considering whether the public interest would be better served by the transfer of permits or licenses to someone else. Basically, the licensee or permittee does select his successor and, obviously, one of the primary considerations in that selection is who will pay the most money. I think our only barrier against unlimited acquisition and concentration of control has been the policy, revised over the years, as to the maximum number of stations which can be owned. At one time in television it was three. Then it got up to five. Then it was five plus two UHF. Then in December 1964, and again in June 1965, the majority of the Commission thought that while that might be a satisfactory limit in the smaller markets, in the major markets where concentration has its greatest impact, we should look toward reducing this to three stations, of which not more than two should be V's.

Mr. BROWN. May I ask a question on this problem?

Mr. KEITH. I have concluded my questioning.

Mr. DINGELL (presiding). We shall proceed under the 5-minute rule. The Chair recognizes Mr. Rogers.

Mr. ROGERS. Gentlemen, I am quite concerned about limiting the transfer of construction permits to so-called out-of-pocket expenses. As I understand, \$1,300,000 was what was received.

Mr. HYDE. This was less than the out-of-pocket expense, as he justified it to us, but he did retain a 20-percent interest.

Mr. ROGERS. What was the out-of-pocket expense?

Mr. HYDE. The out-of-pocket expense, as I have it, was \$1,332,000.

Mr. ROGERS. So, they obtained an 80 percent interest for \$1 million.

Mr. HYDE. That is right.

Mr. ROGERS. He did not mortgage the other 20 percent for the remaining \$300,000, did he?

Mr. HYDE. He mortgaged the other 20 percent and, in addition, extensive other properties as security for the \$3 million loan.

Mr. ROGERS. He did not have a competitive agreement. Why did he have to get into the other properties? If this was to be a clean deal,

if the sales price was only for out-of-pocket expenses, why did he not just mortgage the other 20 percent for the remaining \$300,000 of out-of-pocket expense?

Mr. HYDE. I do not know, but it would appear that Mr. Overmyer had found a source of capital to also rescue some other operations.

Mr. ROGERS. This gets back to the policy. We are thereby avoiding the policy. It works out that here is a man who has five or six stations in the top markets?

Mr. HYDE. Permits for six, and five of them are subject to this transfer.

Mr. ROGERS. Is it possible under your policy for anyone to come in as an original requestee and get five stations in the top market under the ownership of one person?

Mr. HYDE. Under the interim procedural policy, he would be required to go through a hearing unless he made a compelling showing that the public interest would be served by a grant without a hearing.

Mr. ROGERS. In effect, have you not allowed this man to come in and get the five stations in the top market?

Mr. HYDE. No. Congressman Rogers—

Mr. ROGERS. Five subsidiary companies.

Mr. HYDE. We are, of course, dealing with public interest considerations here and not individual equities, but let me mention this—

Mr. ROGERS. Let me say this before we go further with that. Your basic policies, I presume, are set in the public interest.

Mr. HYDE. Yes.

Mr. ROGERS. In any waiver, there must be an overwhelming showing, I should think, that it should be waived in order to show an overriding public interest.

Mr. HYDE. Yes, sir. We believe that such a showing was made for the purpose of this transfer.

I did want to mention to you that when Overmyer got his original permit, there was no such policy. What has happened to Overmyer is that he has found himself subjected to a procedural policy adopted after he made his acquisition.

Mr. ROGERS. This often happens. He has protected himself. But this does not mean someone else can come in and violate the policy; does it?

Mr. HYDE. It does not mean someone else can come in unless it can be shown in a compelling way that the public interest would warrant a waiver of that policy.

Mr. ROGERS. I do not see the showing in the record.

Mr. HYDE. The basis on which the majority finds such a showing is that you have the UHF stations in five more markets unable to go ahead with the capital available, and another source of capital available which will assure their operation.

Mr. ROGERS. Does it not seem strange to have a man come in and try to avoid a basic policy which he knows exists, first of all, to get into a market with five stations, which is generally against policy now, and second, to arrange for payment over and beyond the out-of-pocket expenses, because he went beyond just dealing with the construction permit. He tied this into another deal entirely. Did it not seem strange and should there not have been a hearing on this? I should have thought you would want to go into this and question him. I certainly would have. It seems to me a strange way to operate.

Mr. HYDE. Congressman, we believe that a very thoroughgoing examination has been made of this. If we had felt there were any relevant and important considerations that were not known—

Mr. ROGERS. Why did you let them bring in other properties, and so forth? Why was it not kept to just the permit to make sure it was limited to out of pocket? As a matter of fact, you are claiming now that the sale includes out-of-pocket expenses.

Mr. HYDE. I understand the sale does not include funds above out-of-pocket expenses.

Mr. ROGERS. Does this not trigger something strange that a man wants to get more than his out-of-pocket expenses out? Would that not be enough to trigger some suspicion that the Commission should go to hearing and find why he does not want to get his out-of-pocket expenses?

Mr. HYDE. We are satisfied with the bona fides of this proposal. We see no evidence of any misstatement of the matter at all.

Mr. ROGERS. It appears to me that without any hearing we cannot tell, and this is why we want to go into it. I am concerned that this is a reasonable exercise of delegated regulatory power. It seems to me here you have all of these UHF stations which you say are so weak.

Mr. HYDE. That is right.

Mr. ROGERS. Do you want to allow all of this weakness to be concentrated in the hands of one group? Do you not want to spread it out so you can get a broader base?

Mr. HYDE. What we have here is a substantial entity ready to assume the challenges of operating these stations. What I am suggesting to the Congress is that we should not apply to them restrictions which do not apply to stations with which they must compete.

Mr. ROGERS. But you ought to apply the general policy.

Mr. HYDE. May I respond to the question?

Mr. DINGELL. You may, and then the Chair recognizes the gentleman from Nebraska.

Mr. HYDE. The Commission has considered applications for waivers in a number of instances. There are about eight other instances where the Commission felt that, notwithstanding the interim procedural policy, public interest would be served by making the grant.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. DINGELL. The Chair recognizes the gentleman from Nebraska, Mr. Cunningham.

Mr. CUNNINGHAM. I yield my time to Mr. Brown.

Mr. BROWN. I would like to pursue the question which was being developed by Mr. Keith. The question is whether the sale of stations is generally for a higher price if the stations are sold as a package or if they are sold individually.

Mr. HYDE. No; I cannot say. My impression is that this would not really affect the price of a particular station. I have no information on which to say that they bring higher amounts in a group than they would singly.

I can imagine, Congressman—

Mr. BROWN. I notice some other reactions among the Commission. Has anybody else any comment?

Mr. HYDE. They might have an opinion about it, but I doubt if there is an analysis of this matter available.

Mr. LOEVINGER. Mr. Brown, I do not know whether it is relevant to your question, but Mr. Keith was asking Commissioner Cox what the Commission does to see that there are competitive situations.

Mr. BROWN. That is the next question I will ask, if I may get to that. I would like to pursue the other thing. I gather from the Chairman's reaction there is no definitive study within the Commission of this matter. Are there any contrary opinions that prices are higher if you sell stations as a package than if you sell the stations individually?

Mr. Cox. Mr. Chairman, I agree with the Chairman that it has to be an opinion, because we do not have studies. But I have talked to many broadcasters, and I believe that when they get to a situation where someone who has held several stations is selling, he apparently always finds it in his interest to sell the whole package—unless he is dealing with someone who will run into our multiple-ownership policies, and then he may split up the stations.

In most transactions, where he can dispose of his holdings to a single party without running into the maximum limit, he does sell all of them together.

I think in this case, as was suggested earlier I believe by Mr. Rogers, it would appear to me that if AVC had applied for permits in these five markets, it would not have gotten them, not only because of our interim policy, but because it would have run into comparative applications from other parties and it would have been under the disadvantage of being inexperienced, absentee owned, and after it got one permit, it would have been under the additional disability of having some ownership in broadcasting and, as against a party with no such ownership, it would be at a comparative disadvantage.

Mr. BROWN. But there is an economic advantage which inures to someone owning several stations in terms of economies of technical assistance, networking, programing, talent, and that sort of thing.

Mr. Cox. I believe this is true, and I believe this is one of the reasons for being concerned about the competitive impact of such groups, because if this advantage inheres in group ownership, then it represents a disadvantage for someone trying to compete against a group-owned station.

Mr. BROWN. On the point that you were raising, is there a body of opinion on the Commission which feels the FCC should have the right to determine that to transfer the license to one person is more in the public interest than to transfer the license to another?

Mr. LOEVINGER. I believe generally the Commissioners feel the Commission should have that right, but I believe the statute is perfectly plain that the Commission does not have that right. Section 310(b) of title 47, which is part of the Communications Act, says that in considering any proposed transfer of a construction permit or station license, the Commission may not consider—this is the wording of the statute—"The Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee."

This is a plain mandate, a statutory mandate from Congress that we cannot have such a competitive situation. I think this is probably an unwise provision, and I think most of us would favor seeing it changed, but my oath was to enforce the laws and Constitution of the United States, and I have no choice but to follow this law.

Mr. DINGELL. The time of the gentleman from Nebraska has expired. The Chair recognizes the gentleman from California.

Mr. VAN DEERLIN. Mr. Hyde, page 2 of Mr. Cox's dissent goes into the expenses that were being set against the out-of-pocket costs. About half of the total was provided by firms elsewhere among the Overmyer interests not related to the broadcasting companies. It covers items like personnel payroll, and it goes on into public relations and other services.

What would costs like these be imposed for? What was Overmyer preparing to do? Put these stations on the air?

Mr. HYDE. Yes, he was. Overmyer was making an all-out effort to establish not only these stations but to get a fourth network going. These were part of the expense of promoting and developing such an enterprise.

Mr. VAN DEERLIN. And the staff of the FCC presumably followed up and explored this?

Mr. HYDE. Right.

Mr. VAN DEERLIN. So while it was unusual to have a division of this kind—the outside companies being compensated as well as the prime companies—you feel all these were legitimate expenses that were to be assessed against this operation?

Mr. HYDE. I was satisfied that they were. I am relying strongly on staff analysis, of course.

Mr. VAN DEERLIN. And you, Mr. Cox, felt only that there should be a longer look taken at this before the approval was given?

Mr. Cox. I think this was a novel approach. Generally in transfers of construction permits the sums involved are much smaller than this. In some cases they get down to mere hundreds of dollars.

I think, though I am not sure of this, that our staff has usually been quite rigorous in requiring substantiation of these expenses, and in many cases I think they go as far as getting actual copies of bills and invoices.

What I was pointing out here is that this was novel. They substantiate about half of this \$1,300,000 in the form of direct payments, such as legal and engineering fees. The prices paid for some of these permits are shown, because Overmyer bought some of them from earlier holders. He purchased equipment, and perhaps has acquired program rights for film and other programs on many of these stations.

To jump this sum by more than double without testing this new approach in a hearing seemed to me unsound.

It may be that some part, perhaps a substantial part, of the upper half of this calculation really was incurred in connection with the acquisition of the permits and preparation to go on the air, but I would feel a lot more comfortable about this if our hearing attorneys had a chance to cross-examine the parties who are making these claims.

Mr. VAN DEERLIN. Without regard specifically to the transfers under consideration, has there been evidence in other transfers that have come within the purview of the Commission of outright speculation in the acquisition and transfer of construction permits?

Mr. HYDE. I would have to say that the Commission has been concerned about the possibility that our processes were being used for speculation.

As Commissioner Lee reminds me here, this is the justification for the Commission's regulation which forbids the assignment or transfer of a station except in some very limited exceptional situations unless they have had it for 3 years. This is designed to prevent speculation.

Mr. VAN DEERLIN. In California, in the early fifties, we had quite a speculative binge in the matter of liquor licenses. These licenses, which were acquired for fees of about \$250 from the State, were found to be worth as much as \$15,000. When a place was sold, in addition to the modest real property, there would be a \$15,000 added charge for the liquor license.

Mr. HYDE. We feel strongly that when an applicant applies to build a TV or radio station he must show he will operate it in the public interest and not that he will speculate in it. We also have these other policies designed to prevent him from speculating if he should undertake to do so.

Mr. VAN DEERLIN. It happens, of course, that the fees that accrue to the Government do not even pay for the operation of the Commission, do they?

Mr. HYDE. That is right.

Mr. VAN DEERLIN. Do you think some new legislation may be in order in that area?

Mr. HYDE. I believe not. I believe—and I may be contradicting what has been said by my colleague who suggests that perhaps some of the Commissioners would prefer a little more authority, particularly in terms of determining who we may consider as a possible transferee—but I think we have adequate discretion at the present time. I think we need the flexibility of the present law.

Mr. DINGELL. The time is up.

The gentleman from Michigan, Mr. Harvey.

Mr. HARVEY. Mr. Chairman, the section we are talking about here is the only one where there is any possibility of any violation and non-compliance with the law as far as I see, section 310(b). Is that correct?

Mr. HYDE. The only section of the statute. This is the only provision of law which has been cited as relevant here.

Mr. HARVEY. And that is a confusing section indeed.

Mr. HYDE. Could I give a bit of statutory history as to the 1952 amendment which Mr. Loevinger read?

Mr. HARVEY. He didn't read the last sentence, did he? I didn't hear it.

Mr. HYDE. I think he did.

Mr. ROGERS. I didn't think he read the first sentence. He read only the last.

Mr. HYDE. I think I can give you some of the folklore or the history which will explain why we have such a provision as this.

Mr. HARVEY. I have limited time. Am I correct in reading this that the first part of 310(b) specifically requires a finding of public interest?

Mr. HYDE. It does.

Mr. HARVEY. Without question that was the intention, that that public interest be retained. There is no doubt in your mind about that, is there?

Mr. HYDE. Not at all. I also would take the view, although Chairman Moss disagreed with me, that we have made such a finding.

Mr. HARVEY. The latter part of the section, where we speak of the Commission not making a finding in the public interest, refers only to any other transfer to any other person other than the one being considered here. Is that correct?

Mr. HYDE. That is right. The statute prohibits us from looking at alternative transferees.

Mr. HARVEY. In the work of this committee in 1950 and 1960 in their reports they recommended changes in 310(b). Were any changes ever made?

Mr. HYDE. I think the last change I can recall was 1952. That was the only one.

I am reminded by our counsel that the Commission has suggested the elimination of that last sentence but there was no action on that suggestion by the Congress.

Mr. HARVEY. So we still are bound by it today?

Mr. HYDE. We are.

Mr. HARVEY. You mentioned before the policy that Commissioner Cox refers to on page 1 where he states:

It strikes at our long established policy against allowing the holder of a construction permit to sell for more than the out-of-pocket expenses reasonably incurred in acquiring the permit.

Mr. HYDE. Commissioner Cox disagrees with the finding of the majority that he is not receiving an amount above his out-of-pocket expenses.

Mr. HARVEY. I appreciate that. My specific question is this—I understood you to say there was no such statement of policy but a vast body of precedent. Is this spelled out somewhere in past decisions of the Commission?

Mr. HYDE. I think I could find you illustrations of these precedents. I will undertake to do that.

Mr. HARVEY. If you will, I am sure others will be interested in having those, also, so we will know whether that truly is a past policy or whether this is just something —

Mr. HYDE. I will undertake to supply you with precedents on this point.

(The material submitted appears in the appendix, p. 337.)

Mr. Cox. While it is true that this does not directly relate to transfers, in section 311(c) Congress enacted provisions to govern the settlement between two parties who filed competing applications. They specifically said there that the parties could not settle this matter between themselves, so that one stepped out or they merged, unless they came to the Commission, and if there was a payment to be made, the payment should be limited to:

The aggregate amount determined by the Commission to have been legitimately and prudently expended and to be expended by such applicant in connection with preparing, filing, and advocating the granting of his application.

I think that this represents a congressional agreement in principle with the policy that is spelled out in the cases that the Chairman is undertaking to supply.

Mr. HARVEY. That is 311(c) to which you refer?

Mr. Cox. Yes, sir.

Mr. DINGELL. The Chair recognizes now the gentleman from Texas, Mr. Pickle.

Mr. PICKLE. It seems to me that a great deal of discussion this morning has evolved around the question of whether the Commission did in fact hold full hearings with reference to these transfers. Was it a hearing in your sense or should we have had a public and official full-blown hearing?

Assuming we had a full hearing, and it would seem to me as one member that there was more to be gained from a full hearing, but assuming we had had a full hearing would the matter as far as your Commission is concerned have been decided just on the basis of the hearing?

Mr. HYDE. Yes, of course.

Mr. PICKLE. That would have satisfied the questions involved. In other words, you are not asking for additional legislation?

Mr. HYDE. No, we are not asking for additional legislation.

Mr. PICKLE. Would full hearings have caused unusual delays?

Mr. HYDE. I think so. I believe it might very well have defeated this effort to salvage a sinking enterprise.

Mr. PICKLE. Is it typical the way this case is handled as compared to other cases?

Mr. HYDE. It was typical. We handle a great majority of the transfers upon the same basis—

Mr. PICKLE. You transfer many of these licenses and permits on the basis of your "hearing"?

Mr. HYDE. We handle a great majority of the cases on the basis of written applications and analysis.

Mr. PICKLE. This was a written application.

Mr. HYDE. That is right. This was handled—

Mr. PICKLE. So most of your cases are handled as this one was handled?

Mr. HYDE. They are, sir.

Mr. PICKLE. Without really a satisfactory hearing in the sense you have majority and minority?

Mr. HYDE. That is right, sir. I would like to add that the majority feels they had full information.

Mr. PICKLE. Do you have any different policy with respect to new construction permits as compared to the transfer of a license of a station which has been operating for, say, 5 years or a longer time?

Mr. HYDE. The act specifies the same test—public interest, convenience, and necessity. I believe it specifically says that the test should be the same as on an original application.

Mr. PICKLE. I would hope that any of the Commissioners would submit to this committee any recommendations for additional legislation if in his opinion such is needed other than the public necessity and convenience.

One question is related to this indirectly with reference to CATV. You are not involved in the transfer of any CATV are you?

Mr. HYDE. No, we are not.

Mr. PICKLE. Is that handled as between the licensee and the transferor? Do they have to get approval of a local governing agency or municipality?

Mr. HYDE. Generally speaking this has been handled as a franchising matter by the municipality, the county, the State. We have not undertaken to license—

Mr. PICKLE. In the transfer of a CATV do you know whether they must show public convenience and necessity?

Mr. HYDE. They need not make any representation to us or get any consent from us under the present statutes.

Mr. PICKLE. Some of the CATV chains I suppose have 30, 40, 50 different ownerships all under one.

Mr. HYDE. I understand that in some States there are certain—

Mr. PICKLE. Do you think that is a good public policy?

Mr. HYDE. I think this business of authorizing CATV's and the transfers needs to be researched. I think they need to be examined for the purpose of development of appropriate public policy. This thing has grown. Although it has a bit of history and a good deal of size now we are undertaking a study that will cover the point that you raise.

Very often microwave systems are used in connection with CATV. These are subject to our licensing power and they may not be transferred without our approval. Some applications have been denied.

Mr. DINGELL. The gentleman from Colorado, Mr. Brotzman.

Mr. BROTZMAN. I have had some difficulty understanding the section of the question involved here. I have read it several times and perhaps I am catching up a little bit.

Is there a difference of opinion on the Commission as to legal construction of that particular section?

Mr. HYDE. No; there is not.

Mr. BROTZMAN. You are all agreed on what it means?

Mr. HYDE. Yes. If the chairman would give me a moment at my expense to explain how we got that I think it might help.

Mr. BROTZMAN. If you take that out of your time I will be glad to do it.

Mr. DINGELL. The Chair will try to give you that opportunity.

Mr. HYDE. The Commission did at one time undertake to make regulations which would authorize the Commission to hold up a proposed transfer for consideration of competing bids. These were called AVCO procedures. They did not work very well.

They did put delays on the assignment or transfer of stations and the Commission itself voluntarily deleted the regulations but Congress was not satisfied to have them deleted. They enacted the amendment of 1952 to preclude the Commission from even reviving such a regulation.

Mr. BROTZMAN. The idea is to permit more alienability so it could be transferred. Is that correct?

Mr. HYDE. That would seem to me to be it. I would construe this as an expression of congressional intent to permit alienability without the limitations the Commission had proposed.

Mr. BROTZMAN. You seem to be in agreement on the law. You disagree as to the transaction somewhat, I would glean.

Let me ask a couple somewhat legally related questions. First of all, I would understand that 100 percent of the stock was actually transferred from A to B. Is that correct?

Mr. HYDE. In this instance?

Mr. BROTZMAN. Yes.

Mr. HYDE. Eighty percent.

Mr. BROTZMAN. Eighty percent was transferred.

Mr. HYDE. This is the Overmyer station.

Mr. BROTZMAN. And was the consideration for that \$1 million-plus?

Mr. HYDE. \$1 million.

Mr. BROTZMAN. \$1 million even?

Mr. HYDE. Right.

Mr. BROTZMAN. Who owns the 20 percent now?

Mr. HYDE. Overmyer.

Mr. BROTZMAN. Overmyer owns that?

Mr. HYDE. Yes.

Mr. BROTZMAN. He has pledged that plus other property for a \$3 million loan?

Mr. HYDE. Correct.

Mr. BROTZMAN. My question really is this: In trying to arrive at this thing called consideration, was the granting of the loan a condition precedent to making of the sale?

Mr. HYDE. I am sure it was worked out as part of the proposal. Actually what you have here is a contract for the transfer of the controlling interest in the Overmyer stations plus a substantial loan of capital to Overmyer for his purposes.

Overmyer has a continuing investment in the station, the difference between this \$1 million and his out-of-pocket expense which is at risk in the further operation of the five stations.

Mr. BROTZMAN. So that the transfer of the remaining 20 percent of the stock would occur upon a breach of the collateral agreement, a foreclosure or picking up of the pledge? This is the way AVC would get the 20 percent?

Mr. HYDE. Yes. They would exercise their option.

Mr. BROTZMAN. No agreement to sell it to them at this point?

Mr. HYDE. They would exercise their option to buy or foreclose their mortgage.

Mr. BROTZMAN. There is an option to buy?

Mr. HYDE. There is.

Mr. BROTZMAN. In conjunction with the collateral agreement?

Mr. HYDE. That is right. There is an option to buy the other 20 percent as well as a mortgage on the other 20 percent and other properties.

Mr. ROGERS. Would the gentleman permit one question?

Mr. BROTZMAN. Yes.

Mr. ROGERS. Is it true that under the agreement that you approved it is stated it is understood the price to be paid for the stock shall not in any event exceed \$3 million?

Mr. HYDE. Yes.

Mr. ROGERS. The price for the stock. Now the stock is the 20 percent of the permit that the out-of-pocket expense amounts to about \$300,000 on?

Why didn't the Commission restrict that price of the 20 percent stock to \$300,000? You restricted the first 80 percent to \$1 million.

If you really are carrying out the intent to hold these transfer permits to out-of-pocket expense you should have restricted the 20 percent to what the out-of-pocket expenses were.

Otherwise any one can come in, make a mortgage agreement, and get whatever money they want.

You say "Well, it is later on."

Mr. HYDE. AVC Corp. has not contracted to pay \$3 million for it. They have an option to pay—

Mr. ROGERS. They didn't contract to pay out-of-pocket expenses for it, either. You have not seen to that.

Mr. HYDE. I think we have.

Mr. ROGERS. Show me the language.

Mr. HYDE. We have required a submission of their costs so that we could make a determination as to whether or not an amount—

Mr. ROGERS. In their own agreement it says they can pay up to \$3 million for that 20 percent but no more.

Mr. HYDE. They can.

Mr. ROGERS. I thank the gentleman.

Mr. BROWN. Mr. Hyde—go ahead and finish what you had to say.

Mr. HYDE. I was checking some information. Excuse me, sir.

Mr. BROWN. Is there an analysis available either in memorandum form or any other form as to the value the Commission ascribes to the 20 percent of the stock which was mortgaged and the other items which were mortgaged for the \$3 million?

Mr. HYDE. There is attached to the application information regarding an independent appraisal of the other properties that were mortgaged. My recollection is that there is a 2 to 1 value as against the amount of the mortgage.

What I am saying is that an independent appraisal was made of the properties that were mortgaged and this independent appraisal values them at twice the value—

Mr. BROWN. \$6 million?

Mr. HYDE. That is right.

Mr. BROWN. Is there any place a specific breakdown of the value of the 20 percent of the stock?

Mr. HYDE. No, sir.

Mr. BROWN. Versus the value of the other properties which made up the package of the mortgage for the \$3 million?

Mr. HYDE. There is not.

Mr. BROWN. Do you know whether in the 2 to 1 ratio which assumes \$6 million what the stock was valued at?

Mr. HYDE. I think it was practically disregarded. I believe the loanor is depending upon the mortgages on the other property.

Mr. BROWN. In other words, you have only the generalized assurance that there was a 2 to 1 ratio but no breakdown—

Mr. HYDE. There is a 2 to 1 ratio without regard to the stock.

Mr. BROWN. Does that presume a valuation on the other properties not counting the stock?

Mr. HYDE. It certainly does.

Mr. BROWN. Do you have those broken down by items?

Mr. HYDE. Yes.

Mr. BROWN. In other words, the other pieces of property were assumed to be worth \$6 million by an independent appraisal?

Mr. HYDE. They were found to have that value.

Mr. BROWN. And they are part of the \$3 million mortgage?

Mr. HYDE. They are.

Mr. BROWN. Are they the total of the \$11 million of net worth that Mr. Overmyer had when he went into this whole business of broadcasting?

Mr. HYDE. I do not know.

Mr. Lee may have some information on that.

STATEMENT OF ROBERT E. LEE, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. LEE. If I may correct that figure. At the time he applied our staff found it was \$5,900,000, which was his net worth.

From that time to this he has come into very hard times, and his empire has collapsed.

What his net worth is as of the moment of transfer I assume it is pretty nil.

Mr. BROWN. Did he mortgage the entire empire that he had at the time he began broadcasting?

Mr. LEE. I don't believe all of it. We have already put in the record, or we will put in the record, the list of these 23 properties that were appraised which is the mortgage on the \$3 million.

Mr. DINGELL. If the gentleman will yield for a brief question.

Mr. BROWN. The chairman usually gets his own time at the end of the hearing. I will be glad to yield at this point if you want to develop this line of questioning.

Mr. DINGELL. We want to ask whether the property involved in the remaining 20 percent of the stock was valued at 20 percent or zero.

Mr. HYDE. I do not have a valuation on the remaining 20 percent stock. I can say this—opposite it there is this \$300,000 worth of uncompensated out-of-pocket expenses.

Mr. BROWN. If I may continue my line of questioning, it would seem to me that 80 percent of the stock is really worth \$1 million; if that is so, then 20 percent of the stock is worth something less than \$250,000 because 20 percent is not needed for control. You have control with the 80 percent.

Actually, on that basis the total value of the stock in the broadcasting interest would have to be put down as something less than \$1,250,000.

Is this the contention of the members of the Commission who supported this sale?

Mr. HYDE. I believe they will state their views about that.

Might I say one further thing about the mortgages? They are second mortgages. There is a first mortgage ahead of the one.

Mr. BROWN. On the warehouse properties?

Mr. HYDE. Yes.

Mr. BROWN. And the stock, or just warehouse properties?

Mr. HYDE. Just warehouse properties, as I understand it.

I want to add this: The equities beyond the requirements of the first mortgage are \$6 million, or 2 to 1 as far as the loan is concerned.

Mr. BROWN. I have one other question for the record, and if you cannot answer it gives us statistics if they can be easily developed.

In major markets, what percentage of the stations now in operation for which construction permits have been granted are in multiple ownership?

Mr. HYDE. I will have to ask for time.

Mr. BROWN. Multiple ownership in contradiction to the interim policy on multiple ownership.

Mr. HYDE. I think we can get that for you. I believe I have a full list in front of me. I think there are eight instances where transfers have been made.

Mr. BROWN. I would like to know the number of stations, ownerships —

Mr. HYDE. Oh, this is a larger order. The interim policy was, on its face, not designed to have retroactive —

Mr. BROWN. I understand that. I would like to know whether these were, prior to the adoption of the interim policy, developed before or after the policy of the interim policy.

Mr. HYDE. We will undertake to get you the information.

Mr. BROWN. This is not the first case of frustration of the interim policy, is it?

Mr. HYDE. This is not the first waiver; that is right, sir.

(The information submitted appears in the appendix, p. 342.)

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Mr. Chairman, I would like to direct first of all a request through the Chair for permission that members of this committee be afforded the privilege of asking certain questions as appropriate both insofar as helpful information and other matters are concerned.

The CHAIRMAN. That may be permitted. I will ask the Commission to stand ready when we resume Congress if we need further answers to questions.

Mr. DINGELL. I would like to direct the first question to Commissioner Cox who discussed rather eloquently a statement on page 2, referring to permits being held to actual expenses.

The statement goes on to say "Certainly it represents a novel approach which I think would have to be tested in a hearing before it could be accepted."

Then he goes on to make further statements and makes a further comment with regard to the nature of these expenditures and how they conform to previous Commission practices.

Mr. Cox. I don't believe we have ever had this method of justifying expenses used before. That does not mean it may not be valid, but I feel before it is accepted in such a significant amount it would have been desirable to test it in a hearing.

As I understand the procedure, they took a part of the period during which Overmyer was acquiring and holding these permits for which they had some records as to the services provided by other parts of his empire. They then applied a certain percentage factor to these for other parts of the period, for which records were not available. This is all supported by affidavits of individuals in the Overmyer enterprises as to what part of their time they devoted to broadcast aspects of his operation.

To simply accept the aggregate of these figures without detailed testing seems to me to be unsound. That is why I suggested a hearing would have been appropriate.

Mr. DINGELL. Commissioner, on page 3 of your dissent you discuss the realities of the situation in the second paragraph.

I would like to direct this question to the other members of the Commission.

Does any member of the Commission take issue with the factual statement made by Commissioner Cox in that language on page 3?

I refer now to the second paragraph on that page.

Mr. HYDE. I take the position that the consideration was not \$4 million. It was \$1 million.

Mr. DINGELL. If you were an intelligent businessman and knew that you were going to, within a matter of a year or so, have certain items dumped back into your lap which appeared to be of rather limited value, would you include in such agreement the option to purchase them then for \$3 million?

Mr. HYDE. If I were certain there was going to be a substantial increase in the value of them I would be interested in the option, certainly.

Mr. DINGELL. Does it not strike you it is rather extraordinary that on one hand we have an option to purchase and on the other hand we have a mortgage so widely divergent? Has the Commission taken steps to ascertain whether there were under-the-table agreements in fact to repurchase?

Mr. HYDE. We have examined the whole matter carefully to assure ourselves that we have full information. If we felt we did not have it we would either undertake further inquiries or have a hearing.

There is nothing here to suggest any misrepresentation in the submissions made to the Commission.

Mr. DINGELL. You have not had opportunities to test these allegations from these bare affidavits in an adversary proceeding in cross examination?

Mr. HYDE. Both parties to this application will continue to have business with the Commission. They would be taking a very serious and grave risk to be prosecuting application —

Mr. DINGELL. Are you telling me, then, that misrepresentation will affect the rights and the interests of persons who make false statements at some later time?

Mr. HYDE. There is hardly any offense more serious in our processing than to file an application which is untruthful. There have been revocations of licenses on just that basis.

Mr. DINGELL. I think if I recall the figures correctly with regard to revocation of licenses there have been two or three.

Mr. HYDE. Oh, no.

Mr. DINGELL. During the life of the Commission.

Mr. HYDE. There has been a substantial number.

Mr. DINGELL. I would like to have you submit those for the record. (The information submitted appears in the appendix, p. 343.)

Mr. DINGELL. I would like you also to advise this committee whether you revoke licenses of these parties if you find there are fraudulent statements made.

Mr. HYDE. We would institute proceedings in any case where we find there have been misrepresentations submitted to us in an application on which we have acted.

Mr. DINGELL. What consideration went into the Commission's determination of no hearing?

Mr. HYDE. I didn't hear you.

Mr. DINGELL. What consideration went into the consideration of the matter that no hearing was required in this matter?

Mr. HYDE. One, we felt we did have full information.

Two, it is a matter where in the nature of things expeditious action is required if the Commission is, in fact, going to act.

Mr. DINGELL. What is in the record to show expedition was required?

Mr. HYDE. The financial distress of the permittee.

Mr. DINGELL. You are required under the FCC Act to make a finding in the public interest?

Mr. HYDE. Yes.

Mr. DINGELL. Where is there the requirement that you come to the conclusion that the permittee is under financial stress? There is no place in the act where this is required, is there?

Mr. HYDE. No.

Mr. DINGELL. Public interest is the sole test.

Mr. HYDE. That is right, but I am suggesting to you that the plight of a station and the effect of the distress of the operator upon the public service is a relevant consideration.

Mr. DINGELL. Can you tell me how a company like AVC can apply for all five construction permits in 25 top markets in this country and achieve them in the course of a simple comparative hearing?

Mr. HYDE. We don't have such a case.

Mr. DINGELL. This is a most extraordinary circumstance, is it not?

Mr. HYDE. There are many instances where a station has been acquired by transfer which perhaps would not go to the transferee if it had been a subject of a comparative hearing, depending upon who the other applicants might be.

Mr. DINGELL. Commissioner Johnson, did you have a comment?

Mr. JOHNSON. I think it might be useful in this context to point out the distinctions between the ways to reach this pot of gold at the end of the rainbow. We are talking about two here this morning.

There are, in fact, about seven.

The fact of the matter is, although my colleagues might disagree with me on this, I think in all candor it is quite clear that this Commission, like other comparable institutions, responds to pressures and tends to hold hearings and conduct more complete inquiries in those cases where there are in fact competing applicants or other competitive interests in the matter before the Commission.

I think that those matters in which there is not such interest receive rather cursory attention. I think that that might as well be said.

In the case of applying for a broadcast license, in trying to get into the broadcasting business, there is one way to get into it which involves expenditure of tens of thousands of dollars and many months of time and a tremendous amount of effort. That is the comparative hearing route. That involves applying for construction permits, for a new channel where there are other people who want to get it.

There are many other ways of getting into the broadcasting business, one of which you direct your attention to this morning—that is, purchasing a construction permit from someone else where there is no opposition, where there is no public involvement or participation, and in those cases it will be handled in a very cursory fashion. That is what happened here.

I think for us to pretend that this case receives the same kind of degree of attention and inquiry and hearing and examination that a comparative hearing would is simply not the case. There is no reason to suspect that it would be.

You can apply for a new channel. You can apply for a new channel where there is no competitor and then there will not be a hearing. You will simply be given the channel.

You can ask for transfer of a channel to your community which does not exist there. If there is no opposition, that will be granted with relative ease.

On the other hand, a fourth option would be to ask for the transfer of a channel to your community where there is opposition in the community from which you wish it transferred. In that case there will be a rulemaking proceeding and you again have a problem on your hands.

Fifth, you can intervene in a renewal proceeding for someone who now has a license. There again you have a competitor on your hands, expense and time.

Sixth, you can go out and purchase a station that is in operation and without opposition there will be very little examination.

Seventh, you can do what was done in this case, that is, purchase a construction permit.

I think it is useful for you to see this in context as simply one of many routes into the broadcasting business, some of which are quite rigorous and some of which are relatively easy.

Mr. ROGERS. I can't understand this. Where there is no opposition I can see where you feel a hearing is not necessary if it complies with the regulations and waivers of policy are not necessary.

But where waivers and exemptions of policy are necessary, I would think it would automatically trigger a hearing. This is my concern.

Mr. JOHNSON. You understand I do not disagree with you. I dissented in this case.

What I am trying to do is simply to explain what I think is going on at the FCC in terms of our regulation of entry into a very profitable business.

There are many entry ways. Some are very difficult and expensive. Others are relatively easy. Those that are difficult and expensive tend to involve application by us of very much more rigorous standards than the more easy entry ways.

Mr. HYDE. The Commission does not handle any such case as this in a cursory manner. This thing has been examined at length. There was no competing applicant. There was no petition against it.

The Commission did not find any need for a hearing. That does not mean they were not interested in the relevant facts in the case.

Mr. DINGELL. You granted a waiver of several of your policies.

Mr. HYDE. I have a list of eight of them here.

Mr. DINGELL. You granted a waiver on the prehearing rule?

Mr. HYDE. No.

Mr. DINGELL. You have granted a waiver to the established practice in the Commission that you don't authorize multiple ownership in areas of the top 50. You have not three but five in the top 25 and not the top 50, so you waived that.

What other broad public policies and questions did you waive?

Mr. HYDE. I think the very comprehensive dissenting statements have raised all the possible objections that you could identify.

I would like to say that the 3-year rule provides an exception for transfers where there is financial distress.

Mr. DINGELL. But there is no financial distress to a station in being?

Mr. HYDE. Yes.

Mr. DINGELL. Simply financial distress to a particular construction licensee?

Mr. HYDE. No. The station in San Francisco is essentially complete. It will go on the air soon.

Mr. DINGELL. Not one of these five is on the air?

Mr. HYDE. The investment has been made. The point I make is that these are not bare certificates; they are projects in which substantial funds have been invested.

Mr. ROGERS. If they had assets for which they could obtain \$3 million, where they could secure a loan for \$3 million, surely there was not enough financial distress that they could not have gone out on the money market and obtained capital?

Mr. HYDE. Our information is that this was the only source of funds that he could find.

Mr. ROGERS. Did you go into that? Is there anything in the record to show he made a real effort?

Mr. HYDE. There is a statement by the applicant.

Mr. DINGELL. Was this matter tested in a hearing before the Commission?

Mr. HYDE. There was no hearing on this case.

Mr. DINGELL. You really don't know whether there were alternative measures and methods available to the transferor.

Mr. HYDE. I am satisfied that these stations would have been lost except that a new applicant was found who was willing to assume the risks.

Mr. DINGELL. Here you have a situation where a man mortgages for \$3 million with an option to purchase for \$3 million 20 percent of the value of these stations.

If that kind of deal were sufficiently appealing to AVC it would appear there was a distinctly mortgageable asset available to Mr. Overmyer to dispose of on the market or an interest he could dispose of on the market in such a way that he could have derived some economic benefit which would have enabled him to bail himself out of his financial distress.

Did you make any scrutiny of this point at all?

Mr. HYDE. We acted upon the——

Mr. DINGELL. I want a responsive answer. Did you make any scrutiny of this point?

Mr. HYDE. Not outside the application.

Mr. DINGELL. Well, did you get any information on this point outside of the application?

Mr. HYDE. There is a report in the staff analysis that the applicant Overmyer, the transferor, asserted that he was not able to find another alternative.

Mr. DINGELL. You conducted no hearings on this matter to ascertain whether that fact was so or not?

Mr. HYDE. We did not conduct a hearing.

Mr. DINGELL. Did you make any independent inquiry with other financial institutions to ascertain whether this was a mortgageable item or whether other buyers were available to bail Mr. Overmyer out of the trouble in which he found himself?

Mr. HYDE. If I may have a moment to check with staff.

We did not make an independent investigation in this. With the resources we have in our place, we don't undertake to substantiate the usual application. We examine them and if we find indications of any irregularity we do make a study.

Mr. DINGELL. What you are saying is that you swallow the papers filed with the application whole without chewing.

Mr. HYDE. What I am saying is that we found the application submitted to us a very formidable one adequate for the findings we made.

Mr. DINGELL. Did you make any independent check as to alternative methods of financing or whether or not these statements that were submitted to you were in fact true?

Mr. HYDE. I don't believe this was required of us under the circumstances.

Mr. DINGELL. Do you believe it is required before you waive a hearing?

Mr. HYDE. Our policy, and it is procedural, says that if an applicant makes a compelling showing that public interest would be served by a grant without a hearing, we do it. We feel they made such a showing.

Mr. DINGELL. You concede you have granted an application involving matters which under ordinary circumstances you would have hearing, that you have waived the broad procedural——

Mr. HYDE. No; I am not.

Mr. DINGELL. There was no outside check of the factual content of the applications presented to you?

Mr. HYDE. No; I am not saying that at all.

Mr. DINGELL. I want you to tell me where I am wrong.

Mr. HYDE. I would say that in 95 percent of the cases that the application is acted upon without hearing.

Mr. DINGELL. Here you have something that contravenes the 3-year rule, the rule with regard to concentration of ownership in the 50 top markets, and these are only the top 25. You have also allowed the evolution of a rather interesting financial arrangement on which there is broad controversy as to whether or not it is a \$4 million compensation or not.

You had no scrutiny in the form of an objective hearing to find out the real circumstances. You concede you have engaged in no independent scrutiny of the truth or falsity of the papers submitted to the Commission.

You further say the way you will police this is by waiting to see whether or not these statements were true or false with the later hope that perhaps maybe you will consider these in some relicensing proceeding that will take place in the vague future.

Mr. HYDE. I don't want to give the impression that I have any doubts about the validity of the showings before us or that I feel it is necessary for us to police it to make sure that the representations they made were true.

I am saying that should they, unknown to us, have made misrepresentations, there are sanctions adequate to deal with it.

Mr. DINGELL. Don't you think you have a responsibility as Chairman of that Commission to ascertain the truth or falsity of statements where there are questions of the kind we see here and where the rules of the Commission regarding hearings are being so broadly and wantonly waived by the Commission?

Mr. HYDE. I think we have a responsibility to see that the documents on which we act are truthful.

I also think we are not required to go out and investigate to see whether there are——go out on a witch hunt——

Mr. DINGELL. I am asking whether you made an independent investigation. You said you have not?

Mr. HYDE. There is no evidence of irregularity that would warrant a special investigation.

Mr. DINGELL. How do you know there is no evidence of irregularity? You conducted no hearing and made no independent scrutiny?

Mr. HYDE. This is the way we must act. We do not undertake field investigations of every application filed with us. We could not do our business with the resources we have if we had to proceed in that way.

Mr. DINGELL. But you have an extraordinary situation. Commission rules say you will have a hearing in circumstances where the license is under 3 years old when transferred, and you will have a hearing where there is a tendency toward concentration because of the excessive number of licensees operating in five or whatever the number is of the top 50. Here you have five of the top 25. You made no independent investigation and had no hearing.

Mr. HYDE. There is no tendency to monopoly or concentration here in the transfer of five UHF stations in markets where they will be competing with the strongest forces in the broadcasting industry.

Mr. ROGERS. One of the reasons you give is the public interest. This is not stated in the order, however.

Mr. HYDE. I take the view the finding we make is a public interest finding.

Mr. ROGERS. I do not see edification of what the basis is. As I understand it, one of the reasons for the finding is that you found there was financial difficulty, and the station might go under and might not be operated.

Mr. HYDE. It is consequences to the public about which I am concerned.

Mr. ROGERS. That may be. You said the stations were in financial difficulty.

Mr. HYDE. Yes, sir.

Mr. ROGERS. By a public hearing you could have questioned Overmyer and found out if he had tried to raise cash, how much assets he needed. He must have had considerable assets to get a \$3 million loan.

Mr. HYDE. I believe to have ordered a hearing in this case would have been the finish of the whole project.

Mr. ROGERS. It may not. Some of your brethren disagree with that; I believe three do.

Is it normal when you have a transfer of license or construction permits that the whole amount, the full permit, or the full license is sold?

Mr. HYDE. No.

Mr. ROGERS. Only a majority share of it?

Mr. HYDE. My colleagues seem to feel that the typical case would involve a transfer of the entire ownership. There are instances where minority interests have been—

Mr. ROGERS. Is it tied to compensation out of pocket?

Mr. HYDE. I didn't get that.

Mr. ROGERS. When you allow such a transfer, as I understand it, if it is 100 percent, you allow reimbursement of 100 percent out of pocket?

Mr. HYDE. In the case of a permit.

Mr. ROGERS. How many permits do you have; four?

Mr. HYDE. As distinguished from a license.

Mr. ROGERS. Five permits?

Mr. HYDE. Yes.

Mr. ROGERS. So you would have allowed only out of pocket?

Mr. HYDE. Yes.

Mr. ROGERS. As I understand it from the agreement, when that permit was to change hands, they said, "We will pay you for only 80 percent of it right now"?

Mr. HYDE. Right, sir.

Mr. ROGERS. "I am giving you \$1 million for this."

Mr. HYDE. Yes.

Mr. ROGERS. "But this 20 percent I will pay you \$3 million for under the agreement."

Mr. HYDE. The buyer has an option to pay \$3 million for it—up to that or less—which he is not obliged to exercise.

Mr. ROGERS. I agree he does not have to.

Why did you not, in your investigation, require that to be restricted for the 20 percent of the stock, restricted to the actual out-of-pocket expense prorated?

Mr. HYDE. I don't think it would have been appropriate or necessary for this reason:

Overmyer does not get his full out-of-pocket expenses. There are \$332,000 left uncompensated.

If he wants to risk that for 4 years as an investment, a venture in UHF, why should he not be permitted to do it?

Mr. ROGERS. Why should not everybody do the same thing any time they want to buy a permit, sell a 60-, 70-, or an 80-percent interest, which controls the permit, and simply say after 3 years you can buy the rest up to \$3 million, \$4 million, \$5 million? Does this really not get around your policy of trying to hold it to out-of-pocket expense?

Mr. HYDE. I don't believe the arrangements in this get outside our policy.

Mr. DINGELL. Suppose you run into this circumstance again; are you going to waive a hearing in that proceeding too? You have already approved this set of circumstances which seems rather extraordinary.

Mr. HYDE. This is an unique situation. There is a combination of factors here of great significance. One is the impact upon the development of UHF stations and the development of competitive network possibilities.

There is the unusual situation of an enterprise which started out with substantial resources at the time suddenly meeting adverse circumstances such as we have here.

I do not know of any other such situation. I do not know of any applications at all like this.

Mr. ROGERS. Would it be helpful to you and the Commission if we passed a law saying that in any such case of a change of permit or change of license where it would require the waiver of a rule or policy, there must be a hearing? Would you say this would be helpful to the Commission in setting a policy?

Mr. HYDE. I do not think it would be helpful. I would like to say this to you. You establish a Commission like this to have flexibility, to

meet the exigencies of particular cases as they come, to apply the public interest test to conditions which you cannot possibly anticipate. I think you would be acting contrary to that principle if you imposed—

Mr. ROGERS. To require a public hearing, you think—

Mr. HYDE. A hearing is a very severe sanction. I have participated in a number of efforts to simplify the hearings procedure, to limit the costs, and to expedite the whole business. There has not been any real success in the endeavor. Notwithstanding the efforts, they become longer and more expensive, and in my judgment we have to find ways to get at the essential facts and conclude matters without the ordeal of hearings which exhaust the resources of both the applicant and the agency.

Mr. ROGERS. Thank you.

Mr. DINGELL. Mr. Chairman, do you not find yourself in a situation where a very ingenious method has been found to circumvent the long-established policy of the Commission to avoid concentration of multiple ownership of licenses, and to avoid the historic policy of the Commission to prevent any one company from owning more than three licenses in the top 50 markets?

Mr. HYDE. I do not believe so.

Mr. DINGELL. Is it not also a fact that were AVC to come in with an application for these five licenses, they would each and every one of them have been denied under the traditional practices and rules of the Commission if there had been an adversary proceedings or comparative hearing?

Mr. HYDE. I do not know, and under the circumstances, it is a matter of record that each one of these Overmyer applications was granted without a hearing.

Mr. DINGELL. It is most likely if AVC came in, they probably would not have been allowed the licenses if you had had other applicants. The fact is, in the Overmyer case, there were other applicants.

Mr. HYDE. I think we may not assume that. I called to your attention earlier that one applicant who had three applications pending before us dismissed them all because of their discouragement as to the prospect of UHF.

Mr. DINGELL. Have there ever been instances in the records of the Commission where the transferor received more than his out-of-pocket expenses?

Mr. HYDE. The advice I get here is not in the case of a bare certificate.

Mr. DINGELL. Have there ever been instances where hearings have been waived on questions like those involved in this case?

Mr. HYDE. Oh, yes.

Mr. DINGELL. I again renew my request that I be permitted to submit pertinent questions.

The CHAIRMAN. The request will be granted.

I want to thank all of you gentlemen for your patience and forbearance during this special sitting and, most of all, during the whole of this session. We have had a hard year, and I hope we can end it on a pleasant note.

Mr. HYDE. Mr. Chairman, I thank you for the courtesy of your hearing. I shall endeavor to get a prompt answer to the letter request

which you mentioned earlier. I regret very much that you have not had an answer before this time.

The CHAIRMAN. Each one of us has been under constant and heavy pressure during the whole session. A great deal of it has come from individuals or groups who could have benefited privately if we had acted in a certain way. It is our business to promote private interests so long as they do not conflict with the broader and deeper interests of the public as a whole. But I feel that we can best serve private interests if we look first to what would benefit the general concern of all the people.

—Someone has said that the statesman must do what he would do if he possessed infinite knowledge and complete unselfishness. That is the ideal toward which we should strive.

Again, I want to thank you for your attention to duty, and to hope that the sentiments attached to the Christmas season may take control of our minds and prepare them for the year ahead.

Mr. HYDE. Thank you very much.

(Whereupon, at 12:40 p.m., the subcommittee adjourned.)

TRAFFICKING IN BROADCAST STATION LICENSES AND CONSTRUCTION PERMITS

TUESDAY, JULY 16, 1968

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Today's hearing is a continuation of proceedings before the Special Subcommittee on Investigations begun on December 15, 1967.

At that time, this subcommittee directed certain preliminary questions to members of the Federal Communications Commission with respect to their 4 to 3 decision of September 8, 1967, which authorized, without a hearing, the transfer of five major-market, UHF television stations, construction permits from D. H. Overmyer interests to U.S. Communications Corp. and waived their interim policy on multiple ownership of TV stations.

In line with our intention, expressed then, to receive all pertinent information pertaining to this matter, we shall now proceed to hear other witnesses, including the principals in the transfer itself. Before calling our first witness, certain fundamental facts should be reiterated.

It is the duty and responsibility of the House Committee on Interstate and Foreign Commerce, under section 136 of the Legislative Reorganization Act of 1946, to exercise legislative oversight or continuous watchfulness over the execution by the administrative agencies of any laws, the subject matter of which is within the jurisdiction of the committee.

Communications is one of such subject matters. House Resolution 108, 90th Congress, authorizes this special subcommittee to make investigations and studies concerning communications and the administration by the Federal Communications Commission of the statute which it administers.

Thus, these present hearings have two fundamental purposes, which fall within the jurisdiction of the special subcommittee: First, to ascertain whether the Federal Communications Commission has adequately administered those provisions in its organic statute which pertain to the facts and circumstances involved in the proceedings before us; and, second, whether the Communications Act of 1934, as amended, and FCC regulations contain provisions which are adequate to protect the public interest in light of the testimony and evidence to be received during the course of these proceedings.

(39)

Over the past months, staff personnel of the special subcommittee have continued their investigation of station transfers, a study which began many Congresses ago. Indeed, some of you gentlemen will recall that the subject of broadcast station transfers—trafficking in licenses—has for years been of particular concern to the full Commerce Committee as well as to its special subcommittees such as the Special Subcommittee on Legislative Oversight. The Overmyer transfer is, therefore, but one of countless other assignments examined in furtherance of this important congressional oversight function.

Chairman Hyde, of the FCC, told our subcommittee in December that this transfer was handled in "typical" fashion. However, in their dissents, some members of the Commission have raised important issues about this transfer which it is our duty to explore further.

It is a well-known fact that station licenses and construction permits cost their holders virtually nothing; that there is not enough radio spectrum for all those who desire to use it; and that those chosen few, privileged to enjoy operating rights in this public domain, must abide by the overall "public interest" proscriptions of the law.

Unfortunately, however, some have sought these invaluable broadcast trusteeships not to serve the public interest, as pledged, but, instead, to enrich themselves at the public's expense. Such irresponsibility cannot be tolerated by this or any other Congress, and it is the necessary and proper role of this subcommittee to insure that the Communications Act and its administration by the FCC effectively preclude undesirable and unlawful activity of this kind.

I want to stress again that this subcommittee is concerned with the Overmyer transfer only as relates, if at all, to the broader problem of trafficking in broadcast licenses and construction permits. In this regard, it should be made plain at the outset that members of this subcommittee have no intentions whatsoever of subverting the good reputations of Mr. Overmyer, of any of his organizations, or, for that matter, the good reputations of any persons.

In accomplishing its legislative duty, the subcommittee will observe scrupulously all the fundamental safeguards afforded by our Constitution to corporations and individuals, whose rights and privileges will be protected and preserved during the course of these hearings.

Witnesses will be permitted to be accompanied by counsel, who may advise them of their constitutional rights.

Moreover, a copy of rule XI, 26 of the Rules of the House of Representatives, of section 136 of the Legislative Reorganization Act of 1946 and of House Resolution 168, 90th Congress will be given to each witness prior to his testimony.

We shall now call our first witness and have him sworn in.

Mr. Robert F. Adams, former executive vice president of the Overmyer Permitees, will you please come forward.

Mr. Adams, will you raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROBERT ADAMS. I do.

TESTIMONY OF ROBERT F. ADAMS, FORMER EXECUTIVE VICE PRESIDENT, D. H. OVERMYER COMMUNICATIONS CO. AND D. H. OVERMYER BROADCASTING CO.; ACCOMPANIED BY MICHAEL FINKELSTEIN, COUNSEL

The CHAIRMAN. State your name and occupation and the gentleman's name accompanying you, for the record.

Mr. ROBERT ADAMS. My name is Robert F. Adams. I am self-employed. The gentleman on my left is Michael Finkelstein, my counsel.

The CHAIRMAN. Mr. Lishman, would you proceed.

Mr. LISHMAN. Mr. Chairman, before interrogating the witness, I would like to place in the record certain foundation material.

The CHAIRMAN. That may be done.

Mr. LISHMAN. Specifically, the complete files on the Overmyer proceedings before the FCC have been transmitted to the subcommittee under date of April 15, 1968 together with letters from the secretary of the FCC certifying them.

I would like these in the record. The files themselves are stacked in the middle of the podium. They are so voluminous I should like them to be accepted for the record and placed in the files of the committee but not printed unless the committee desires otherwise.

The CHAIRMAN. Without objection, your request is so granted.

Mr. LISHMAN. I would also like to have placed in the record various items which deal with the rules of the FCC and Overmyer's financial qualifications to obtain the five construction permits in issue.

Included in these items are balance sheets that were submitted by the Overmyer Communications and Broadcasting Companies, the D. H. Overmyer Warehouse Co. & Affiliates, letters from various banks pertaining to the financing that was necessary, and excerpts from forms that the FCC requires to be completed in connection with the processing of a construction permit application.

I think this material, Mr. Chairman, should be printed in the record.

The CHAIRMAN. Without objection, that may be done.

(The documents referred to appear in the appendix; see items 10 and 11 of contents for individual listing.)

Mr. LISHMAN. May I say at this point, Mr. Chairman, I think in fairness to everyone concerned that the Overmyer interests should be permitted to correct or rebut any of this foundational material in sworn statements or in audited statements in order to make sure that this is a completely objective record. I would suggest that they be given 4 weeks from the date of this hearing within which to comply with my suggestion, if that is agreeable with the committee.

The CHAIRMAN. From the closing date of the hearings?

Mr. LISHMAN. Yes, sir.

The CHAIRMAN. Without objection, the request is so granted.

Mr. LISHMAN. Mr. Adams, will you please describe your official position with the Overmyer Co.?

Mr. ROBERT ADAMS. I was executive vice president.

Mr. LISHMAN. Of what company?

Mr. ROBERT ADAMS. Of each of the broadcast companies that held the construction permits.

Mr. LISHMAN. In other words, you were executive vice president of the D. H. Overmyer Broadcast Co., Inc.?

Mr. ROBERT ADAMS. I believe that was one of the companies.

Mr. LISHMAN. And the D. H. Overmyer Communications Co., Inc.?

Mr. ROBERT ADAMS. I believe that was another company.

Mr. LISHMAN. At what time were you engaged in your duties as such executive vice president?

Mr. ROBERT ADAMS. From approximately June 1964 until December 23, 1965.

Mr. LISHMAN. Did you play any part in preparing the applications to the Federal Communications Commission whereby these broadcasting companies sought construction permits in Newport or Cincinnati, Atlanta, Pittsburgh, Houston, and San Francisco?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Just what part did you play in drafting these applications to the Commission on behalf of these companies?

Mr. ROBERT ADAMS. Could you be a little more specific, please?

Mr. LISHMAN. I will be glad to. To be specific, for the Cincinnati CP, which was granted March 10, 1965, to D. H. Overmyer Broadcasting Co., Inc., a submission was made to the Federal Communications Commission concerning the financial capability of the applicant.

Such statement showed that the costs would total \$975,928. For the financing of this cost the Cincinnati application also showed capital of \$1,000, a bank loan of \$400,000, equipment credit of \$357,000 and first year estimated revenues \$225,000.

Did you have anything to do with estimating these cost figures for the Cincinnati station?

Mr. ROBERT ADAMS. Yes, I did.

Mr. LISHMAN. Will you please describe what that role was?

Mr. ROBERT ADAMS. I determined the amount of equipment that would be required. And at the same time negotiated for the terms for that equipment.

Mr. LISHMAN. With whom did you negotiate?

Mr. ROBERT ADAMS. With the various broadcast equipment manufacturers such as General Electric, RCA, Ampex, the usual suppliers of broadcast equipment.

Mr. LISHMAN. Did you estimate the construction cost as being \$575,928?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. What was the basis for that estimate?

Mr. ROBERT ADAMS. It was a combination of cash required, total commitment that is needed at the time to build and construct and operate, I don't recall whether this was on a 3-month or year basis.

Mr. LISHMAN. I think this station was on a 3-month basis.

Mr. ROBERT ADAMS. The total operating cost of the station including the cash requirement, there were many things that had to be gone over both with equipment manufacturers and the philosophy insofar as the modus operandi would be concerned.

It is never possible to have an absolute final figure. Of course, it is subject to having the land, equipment, and other such things made available on the basis that you originally project.

Mr. LISHMAN. Mr. Adams, at this point could you please describe some of your background and expertise in the field of broadcasting?

Mr. ROBERT ADAMS. I have been 18 years in this business.

Mr. LISHMAN. In what role?

Mr. ROBERT ADAMS. From station sales, station management, from radio, television, promoting the station sales, single station sales man-

agement in New York and Chicago until the time I joined Mr. Overmyer in 1964.

Mr. LISHMAN. Now I would like to ask you, do you think that the total cost shown the FCC of \$975,928—

Mr. ROBERT ADAMS. That was including the first year operating expense?

Mr. LISHMAN. Yes, sir. This is cost, which includes \$300,000 for the first year operating expenses.

Do you think that is a realistic figure to accomplish placing the station on the air within 6 months?

Mr. ROBERT ADAMS. Yes. I represented it as such and I will stand by the figure.

Mr. LISHMAN. Has that station gone on the air?

Mr. ROBERT ADAMS. Not to my knowledge.

Mr. LISHMAN. When you left in 1965, how near completion was the station?

Mr. ROBERT ADAMS. At the time that I left we were just in the process of locating our appropriate site, location for our transmitter and tower.

Mr. LISHMAN. Had equipment been ordered?

Mr. ROBERT ADAMS. Partially, yes.

Mr. LISHMAN. Had you obtained a bank loan?

Mr. ROBERT ADAMS. I believe we had a credit letter from a bank but I don't think the loan had been obtained.

Mr. LISHMAN. I would like to read this credit letter, addressed to you and dated August 14, 1964, by the First National Bank of Cincinnati:

DEAR MR. ADAMS: It is our understanding that you have entered in a purchase and sale agreement with the Tri-City Broadcasting Company calling for the purchase of certain assets of a UHF TV station known as WNOP-TV.

You have asked us to consider in connection with the construction of such a station a \$400,000 term credit.

We are willing to extend such a credit which would be represented by a note either guaranteed by or indorsed by Mr. D. H. Overmyer based upon the submission of certified audited figures satisfactory to us of the broadcasting company and of Mr. Overmyer.

The loan would also be contingent upon such terms and conditions as might be mutually satisfactory to both your company and the bank.

I shall be pleased to pursue the matter further as your plans progress. Signed R. H. Brookes, Vice President, First National Bank of Cincinnati.

Now, this letter was submitted by Overmyer to the FCC as evidence that it had a commitment for a bank loan?

Mr. ROBERT ADAMS. Yes, sir, I believe it was.

Mr. LISHMAN. Now I would like to read to you a letter that we received from the bank dated April 18, 1968, in answer to an inquiry by this committee as to the bank's own interpretation of that letter, and whether or not such letter was a commitment.

The letter reads:

Reference is made to your letter of April 15 in which certain questions were raised relative to a personal request of the D. H. Overmyer Broadcasting Company in August of 1964. Answering your questions in order.

1. Following my letter of August 14, 1964, there was no further request for a \$400,000 loan or any part thereof. We are not aware of any reason for the company's failure to follow up on the loan request.

2. We did not consider our letter a legally binding commitment to provide the loan since at the time the letter was written there was no meeting of the minds as to terms.

3. If certified audited financial statements had been submitted to us and were satisfactory then we would have worked out a mutually agreeable repayment program supported by a loan agreement with the company.

If the statement had not been satisfactory then perhaps effort would have been made to support the loan in some other fashion.

However, this is conjecture since, as indicated above, there was no follow-up on the loan request.

4. Our loan agreement which would have been part of the credit arrangement would have provided for amortization schedule plus covenant as to working capital requirement, dividend restrictions, salary restrictions, prohibitions against the encumbrance of assets, default provisions under which the maturity of the note could have been accelerated and perhaps restrictions as to changes in capital stock, management and so forth.

Naturally, all of these provisions would have been worked out in negotiations between company management and the bank. We trust that these explanations will be helpful and that you will let us know if we can be of further assistance to the subcommittee."

Signed R. H. Brookes, Vice President.

Now, when you submitted on behalf of Overmyer the letter of August 14, 1964, did you do so with the understanding that it was a firm commitment that a \$400,000 loan would be forthcoming?

Mr. ROBERT ADAMS. Under the provisions of the letter, yes.

Mr. LISHMAN. What do you think about the answer we got from the bank, itself, interpreting it as not being a commitment?

Mr. ROBERT ADAMS. There might be a reasonable explanation for that. I understand, for one, we had no idea how long it would be before the Commission would act to approve or would in fact approve the request for the transfer of the construction permit.

These things have been known to go on sometimes for 2 or 3 years. It is very difficult for the bank at that time to give a firm commitment as such unless at that time we are ready to take a loan. It might be as much as a year or two, any length of time. They wanted it on the basis where they wanted to take a review of Mr. Overmyer's financial condition at the time that we were ready to take the loan.

I think that might have been, perhaps, the reason for the condition as in the letter. I was under the impression at the time and at that particular meeting at the bank there was a gentleman from the warehouse company with me.

We were both under the impression that had we wanted the loan at that time that we would have probably been able to probably have worked the loan out at that time.

Mr. LISHMAN. Are you familiar with form 314, section III, of the FCC, which must be used in connection with the acquisition of a construction permit?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. I would like to read to you from a portion of that form, subparagraph c.4, section III:

For each person who has agreed to furnish funds, purchase stock or extend credit submit a verified copy of the agreement by which each person is so obligated showing the amount, terms of repayment, if any, and security, if any.

Was any such document supplied to the FCC in connection with this bank loan?

Mr. ROBERT ADAMS. The only document I know is this letter.

Mr. LISHMAN. Aren't you familiar with the fact that this is a requirement of the Commission?

Mr. ROBERT ADAMS. No, sir.

Mr. LISHMAN. Was any substitute form of financing submitted to the Commission in connection with the Cincinnati station?

Mr. ROBERT ADAMS. Not that I know of.

Mr. LISHMAN. Were any verified statements showing financial capacity submitted with respect to any of the five construction permits involved here?

Mr. ROBERT ADAMS. Would you repeat the question?

Mr. LISHMAN. Would the reporter repeat the question?

(Question read by the reporter.)

Mr. ROBERT ADAMS. Verified statement, I believe; there were times when the Overmyer warehouse statements were either submitted or were presented or used in some way to verify the qualifications of the corporate warehouse company.

Mr. LISHMAN. According to the material submitted to this subcommittee by the FCC there were no such verified statements.

Do you recall any?

Mr. ROBERT ADAMS. I do remember that the warehouse company's statements, I don't remember if they were filed with the Commission, I do remember that they were used, maybe perhaps verbally upon some questions that the staff members might have brought up at some time with respect to one or more of the permits or during the time they were awaiting transfer.

Mr. LISHMAN. Getting back to the Cincinnati station which, when you left in 1965 was nowhere near completion as I understand your testimony, what were the causes that prevented this station from being constructed?

Was it lack of money?

Mr. ROBERT ADAMS. Well, in answer to your question, the construction permit was granted on March 10. So 30 days was April 10 before we had a final closing. I believe that is correct. At that very time we had obtained this station by way of a transfer so that the engineering section of the 314 had been inherited, that is the technical section, the engineering, we had inherited from the seller.

He had proposed the site in Newport, Ky. Technically it was not in my opinion a suitable site to provide the best services to the communities of Newport and Cincinnati, which, as you are perhaps familiar, are 3 1/4 miles apart.

So we then commenced a search for land to try to find the right site. We would have preferred enough property to put a guyed tower in because the cost is considerably less for a guyed tower than to put up a self-supporting tower, sometimes as much as three or four times greater, the cost depending on the height. This took many months of work. I don't think that we were anywhere near able to locate a piece of property until September or October of that year.

Mr. LISHMAN. What year was that?

Mr. ROBERT ADAMS. This was 1965. That was within 4 or 5 months, I suppose, following the grant; 5 or 6 months. In that area. We had an extensive search for property that took place at that time. I would say that was probably the first delay and the most important delay because in order to properly locate a station in order that it may transmit to the home it must have a proper site and location of tower in the proper position.

Short of everything else, it is contingent on that. If a site is too far out of town, on a mountain range for the sake of propagating a signal

into the home sites, that will determine to some extent where you put your studio which is the second physical entity.

From there it is then a matter of building your staff of people. Really everything was waiting on the site. The land we were interested in was a 3-mile radius within the center of Cincinnati or were areas which the engineers had advised was the best area for propagating a signal.

We were interested in building the best facility we could build. In order to achieve this we had to find the proper site first. Short of that, it might have been very disastrous in the way of going ahead and completing the station.

Mr. LISHMAN. What difficulty did you have in finding the site?

Mr. ROBERT ADAMS. As I explained before, we had to find a piece of land within 3 miles of the center of the community because of the mountain range that came down.

Mr. LISHMAN. Did you ever find such a site?

Mr. ROBERT ADAMS. In my opinion, we found a site in about October or November of that year.

Mr. LISHMAN. Did you bring that to the attention of your principal, Mr. Overmyer?

Mr. ROBERT ADAMS. Yes, sir; I did.

Mr. LISHMAN. What did you tell him?

Mr. ROBERT ADAMS. I told him we had located a site, I believe the mountain was Bald Mountain, something like that. It was a site within the 3-mile area that had been the restrictions that the engineers had advised and the site had been determined to be available and that I wished to proceed to purchase this particular site.

Mr. LISHMAN. Was any price mentioned?

Mr. ROBERT ADAMS. Yes. Mr. Overmyer asked to have the warehouse appraisers look at the site. They did so and they had said the value of the land was in the \$80,000 to \$100,000 bracket.

Mr. LISHMAN. What was the price that you had been dickering for?

Mr. ROBERT ADAMS. \$100,000 had been the price that Mr. Rose, the owner of the land, who was willing to sell us the 5 acres on top of the mountain, what we wanted and easements for the guy wires coming down.

Mr. LISHMAN. What did Mr. Overmyer say when you reported to him that you could get the site for \$100,000?

Mr. ROBERT ADAMS. He suggested that we offer \$30,000.

Mr. LISHMAN. Did you? Did you make that offer?

Mr. ROBERT ADAMS. I don't think we did, no. I think we went back and sat on it and tried to figure another way to come up with what would be appropriate out there.

Mr. LISHMAN. Now is it correct that if you don't have a suitable site, you can't order the antenna?

Mr. ROBERT ADAMS. I would not recommend otherwise. I would not order my antenna until I had my site; that is correct.

Mr. LISHMAN. Is it a fact that antennas have to be tailor made to fit the contour of the surroundings?

Mr. ROBERT ADAMS. In some cases. A UHF antenna is tuned to a specific channel. In that respect I might say that we had originally been granted channel 74. The transfer, I believe, was channel 74 to

channel 70, which is a very high frequency, and the signal on the higher band spectrums don't bounce—they bounce more severely.

We were looking for a lower channel and had a request in, again which was another reason for part of our delay. We were at that time talking with the Commission, we might even have filed for a request for a lower channel so that we could then have our antenna tailor made for this specific channel we hopefully would eventually get.

Mr. LISHMAN. Without a site you could not construct and put the station into operation?

Mr. ROBERT ADAMS. No, sir.

Mr. LISHMAN. Did you have any discussions with Mr. Overmyer about the situation?

Mr. ROBERT ADAMS. Yes.

Mr. LISHMAN. Did he attribute the failure to purchase the site for \$100,000 because it was overcharged or because he didn't have the money to buy it?

Mr. ROBERT ADAMS. I don't believe I am privy to Mr. Overmyer's thinking there.

Mr. LISHMAN. What did he tell you?

Mr. ROBERT ADAMS. He told us that \$30,000 is what he would offer for the land and to proceed to buy it at that price. That is what we were to do.

Mr. LISHMAN. Did you have anything to do with estimating the first year's income from that station?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. You estimated that first year revenue would be \$225,000. On what did you base that estimate?

Mr. ROBERT ADAMS. I probably had, to the best of my knowledge, I can't recall exactly because there are several ways to do this. Penetration of the UHF market at the time to some extent has a bearing on it. That in relation to the date when you get on the air.

That was one contributing factor. Others are the revenues that the total market had been reporting for the total market reported each year by the FCC. You take a look at what the total amount of dollars are. Then at the same time you might take a look to see how the other stations maybe in similar market situations have been doing and reporting, particularly UHF independent stations, even though at that time there were very few to draw a parallel from, and try to come up with a realistic figure.

Mr. LISHMAN. In connection with Cincinnati, did you also on behalf of Overmyer file an amendment to the application?

Mr. ROBERT ADAMS. An amendment?

Mr. LISHMAN. Yes, increasing the equipment credit from RCA? Or was that after your time?

Mr. ROBERT ADAMS. I don't recall making that change, sir.

Mr. LISHMAN. While you were executive vice president were any extensions for the CP requested from FCC?

Mr. ROBERT ADAMS. With respect to Cincinnati I think at the time I was there we did file for one extension.

Mr. LISHMAN. What reason was assigned for that?

Mr. ROBERT ADAMS. Sir?

Mr. LISHMAN. What reason was assigned for seeking such an extension?

Mr. ROBERT ADAMS. We were still in the throes of trying to get a lower channel straightened out with the Commission, at the same time trying to find the proper site. I am trying to recall. This is to the best of my knowledge. I have not refreshed myself from these files since the date they were filed.

Mr. LISHMAN. Mr. Adams, you were executive vice president of the D. H. Overmyer Communications Co. when it obtained its construction permit for Atlanta?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Did you assist in preparing the financial figures that were submitted to the Federal Communications Commission?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. As you know, under section 308 of the act there must be a showing of financial capacity to operate the station. Are you familiar with that?

Mr. ROBERT ADAMS. At that time, yes.

Mr. LISHMAN. In this Atlanta construction permit which was granted Mr. Overmyer originally on May 12, 1965, the costs submitted to the FCC included purchase price, \$100,000; construction, \$455,004; and, first-year operating expense, \$300,000; for a total of \$855,005.

Did you participate in the preparation of any of these estimates?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Do you think you could have put the station on the air for that amount of money?

Mr. ROBERT ADAMS. Yes, sir; I could have done a much better job with four or five times greater dollars.

Mr. LISHMAN. Well, it would seem that you have already testified with respect to Cincinnati that you couldn't get the ideal site for \$100,000 and you certainly didn't get it for \$30,000.

Mr. ROBERT ADAMS. I am referring specifically to operating expenses.

Mr. LISHMAN. For the financing of this \$855,000, revenue figures were submitted to the FCC showing capital of the corporation as \$1,000, a bank loan of \$400,000, equipment of credit of \$300,000 and first-year estimated revenue of \$200,000 for a total financing of \$901,000 to defray the total cost of \$855,000.

Did you have anything to do with these figures?

Mr. ROBERT ADAMS. On the financing of the station?

Mr. LISHMAN. On financing the costs of construction and initial operation.

Mr. ROBERT ADAMS. You mean arriving at the expenses?

Mr. LISHMAN. Yes.

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. How much of the construction cost included cost of the site?

Mr. ROBERT ADAMS. I wouldn't remember that.

Mr. LISHMAN. Did you have difficulties with the site in Atlanta?

Mr. ROBERT ADAMS. And how.

Mr. LISHMAN. When you left the Overmyer Co., how near completion was the Atlanta station?

Mr. ROBERT ADAMS. We hadn't located our site. We had nothing at all except having looked at a site. To the best of my recollection, nothing had been done except trying to plan a site. Again we were confronted with the same problem, only four times greater in Atlanta.

Mr. LISHMAN. How did you go about trying to find a site?

Mr. ROBERT ADAMS. We went to our consulting engineers who told us that there was an area the size of a triangle, small, maybe 4 or 5 miles square area.

Atlanta was surrounded by four airports. The FAA restriction was our first pain. We wanted to get equal height with other telecasting facilities. We wanted an equal facility. We wanted to be first class.

To do so we had to get equal height first. To do that we had to get zone approval and FAA approval. So, to minimize our first hazard, we proceeded with the triangular area that we refer to as the triangular area on the map that the consulting engineers advised would probably receive FAA approval if we could find a piece of land in that area.

At the same time we then proceeded with the local real estate people and others in Atlanta to find a site.

Mr. BROWN. Will the gentleman yield for just one technical question?

What is the size of land that you were looking for, how many acres?

Mr. ROBERT ADAMS. We preferred the guyed tower as I explained earlier. It was considerably less expensive. In Atlanta we wanted approximately 1,300 feet as I recall now. That would have required approximately 22 acres. Now we would have liked to have had a triangular piece but you usually can't find it this way so you have to buy more land. There were many different sites looked at in that particular triangular area which had been set by the engineers, 20, 24 acres, depending on the shape of the land.

Mr. LISHMAN. Mr. Adams, in connection with the financing, representation was made to the FCC that there would be a bank loan of \$400,000. Is that correct?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. That loan was supposed to come from the Girard Trust Co. of Philadelphia?

Mr. ROBERT ADAMS. Yes, sir; it was.

Mr. LISHMAN. Did you have meetings with officials of the bank in connection with that loan?

Mr. ROBERT ADAMS. No sir; I did not.

Mr. LISHMAN. But this loan you ultimately obtained, is that correct?

Mr. ROBERT ADAMS. It was obtained by the company.

Mr. LISHMAN. Do you know when it was obtained? Would it be correct that it was more than a year and a half after the Atlanta CP was granted by the FCC?

Mr. ROBERT ADAMS. The date that the loan was obtained from Girard?

Mr. LISHMAN. Yes.

Mr. ROBERT ADAMS. I didn't know that there had been a loan made.

Mr. LISHMAN. What is that?

Mr. ROBERT ADAMS. I was not aware that there was a loan made.

Mr. LISHMAN. It may have been after your time.

Mr. ROBERT ADAMS. Yes.

Mr. LISHMAN. Were you executive vice president of the D. H. Overmyer Communications Co., Inc., on July 28, 1965, when it received its construction permit for Pittsburgh?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Did you participate in estimating the costs of its construction?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. I will read them to you as submitted. Were you the person that signed the papers presented to the FCC?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. In all of these five construction permits you were signing as executive vice president of the respective communications or broadcasting companies?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. The costs for Pittsburgh were: purchase price, \$28,000; construction, \$505,000; estimated first-year operating expense, \$400,000; for a total of \$933,000.

Now, again I am going to ask you, do you think that this was a realistic figure for placing into operation a UHF station of the type contemplated in the application?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Do you have any comparative data to support this opinion?

Mr. ROBERT ADAMS. Well, I would say that actually supporting data, no. Operating experience, yes. We are entering into an area, you are delving in an area of philosophy. You can buy an automobile for \$20,000; you can buy one for \$2,000. Both automobiles will get you there.

The principle of the company was that we would operate at a very small low base during the initial development years, particularly the development of the all-channel law with respect to UHF set penetration. We knew that we were in a precarious income area because of the acceptance of the newer UHF which directly relates to the income of the station.

Our viewers can't get advertising dollars. We looked at it very cautiously so far as operating overhead is concerned and geared the application accordingly.

Mr. LISHMAN. In the financing of this Pittsburgh station the statement submitted to the FCC showed, capital, \$1,000; bank loan, \$350,000; equipment credit, \$315,000; and first-year estimated revenues, \$450,000, for a total of \$1,116,000.

Did you have anything to do with these estimates?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Did you participate in estimating the first year's revenue of \$450,000?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Can you state what elements you took into consideration when you made such estimates?

Mr. ROBERT ADAMS. The UHF penetration at that time.

Mr. LISHMAN. How many VHF stations were there at that time in Pittsburgh?

Mr. ROBERT ADAMS. Three.

Mr. LISHMAN. How many UHF stations?

Mr. ROBERT ADAMS. On the air?

Mr. LISHMAN. Yes.

Mr. ROBERT ADAMS. Commercially there were none. We proposed Pittsburgh would be the first independent TV service for the community.

Mr. LISHMAN. I just would like to know on what basis you made an estimate of your first year's estimated advertising or revenue from the station.

Mr. ROBERT ADAMS. Like all projections they are difficult to pin down. Most of it had to do with your operating experience in sales and income. I believe that at the time the FCC reported television revenues for Pittsburgh were \$20 million and we had assumed a very modest percent of that. I think it was 2 percent, if we could get 2 percent of the total spot dollars, which would not be unrealistic to expect if we put on good programs that would receive good attention, we would get advertiser support.

This has proved itself to be pretty much true with the other U's that have subsequently gone on, particularly an independent in a market in the top 10 cities.

Mr. LISHMAN. You are familiar with the fact that according to FCC requirements under the so-called ultravision rule you have to provide specific data to support first-year estimated revenues. Did you ever supply any such detailed backup information to the FCC concerning this estimate?

Mr. ROBERT ADAMS. Yes, sir; I believe we did in the case of Cincinnati.

Mr. LISHMAN. Could you refer to the document?

Mr. ROBERT ADAMS. I am afraid I can't remember. I think we did do some detail. It might have been in the general classification of program, technical, G. & A. and sales. I am not so sure that we went beyond that.

Mr. LISHMAN. We have been unable to find anything that you submitted with your Pittsburgh application justifying this estimated first year's operating revenue. Would it be likely that this would be something that you would tell the Commission orally?

Mr. ROBERT ADAMS. No, sir. You are talking about the income on the statements?

Mr. LISHMAN. Yes, the estimated income.

Mr. ROBERT ADAMS. I see.

On the income I believe that on the financial statements that were provided that we did not have to use the revenues. I don't believe we used the projected revenues as part of the funds that we would be required to have available in order to build the station and operate it for the year.

In other words, I don't think we relied on those revenues, the income revenues. Therefore, if we did not provide a statement that is the reason why we did not, any detailed backing up of those revenues.

Mr. LISHMAN. Were any of the financial statements and balance sheets submitted by you on behalf of Overmyer to the Commission certified or audited?

Mr. ROBERT ADAMS. Let me make a statement, if I may, with respect to these financial statements.

All the financial statements that were filed with the Commission were done so upon a review by the FCC counsel for the corporation and very often the financial statements were not my direct doing so far as anything informally or otherwise that might have taken place with the Commission.

We received two or three letters asking about further detail on certain credit letters. Very often this was handled by counsel and I was not always directly involved.

Mr. LISHMAN. If I were to tell you that none of the financial statements submitted to the FCC on behalf of Overmyer were either certified or audited, would you deny that?

Mr. ROBERT ADAMS. No, I would not.

Mr. DINGELL. You say, sir, that you denied that or would not deny it?

Mr. ROBERT ADAMS. To my knowledge, I did not see certified statements while I was an employee of the company.

Mr. KEITH. Mr. Chairman, while we are on that point, did you Mr. Adams, make an inquiry into the finances of your employer before you went to work for him?

Mr. ROBERT ADAMS. I did not.

Mr. KEITH. When you learned later that he was trying to obtain property worth \$80,000 at a price of \$30,000, did you have any question in reference to financial problems which later dealings might bring in the establishment of other stations.

Mr. ROBERT ADAMS. Yes. I had my own questions that I asked of myself at that time.

Mr. KEITH. What was your annual salary at this point?

Mr. ROBERT ADAMS. I believe my salary was \$30,000.

Mr. KEITH. Thank you.

Mr. LISHMAN. Now, Mr. Adams, let us turn to the Houston CP which was granted by the Commission to the D. H. Overmyer Broadcasting Co., Inc., on August 12, 1965.

Did you submit the material to the FCC upon which this construction permit was issued?

Mr. ROBERT ADAMS. The application?

Mr. LISHMAN. Yes, sir.

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. According to that submission the construction costs for this station were \$1,147,744 and estimated first year operating expenses \$320,000, for a total of \$1,467,744.

Did you have any difficulties with the site in Houston?

Mr. ROBERT ADAMS. Yes, sir; we had problems there.

Mr. LISHMAN. Will you explain what those difficulties were?

Mr. ROBERT ADAMS. We again had the orientation requirement, as in all the cities that we have discussed. We had to try to find an area, a piece of land in the area, where the three existing on-the-air transmitting television stations exist.

In the Rosenberg-Houston area the Houston VHF stations were operating from a candelabra tower approximately 15 miles from downtown Houston.

This candelabra tower had three antennas—I beg your pardon, at the time there were only two stations. Two of the three VHF stations were on that tower and another was south of that area. We were going to try to find a place in between the two to make certain of our orientation. We had negotiations with many of the realtors there, with several landowners. I think at the time prior to application we finally obtained a letter of intent that the Texaco Co. would agree to lease to us or sell to us a piece of land large enough for us to put a guyed tower in of equal height with the VHF candelabra tower.

Mr. LISHMAN. What was the status of construction when you left in 1965 insofar as the Houston operation was concerned?

Mr. ROBERT ADAMS. Let me go back for just a minute. We originally applied in Rosenberg, Tex. We applied for channel 17. That was on the allocation table.

During the period that we were waiting for Commission approval the allocation table was redone and we were given a higher channel, I think 50 something, 3 or 4. Of course, we were not pleased with that. Even though we went ahead and modified our application to show that we would go ahead with 54 we had to make an engineering statement, I believe, and other papers were asked for by the Commission.

When those were complete we then waited afterward to try to get a lower channel. We went through an engineering search out with our engineers to try to locate a lower channel. That is one of the things.

We wanted to try to drop back if we could in the lower 30 channels. As it is, I think it finally ended up as channel 45. I am not sure whether that was granted during my period with him or not.

Mr. LISHMAN. How near completion would you say it was in 1965 when you left?

Mr. ROBERT ADAMS. We were just searching for land. That was granted in August, was it not?

Mr. LISHMAN. Yes; August 12.

Mr. ROBERT ADAMS. I think I left in 3 months so there would not have been a renewal period at that time.

Mr. LISHMAN. In your application for the CP at Houston, the financing figures submitted included capital, \$1,000; bank loan, \$550,000; equipment credit, \$713,058; first-year estimated revenue, \$350,000; for a total of \$1,614,058.

Do you know whether the bank loan was ever obtained?

Mr. ROBERT ADAMS. No, sir; I don't know.

Mr. LISHMAN. Did you submit on behalf of the company a letter from the Southern National Bank?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. I would like to read this into the record.

This is a letter dated January 19, 1965, from the Southern National Bank addressed to D. H. Overmyer Broadcasting Co., attention of Mr. Robert F. Adams, vice president:

Gentlemen, we want to thank you for apprising us of your plans to apply to the Federal Communications Commission for permission to construct television facility in Rosenberg, Texas. We understand this is one of several television projects contemplated by your organization. You plan to purchase the necessary equipment on credit terms that are customary in such cases and you will require additional term financing in the approximate amount of \$550,000.

You have indicated that Mr. D. H. Overmyer whose financial statement has been provided will support such credit personally in a manner satisfactory to us.

The purpose of this letter is to express our willingness to provide such bank financing as will be required subject to obtaining the FCC permit within a reasonable period of time.

These arrangements will be subject further to you providing the then current financial statements of the company and Mr. Overmyer showing no material change in Mr. Overmyer's financial position and substantiating the principal assets in a manner and form satisfactory to us.

It is understood also that these arrangements will be subject to customary local requirements and a mutually acceptable loan agreement. We look forward to working with you.

Yours truly,

F. MAX SHOUELT,
Vice President.

You received this letter?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. This was submitted to the FCC as an indication of a commitment for a bank loan?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Now I would like to read a letter that the subcommittee has received under date of May 2, 1968 from Mr. Shouett with respect to this matter:

This is in reply to your letter of April in regard to D. H. Overmyer Broadcasting Company.

1. There were no developments regarding the loan discussed in the letter of January 19, 1965, until the spring of 1966. At that time there were discussions regarding the plans of Overmyer Communications pertaining to the Rosenberg station but we did not then consider ourselves bound in any way by our letter because of the lack of time.

We did, however, remain interested in discussing with Overmyer the financial requirements for this project.

2. The bank letter of January 19, 1965, was intended as a commitment conditioned, however, upon a number of requirements that we attempted to spell out in as clear detail as possible under the circumstances.

As the letter points out we would have required financial statements of the D. H. Overmyer Broadcasting Company and D. H. Overmyer, individual.

Inasmuch as Mr. Overmyer's statement reflected a substantial investment in a closely held interrelated company we would have required a certified statement substantiating the principal assets of Mr. Overmyer and his company.

This also I attempted to spell out in our letter. Mr. Overmyer's personal guarantee would very likely have been requested. Other security arrangements would, of course, depend on the matters disclosed by the personal corporate statement provided to us at the time of the actual loan and other financing arranged for in connection with this project.

4. The manner and form of substantiation by Overmyer of his principal assets also would have depended upon the matter disclosed in the current statements of the company and him individually.

This, of course, relates to the nature of the assets revealed by such statement. Inasmuch as Mr. Overmyer's assets were represented by interests in real estate in a considerable degree we might have required substantiation in the form of appraisal reports.

At the time our letter was written it was not possible to spell out in any greater detail what would have been required by us.

5. Customary legal requirements were the legal documentation that would be required to implement the credit arrangements that would have been specifically agreed to at the time of the borrowing.

Again let me say that our commitment was intended to be conditional in nature inasmuch as we could not at that time foresee all the contingencies that might arise. It was nevertheless a commitment which was considered and approved by our loan committee and intended to be something more than a mere expression of interest.

If there is any further question you may have regarding this matter please let me hear from you.

Do you know of any instance where Mr. Overmyer has ever submitted a certified statement to a lending institution?

Mr. ROBERT ADAMS. I do not know of any.

Mr. LISHMAN. Now in connection with the Houston application it is correct, is it not, that the original application was amended to reflect certain changes?

I will refresh your memory.

Mr. ROBERT ADAMS. Thank you.

Mr. LISHMAN. You amended the method of financing. The original presentation contemplated \$1,614,058 but your amended estimate was this: Capital, \$1,000; bank loan, \$550,000; equipment credit, \$808,133;

Overmyer warehouse loan, \$250,000; first-year estimated revenue, \$350,000.

Now, did the Overmyer warehouse loan ever become a reality?

Mr. ROBERT ADAMS. To my recollection, at the time I was there, it had not.

Mr. LISHMAN. Did the bank loan ever materialize?

Mr. ROBERT ADAMS. No. We didn't discuss taking the loan at the time.

Mr. LISHMAN. So you had two items for financing: a \$550,000 bank loan and the Overmyer warehouse loan of \$250,000 which during the time you were there never materialized?

Mr. ROBERT ADAMS. That is the best I can remember.

Mr. ROGERS. Would the gentleman yield for a moment?

Mr. LISHMAN. Yes.

Mr. ROGERS. Is it normal when you go into the business of operating a television station before you apply for a permit that you would look over the situation to see about what the cost would be, where you would locate the tower, what property would be available?

Would this be done before you would normally go in and ask for a permit?

Mr. ROBERT ADAMS. Yes, sir.

Mr. ROGERS. Was it done in this instance?

Mr. ROBERT ADAMS. Yes, sir.

Mr. ROGERS. You knew where you were going to locate your property?

Mr. ROBERT ADAMS. We knew approximately where it would be; yes.

Mr. ROGERS. I thought I understood you to say you had not, and you had difficulty locating land.

Mr. ROBERT ADAMS. There are two different types of applications that we are discussing. One is the transfer where you take from another owner and acquire. In that case, you would accept his engineering.

The reason that it is not required—I don't believe it is required in the Commission rules—that you do new engineering when some has already been accepted by the engineers at the Commission.

Mr. ROGERS. I am talking about your stockholders. Didn't you look over the engineering, didn't you know whether the property was suitable or not, that you would not have to change?

Mr. ROBERT ADAMS. We realized we would not have to change. That does not become part of the application in the transfer request.

Mr. ROGERS. I understand that.

Mr. ROBERT ADAMS. We knew we had to find other land.

Mr. ROGERS. Was this indicated in the application?

Mr. ROBERT ADAMS. I don't recall.

Mr. ROGERS. And the cost contingent upon it?

Mr. ROBERT ADAMS. I don't recall.

Mr. LISHMAN. Mr. Adams, I notice that in the Houston presentation the first-year estimated revenue was \$350,000.

Can you add anything as to the manner in which this figure was reached, other than what you have already testified to with regard to the others?

Mr. ROBERT ADAMS. In the very same similar way.

Mr. BROWN. Will the gentleman yield?

Mr. LISHMAN. Yes.

Mr. BROWN. You made reference twice to that estimate relating to the time of hearing. As I understand, that is not necessarily a 12-month estimate? Is that correct?

Mr. ROBERT ADAMS. There was a rule change in the middle of all this. The first three stations which I believe were obtained, that we are discussing, Cincinnati and Pittsburgh, were under the 3-year qualification of being able to show figures for 3 months and the rule changed and you had to show 12 months.

Mr. BROWN. My question is whether the 350 or 313—I didn't get it.

Mr. LISHMAN. Whether the \$350,000 estimate is an estimate of the first 12 months of on-the-air operation.

Mr. ROBERT ADAMS. Yes, sir; it would have been the first 12 months.

Mr. BROWN. Were the other figures that the counsel gave, \$415,000, I think, and so forth, were those 12-month estimates?

Mr. ROBERT ADAMS. Yes. I indicated all the applications were 12-month estimates.

Mr. LISHMAN. Turning to the application—

Mr. KEITH. Will counsel yield for a moment? I am a little bit concerned, Mr. Lishman, about the amount of time we have here, as I am sure you must be. We are dealing with an agent of Overmyer. We have only this session and tomorrow's session to deal with this entire matter. How much longer do you plan to question Mr. Adams?

Mr. LISHMAN. I think in 5 or 6 minutes I will be through. I am sorry. These are foundation questions, I may add, that will be referred to in later testimony.

Mr. KEITH. Thank you.

Mr. LISHMAN. Turning to the San Francisco construction permit which was granted to the D. H. Overmyer Communications Co., Inc., on October 20, 1965, certain cost and financing figures were submitted.

Did you participate in the submission of such figures?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. I will read to you the cost estimates as submitted to the FCC: Construction, \$475,000; estimated first-year operating expense, \$400,000; total, \$875,000.

On the financing for this cost: capital, \$1,000; bank loan, \$350,000; equipment credit, \$300,000; first-year estimated revenue, \$400,000; for a total of \$1,051,000.

Did you have trouble with locating a site for the Houston station?

Mr. ROBERT ADAMS. The San Francisco market has been in the throes of a lot of site problems, all the stations. There has been a proposed tall tower for all the TV stations both for the V's and the U's for 3 or 4 years, at least.

Mr. LISHMAN. When you left in 1965, what was the construction status of that station?

Mr. ROBERT ADAMS. We were participating in the meetings with the American Broadcasting Co. and the other UHF and VHF owners in trying to arrive at a tall tower so that we could build first our tower and get the location set.

That is a matter of court record, I believe. We were participating. We wanted to be in on the tall tower if we possibly could at the time I was employed with the company.

Mr. LISHMAN. Was it one-third completed or two-thirds completed when you left in 1965?

Mr. ROBERT ADAMS. There was nothing that had been done except that we were trying to get the site. Really very little can be done in any one of these instances; we can't do a thing until we have a site. Site selection has to be done first.

Mr. LISHMAN. You had the permit but practically nothing was actually going ahead?

Mr. ROBERT ADAMS. That is right.

Mr. LISHMAN. What was the reason for not going ahead with any one of these five stations?

Mr. ROBERT ADAMS. During my employment, I would have certainly said that the biggest holdup we had was site location, at the time I was there. We had a lot of trouble finding sites.

Mr. LISHMAN. Was there any question of money?

Mr. ROBERT ADAMS. The only question of money came up when I asked Mr. Overmyer for the funds for the site that met all requirements in Cincinnati and he didn't like the price.

Mr. LISHMAN. Now in connection with the San Francisco application, an amended application was filed with respect to the financing.

I will read it off so that the record will be complete. Under the amended application the capital was \$50,000; Corwin loan, \$80,000; bank loan, \$475,000; equipment credit, \$340,000; first-year estimated revenue, \$400,000; for a total of \$1,345,000.

Now on behalf of Overmyer Communications Co., you submitted balance sheets dated August 31, 1964, and August 31, 1965, to the Federal Communications Commission; is that correct?

I will show them to you. They have already been submitted for the record.

(The documents referred to appear in the appendix, pp. 348-350.)

Mr. ROBERT ADAMS. Fine. If you say they are there.

Mr. LISHMAN. You are welcome to look at them.

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. I won't take the time of asking you any detailed questions on the balance sheets at this time. I think other witnesses may respond to that.

I would like to conclude by reading you a letter which you sent to the Federal Communications Commission under date of February 3, 1965, addressed to the secretary:

Pursuant to informal conversations with the staff there are submitted herewith balance sheets of D. H. Overmyer individually and D. H. Overmyer Warehouse Co. & Affiliates.

The warehouse company is owned by Mr. Overmyer as is each of the above applicants. Although the financing plan of each of the above proposals relies on equipment credit and bank loan, the resources of both Mr. Overmyer individually and his warehouse company are available and will be used to the extent necessary to carry on the above proposals.

Very truly yours,

D. H. OVERMYER COMMUNICATIONS Co.,
By ROBERT F. ADAMS,
Executive Vice President.
D. H. OVERMYER BROADCASTING Co.,
By ROBERT F. ADAMS,
Executive Vice President.

Do you recall submitting that letter?

Mr. ROBERT ADAMS. Yes.

Mr. LISHMAN. Did Mr. Overmyer authorize you to make a personal commitment of his resources to carry out these proposals?

Mr. ROBERT ADAMS. Yes, sir.

Mr. LISHMAN. Did he do it in writing?

Mr. ROBERT ADAMS. I don't recall. I don't believe so.

Mr. LISHMAN. Did any other official of the warehouse company authorize you to commit its resources to carry out these proposals?

Mr. ROBERT ADAMS. No, sir. The financial commitments of the Overmyer Co. as my employer and the company were solely those given by Mr. Overmyer.

Mr. LISHMAN. Mr. Chairman, I have concluded with this witness.

The CHAIRMAN. Does anyone have any questions?

Mr. KEITH. I have just one question.

Was there any interface between you and members of the FCC in the negotiation process when Mr. Overmyer was given these licenses? "Interface" is a new Government term meaning meeting between the principals involved.

Mr. ROBERT ADAMS. Were there meetings with the members of the Commission?

Mr. KEITH. In other words, did the Commission interview you at any time during its efforts to satisfy itself as to the ability of Mr. Overmyer to operate these stations acceptably in the public interest?

Mr. ROBERT ADAMS. Yes.

Mr. KEITH. Extensively, would you say?

Mr. ROBERT ADAMS. No, not extensively but on various different applications, on different matters they would ask questions.

We wrote some of them formally and others were informally.

Mr. KEITH. There was discussion at meetings between you and the members of the FCC?

Mr. ROBERT ADAMS. Yes, sir.

Mr. KEITH. Would you say the discussions prior to your being granted the first application were in depth and gave them real knowledge about your qualifications? Did they interview you as thoroughly as Mr. Overmyer did when he hired you?

Mr. ROBERT ADAMS. Well, I think that the questions that they had were in the application. What we had to say was there according to the standards set.

Mr. KEITH. That was on paper. What about personal conversation? How much actually took place?

Mr. ROBERT ADAMS. I don't think there was very much. They just called me in.

Mr. KEITH. For an hour?

Mr. ROBERT ADAMS. Maybe an hour, perhaps.

Mr. KEITH. Thank you.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Adams, did you submit a letter of resignation to Mr. Overmyer?

Mr. ROBERT ADAMS. Yes, sir; I did.

Mr. ROGERS. Why did you do that?

Mr. ROBERT ADAMS. I suppose I grew a little impatient, perhaps I was a little disbelieving and also frustrated. I did not feel that the promises that had been conveyed—a schedule more than promise, a schedule which we had and promised to the Commission would be followed.

I encountered obstacles in the way of obtaining the funds from Mr. Overmyer and the needed personnel from Mr. Overmyer and just felt that if he could not listen to the advice that I felt was expert in my field that there would be no need to have an association any longer.

So I resigned on two different occasions.

Mr. ROGERS. May I ask if Mr. Overmyer ever indicated to you that he did not intend to use the bank loans that you have discussed here?

Mr. ROBERT ADAMS. Yes, sir.

Mr. ROGERS. Although this was submitted to the FCC?

Mr. ROBERT ADAMS. He indicated—he did not make a statement—he said he might not take the loans.

Mr. ROGERS. Was any action taken to get the Toledo station on the air?

Mr. ROBERT ADAMS. Any action on Toledo?

Mr. ROGERS. Yes.

Mr. ROBERT ADAMS. Getting it on the air?

Mr. ROGERS. Yes.

Mr. ROBERT ADAMS. Yes, we proceeded to purchase the land. We purchased 52.2 acres. We ordered the tower and the equipment and broke land and we were getting ready to build and operate Toledo.

Mr. ROGERS. What about the other stations now? Were any such actions taken in regard to them?

Mr. ROBERT ADAMS. No, sir; we weren't making as much progress with the land in the other cities. Toledo had a very fortunate site location because it was in a farmland area where land was plentiful.

In the other cities we were a little closer. We had complications.

Mr. ROGERS. Did you ever obtain the impression from Mr. Overmyer that he never intended to put these other stations on the air, he was thinking of selling the construction permits?

Mr. ROBERT ADAMS. I suppose that passed my mind; yes.

Mr. ROGERS. It passed mine, too.

Mr. DINGELL. Did Mr. Overmyer ever indicate to you specifically that he might not take advantage of these bank loans that had been arranged for?

Mr. ROBERT ADAMS. Not specifically.

Mr. DINGELL. Not specifically, but he did give you an indication, I believe you said that to Mr. Rogers.

Mr. ROBERT ADAMS. He wanted the bank loans, he said he might need them.

Mr. DINGELL. He said he might?

Mr. ROBERT ADAMS. Yes.

Mr. DINGELL. He never indicated that he intended to take advantage of them?

Mr. ROBERT ADAMS. Mr. Overmyer runs the financial affairs of the corporation. I don't think that I was in a position to question just how he intended to finance the various broadcast corporations.

Mr. DINGELL. Did he indicate some alternative financing device, since you tell us he indicated that he might not take advantage of the bank loans?

Mr. ROBERT ADAMS. He just reiterated when it came time that we needed the money that we would have the money, not to worry about the money.

Mr. DINGELL. Did he indicate any alternative financing device?

Mr. ROBERT ADAMS. No, sir.

Mr. DINGELL. Did he indicate he was considering alternate financing?

Mr. ROBERT ADAMS. He indicated at the time we need the money there might be other ways to obtain the money. He might find it more advantageous rather than to take down a bank loan at a certain interest rate at that time, perhaps to do it through one of a number of other ways that only he had access to.

Mr. DINGELL. What were those other ways?

Mr. ROBERT ADAMS. That is what I don't know.

Mr. ROGERS. One more question.

As a matter of fact, Overmyer in your organization submitted to the FCC the financing that was proposed as indicated by the letters from banks that they would give you loans.

Isn't that what you based your financing on, the possibility of loans?

Mr. ROBERT ADAMS. It was always our intention and it was always our intent and I don't think in any way—those letters were submitted were done so with the idea that those letters met the Commission rules and each letter and, in fact, all applications, but specifically all letters were reviewed and approved by Washington counsel.

Mr. ROGERS. The point I am making is that you showed to the Commission that you were going to try to use bank loans to help finance your stations.

Mr. ROBERT ADAMS. At the time that is the way Mr. Overmyer wished to proceed and that was his prerogative, and we proceeded accordingly. If he had wanted to obtain the money in a different way he would have notified us.

Mr. ROGERS. Would he have notified the FCC?

Mr. ROBERT ADAMS. I believe he would.

Mr. ROGERS. Was it ever done?

Mr. ROBERT ADAMS. I don't know there was a need to.

Mr. ROGERS. Then the FCC was never notified although no loans were ever made from the bank, is that right?

Mr. ROBERT ADAMS. Again, I left in September. I don't know what happened afterward, whether the loans were taken or not.

Mr. ROGERS. Thank you.

The CHAIRMAN. Mr. Brown.

Mr. BROWN. I just want to pursue one area of question. That is the problem that developed on land acquisition. Am I to understand there was no problem in Toledo because of the availability of land at a reasonable price but in the various other locations within the area set out by the engineers as a desirable area you could not find land for sale or you couldn't find land at a price that you wanted to pay or for some other reason?

Mr. ROBERT ADAMS. It was a combination of both. First, it was the finding of the piece of land large enough to guy the tower; and second, we wanted it within a price range that Mr. Overmyer would feel was acceptable.

Mr. BROWN. In each of the locations did you pin down what the problem was specifically?

Mr. ROBERT ADAMS. Yes. Toledo we covered. We went from there to Atlanta. We had a terrible limitation, very high cost of land.

Mr. BROWN. But you could find—

Mr. ROBERT ADAMS. Yes; there were many, many parcels of land in Atlanta. Mr. Overmyer believed they were too expensive, those that we came up with and recommended.

Mr. BROWN. Did he indicate what the per acre cost was?

Mr. ROBERT ADAMS. I just remember compared to the other markets we were looking at it was by far the most expensive.

Mr. BROWN. Do you remember what the price was in Cincinnati?

Mr. ROBERT ADAMS. It was \$100,000 that they asked for that hill there, 5 acres plus easements. So that wasn't too expensive considering it was right within the view of downtown Cincinnati; very close.

So it wasn't particularly attractive for other developments. For our purpose it might have been worth three or four times to us to have the proper propagation of the television signal.

Mr. BROWN. When you went to purchase this land was it a blind purchase or did you have to reveal the purpose for which you were purchasing the land?

Mr. ROBERT ADAMS. No; we revealed it was for a television station. We always are hopeful that the seller doesn't realize how important a television station is.

The price of the land had been approved by the Overmyer appraisers, in the area of \$80,000 to \$100,000. Then we had the appraisal of the real estate people themselves. Mr. Overmyer had his warehouse appraisers appraise the land for him.

Mr. BROWN. Did you have any selling problems in these areas?

Mr. ROBERT ADAMS. No, sir, not on the tower.

Mr. BROWN. Was the Atlanta property considered to be higher than ordinary by the Overmyer appraisers or by the local real estate men who assisted you in the search?

Mr. ROBERT ADAMS. Combination of both. Both by our men in Atlanta and the real estate men. I am not trying to determine what the value was, I am not a real estate man. I left this for the appropriate people of the Overmyer Warehouse Co. to look into.

We knew from the real estate men and they knew we had our own real estate people. We usually got pretty accurate figures.

Mr. BROWN. In Atlanta you revealed to the real estate people the purpose for which you were purchasing the land?

Mr. ROBERT ADAMS. Yes, sir, in all cases.

Mr. BROWN. And the prospective seller?

Mr. ROBERT ADAMS. Yes, sir.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Did the talk among your companies in the planning stages involve the area of programing at all for these five stations?

Mr. ROBERT ADAMS. We filled out proposed program schedules that were part of the application.

Mr. VAN DEERLIN. Did you have network affiliations?

Mr. ROBERT ADAMS. No, sir.

Mr. VAN DEERLIN. Did the FCC, either staff or any of the Commissioners, show any interest in what programing you were going to bring to these five communities?

Mr. ROBERT ADAMS. They didn't ask any questions on the subject.

Mr. VAN DEERLIN. All the discussions turned on the acquisition of property and financing plans, not at all on programing?

Mr. ROBERT ADAMS. Except in the particular program section of the 314.

Mr. VAN DEERLIN. What about market surveys and contacts with the principal advertisers and other television outlets? Was any of that done to estimate the revenue resources which might be expected?

Mr. ROBERT ADAMS. Yes. I was in each city, many days in the city looking around talking to people, retailers, advertisers, to try to come up with what would be required, what we would need out there.

Mr. VAN DEERLIN. Were programing plans to any extent submitted to the FCC with these applications?

Mr. ROBERT ADAMS. Yes, sir, in each case.

Mr. VAN DEERLIN. Does this include plans for news and special service?

Mr. ROBERT ADAMS. Yes, we had community affairs programing, news programing, the regular entertainment, sports, weather, farm news.

Mr. VAN DEERLIN. How would you briefly summarize the intended thrust of these stations? Were you going to bring anything new or different into the broadcasting?

Mr. ROBERT ADAMS. Yes, we were going to bring a fourth facility to the public of each city that had been deprived of a fourth station for about 20 years.

Mr. VAN DEERLIN. What do you call it?

Mr. ROBERT ADAMS. A fourth facility, a fourth choice on your television dial. These towns, most of them had only three operating facilities. With the exception of San Francisco there were only three stations serving Cincinnati, three in Atlanta, three in Pittsburgh, and we wanted to give them another choice on their dial.

Mr. VAN DEERLIN. Obviously in the time we have we can't go deeply into this but in essence what was going to be the fourth choice? What were you going to use to draw them in?

Mr. ROBERT ADAMS. The same type of programing put on any other station, entertainment fare, sports, news, weather, entertainment, movies.

Mr. VAN DEERLIN. In other words, a fourth choice of the same old stuff?

Mr. ROBERT ADAMS. I don't like to refer to it as a carbon copy but we don't have the availability of a fourth network. Therefore, the programs which we would hopefully be able to—I might go a little bit further and say that we had planned for a production facility in the San Francisco station because of its nearness to the film capital there, we hoped to produce programs which we would not only offer and put through our own station chain but offer in syndication to other stations.

We were hopeful to be able to create and in the long haul we hoped this might be the foundation of what might be eventually in some way, whether it be a bicycling of taped programs to other stations, the availability of new, fresh, different programing.

This had all been part of the planning stage with Mr. Overmyer. However, when we were first starting we had to, of course, rely on the syndicated available programs, repeats, any network programs that are not cleared by the affiliates in that market that the network would permit us to have, the availability of syndicated taped programs which might be available in any one of the various station groups that are

offering them, and, of course, local creative community affairs programs and news, weather, sports.

Mr. VAN DEERLIN. I notice in your letter of intent of resignation to Mr. Overmyer that there was an emphasis on the inexperience of the help that he apparently was going to provide you.

Was it your impression based on shopping for tower sites that Mr. Overmyer looked to get his talent for 80 cents on the dollar?

Mr. ROBERT ADAMS. Yes, I think I would have to say that was my feeling at the time I resigned.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. DINGELL (presiding). Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Adams, if you were going to set up a production facility in San Francisco as a base to serve other stations, would this indicate a bona fide effort to go into the business?

Mr. ROBERT ADAMS. Would this what, sir?

Mr. PICKLE. Would this be a bona fide intent of your organization that you were actually going into the broadcast business?

Mr. ROBERT ADAMS. Yes, sir, it was very much part of our intent. We felt it was a very important part of the lifeline which is program supply of our stations.

Mr. PICKLE. You testified earlier that it crossed your mind that maybe Overmyer would never do anything.

Mr. ROBERT ADAMS. The time this crossed my mind was at the time I departed from the company. All during the building, the planning, the thinking out stage of how to build the television group for Mr. Overmyer there was never any question in my mind we should have it.

Certainly Mr. Overmyer had given me his blessing that he thought this was the right thing to do.

Mr. PICKLE. Then the question of whether the company would actually do anything with the permittee's license, this occurred to you after you were separated from the company?

Mr. ROBERT ADAMS. Yes, this was probably one of the reasons why I resigned from the company.

Mr. PICKLE. Even before you resigned, didn't it?

Mr. ROBERT ADAMS. Yes, it passed my mind.

Mr. PICKLE. You were making \$30,000 a year?

Mr. ROBERT ADAMS. Yes, sir.

Mr. PICKLE. Did you resign and go to a better job?

Mr. ROBERT ADAMS. No, sir. My income the second year was \$12,000 after I left Overmyer.

Mr. PICKLE. Was there any specific instance of unpleasantness or disagreement with Mr. Overmyer or his organization that caused you to leave that company, any act that brought something to a head that you were either dismissed or you quit?

Mr. ROBERT ADAMS. I was not being permitted to staff the way I wanted to staff it. I wasn't being permitted to hire the people that I thought we should have. There were many things that should have been done at the time.

I wasn't able to convince Mr. Overmyer that we should have those at that time.

Mr. PICKLE. You testified earlier, I don't remember the exact words, that you were perhaps tired or disillusioned and you submitted your letter of resignation. I don't question the fact that that might not be

something you would want to do but it crosses my mind that you would leave a \$30,000 job just because you were growing tired of the company.

Let me ask another question. Did you testify earlier that before you ever put a station on the air that the first thing you did was to go out and get a site, locate a site?

Mr. ROBERT ADAMS. That is one of the very first things.

Mr. PICKLE. I don't question that. I don't know what is required. I once had an interest in a radio station. We were concerned about getting that permit first almost totally. After that permit then we worried about finding a site.

Now, this was 20 years ago and it was not the same problem as perhaps it would be now in a larger area. Is this required by the FCC that you must have your site, proposed site, in mind, when you make application?

Mr. ROBERT ADAMS. No. The Commission rules in this respect, as I recall, are limited. They say that you must have received an intent from the owner of a particular piece of land, subject to the Commission approval of your transfer and/or the new station, that they would be willing to negotiate with you.

My reason for that is that often these things go on for 2 or 3 years. You can't pay a man sometimes enough for an option for a time like that and it is going to tie up his property for several years.

The Commission recognizes this and, therefore, they don't make it a very specific part of that application which should tie that down for you.

But we have to go back later, and often it is a year, 6 months, or 8 months, the property that you thought you had has been disposed of and you have to start all over again.

Mr. PICKLE. Thank you.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS of Washington. I have no questions.

The CHAIRMAN. Are there any further questions of anyone?

If not, Mr. Adams, thank you very kindly for coming here and giving us your testimony.

At this time you may step aside.

Mr. ROBERT ADAMS. Thank you.

The CHAIRMAN. Is Robert L. Bryan here?

Mr. Bryan, would you hold up your right hand, please?

Do you solemnly swear or affirm that the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRYAN. I do.

TESTIMONY OF ROBERT L. BRYAN, TELEVISION ADVERTISING REPRESENTATIVE, FORMER PRESIDENT, OVERMYER COMMUNICATIONS CO.

The CHAIRMAN. You may be seated.

Give us your name and your position now for the benefit of the record.

Mr. BRYAN. Robert L. Bryan, television advertising representative.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Bryan, did you succeed Mr. Adams as executive vice president of the Overmyer Communications Co.?

Mr. BRYAN. I succeeded Mr. Adams as president of the Overmyer Communications Co.

Mr. LISHMAN. What date was that?

Mr. BRYAN. I would approximate it about the end of February or March of 1966.

Mr. LISHMAN. When you assumed that post did you engage in some activities in connection with getting the Toledo TV station on the air?

Mr. BRYAN. Yes sir; we got it on the air.

Mr. LISHMAN. How long were you with Overmyer?

Mr. BRYAN. From March through December 9, 1966.

Mr. LISHMAN. Could you estimate how much of the time you were devoting to activation of the Toledo station?

Mr. BRYAN. To accomplish that I had to engage the staff quite a bit. So I would say that a great deal of our time the first 3 months—we got the station on the air I believe it was May 3, 1966—a great deal of the time was spent in doing that. We only had 2 or 3 months from the time I got there to get on the air.

Mr. LISHMAN. Would you say that a relatively minor proportion of your time was devoted to the filing of construction permits which we were discussing this morning?

Mr. BRYAN. No, I wouldn't.

Mr. LISHMAN. How much time did you devote to that area?

Mr. BRYAN. We had to go ahead in all markets. Quite a bit of time including the staff.

Mr. LISHMAN. How many did you have?

Mr. BRYAN. At least six.

Mr. LISHMAN. Six for the five CP's involved and in addition those gentlemen were also working on the Toledo station?

Mr. BRYAN. They were.

Mr. LISHMAN. Were any of these five locations involved in the CP's activated while you were there?

Mr. BRYAN. The five excluding Toledo?

Mr. LISHMAN. Excluding Toledo.

Mr. BRYAN. Activated on the air; no.

Mr. LISHMAN. Could you state approximately how close to completion they were when you left?

Mr. BRYAN. Sites had been located and started to be worked on on Bald Knob. We had located our tower on San Bruno Mountain in San Francisco. Equipment had been ordered.

We were in negotiation for the specific site, we had to have a clearance on the site we determined to be the correct one.

We had the site on a piece of property in Pittsburgh but when we decided to start excavating we found mine shafts so that delayed that. I think that is about the five that are in question.

Mr. LISHMAN. Did you have any difficulty in staffing for the operations in Atlanta?

Mr. BRYAN. Yes, sir.

Mr. LISHMAN. Were you directed by Mr. Overmyer to fire all the personnel?

Mr. BRYAN. Not all.

Mr. LISHMAN. How many?

Mr. BRYAN. Sir?

Mr. LISHMAN. How many?

engineer, two secretaries, a chief bookkeeper, and our salesman. I had to discharge our business manager, one of the secretaries, and the salesman who had left the radio station down there.

Mr. LISHMAN. What reason was given for discharging the people who were working on the Atlanta station?

Mr. BRYAN. At the moment we had inadequate financing.

Mr. LISHMAN. Isn't it a fact you had obtained a loan from the Girard Trust Co. to activate that station?

Mr. BRYAN. Yes, sir.

Mr. LISHMAN. Was the loan obtained from the Girard Co. used to activate that station?

Mr. BRYAN. I can't answer that. I don't think so, directly.

Mr. LISHMAN. Where did the proceeds of that loan go to if they didn't go to the Atlanta station?

Mr. BRYAN. I don't know. I just don't know.

Mr. LISHMAN. Are you familiar with the fact that Overmyer had a central disbursing office?

Mr. BRYAN. Not as such. Not central disbursing; no, I didn't know that.

Mr. LISHMAN. Or central accounting office?

Mr. BRYAN. Yes.

Mr. LISHMAN. Are you familiar with the fact that this loan went into a pool?

Mr. BRYAN. As it ultimately turned out I learned that.

Mr. LISHMAN. Who could draw on that pool?

Mr. BRYAN. The vice president in charge of financing of the communications company as far as I know, was told to—the expression was “take it down.”

Mr. LISHMAN. Wasn't that money available to the warehouse operations?

Mr. BRYAN. Yes, sir.

Mr. LISHMAN. Are you familiar with the fact that in Cincinnati the warehouse corporation made a loan of \$100,000?

Mr. BRYAN. I did not know that.

Mr. LISHMAN. You are not familiar with that?

Mr. BRYAN. No, sir.

Mr. LISHMAN. Did there ever come a time when you requested that Mr. Overmyer supply the communications corporation with promissory notes from the warehouse companies who were dipping into the pool for money that you believed was earmarked for station construction?

Mr. BRYAN. I did suggest that.

Mr. LISHMAN. What response did you get?

Mr. BRYAN. Nothing happened. Nothing happened while I was there. I understand that since then it has happened. Promissory notes were drawn.

Mr. LISHMAN. I have no other questions.

The CHAIRMAN. Are there any questions of the witness?

Mr. Dingell?

Mr. DINGELL. No questions.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. I do not wish to prolong this. There were more questions of Mr. Adams regarding his background in broadcasting. No

such questions were asked of you, Mr. Bryan. Will you give us a thumbnail sketch of yours?

Mr. BRYAN. I was a salesman for a representative company, general management (television stations, and I did some research, and am now back in sales.

Mr. VAN DEERLIN. Were you able to add to the staff anybody with experience on the programing side?

Mr. BRYAN. Yes, sir.

Mr. VAN DEERLIN. Were you satisfied that you got competent talent?

Mr. BRYAN. Very much.

Mr. VAN DEERLIN. Were you able to pay them satisfactorily?

Mr. BRYAN. Yes.

Mr. VAN DEERLIN. Things were looking up during the time of your—

Mr. BRYAN. I thought so.

Mr. VAN DEERLIN. Thank you.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS of Washington. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Bryan, that will be all. Thank you very kindly.

Mr. Arthur M. Dorfner?

Mr. LISHMAN. May I suggest, Mr. Chairman, that Mr. Dorfner, Mr. Overmyer, and Mr. Byrnes all appear together.

The CHAIRMAN. Will each hold up his right hand, please?

Do you solemnly swear or affirm that the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DORFNER. I do.

Mr. OVERMYER. I do.

Mr. BYRNES. I do.

The CHAIRMAN. You may be seated.

TESTIMONY OF ARTHUR M. DORFNER, PRESIDENT, D. H. OVERMYER TELECASTING CO.; D. H. OVERMYER, CHAIRMAN OF THE BOARD OF THE OVERMYER COS.; AND THOMAS J. BYRNES, EXECUTIVE VICE PRESIDENT, OVERMYER CO.; ACCOMPANIED BY COUNSEL, RUSSELL MORTON BROWN AND BENITO GAGUINE

The CHAIRMAN. Will each of you identify yourselves for the committee record, starting on our left.

Mr. RUSSELL BROWN. I am Russell Morton Brown. I am counsel for the Overmyer Co., together with Mr. Benito Gaguine of Washington, D.C. We are both from Washington, D.C.

The CHAIRMAN. Mr. Overmyer.

Mr. OVERMYER. My name is Daniel Harrison Overmyer. I am chairman of the board of the Overmyer Cos.

Mr. DORFNER. My name is Arthur M. Dorfner. I am president of the D. H. Overmyer Telecasting Co., Inc., an Ohio corporation.

Mr. BYRNES. My name is Thomas J. Byrnes. I am executive vice president of the Overmyer Co. and the various Overmyer affiliates.

The CHAIRMAN. Thank you.

Mr. Lishman.

Mr. LISHMAN. Gentlemen, I will try to be as brief as possible. I will direct the question to all three of you and the one most competent to answer may do so.

In the balance sheet of D. H. Overmyer Warehouse Co. & Affiliates at August 31, 1964, filed with the Commission, there was a showing of total assets of \$15,644,333.73.

Are any of you gentlemen familiar with that figure?

Mr. BYRNES. I am, sir.

Mr. GAGUINE. Mr. Lishman, do you happen to have extra copies? I am sorry, I don't have one. I don't like to rely on memory.

Mr. LISHMAN. We will get one. Are you also familiar that the balance sheet of the same date submitted to the Internal Revenue Service for the Federal income tax return for the warehouse group shows total assets of \$10,600,000?

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. Can you explain this discrepancy of the \$15 million figure you gave to the FCC and the \$10 million figure you gave IRS?

Mr. BYRNES. Yes, sir. At the time we had a great many of our subsidiaries still in the process of constructing their first buildings. We therefore had two separate groups, one which in its entirety was the parent warehouse company which is designated as the Ohio Co. and all of its warehouse subsidiaries, whether they were in operation or to become in operation.

The other group was just those that were actually in operation, had completed at least construction of one building and were formerly in operation of the warehouse company and not just a real estate development.

Mr. LISHMAN. Could you please enumerate the names of the companies?

Mr. BYRNES. If I may, sir, we were incorporated separately in each State where we intended to construct and pursue the warehouse business.

So with possible rare exceptions the corporation was always called D. H. Overmyer Warehouse Co. and in parentheses the State name. This would be about 35 different States, 35 different corporations, plus several small warehouse companies that we had acquired from others during our history.

So, the difference between the two statements, the larger one is the all-inclusive statement including all of the warehouse companies whether or not they were still under construction, whereas in our consolidated tax return we chose to file separate returns for those which were still under construction but file a consolidated return for those which had operations. That is the difference between the two groups of figures, sir.

Mr. LISHMAN. Now I refer you to the balance sheet that was submitted on behalf of D. H. Overmyer Warehouse Co. & Affiliates to the FCC at August 31, 1965.

There you show total assets of \$34,800,000. For the same period you show to the Internal Revenue Service assets of \$23,500,000, a difference of \$11,300,000.

How do you explain that difference?

Mr. BYRNES. It is the same situation, sir, of two different groups of companies, one being all inclusive and those just under operation.

Mr. LISHMAN. Do you have records that could be made available to the committee explaining these differences?

Mr. BYRNES. Yes, sir.

You mean with me, sir?

Mr. LISHMAN. No.

Mr. Chairman, I would like to have the company be directed to supply a detailed and verified explanation of these differences between the figures submitted to the Federal Communications Commission and the Internal Revenue Service.

Mr. RUSSELL BROWN. I am sure, Mr. Chairman, we will be glad to prepare and submit the kind of statements that Mr. Lishman wants.

Mr. DINGELL (presiding). Very well, gentlemen. The Chair will keep the record open for an appropriate period.

(The documents requested appear in the appendix; see item 34(b), attachment I-C, p. 843.)

Mr. RUSSELL BROWN. I would like to explain that was never requested before. We would have been glad to make the information available.

Mr. VAN DEERLIN. Mr. Chairman, I don't mean to be picayunish but I would point out only three of the five gentlemen at the table are sworn witnesses.

Mr. DINGELL. Gentlemen, may I ask—

Mr. RUSSELL BROWN. Mr. Van Deerlin, I am counsel and Mr. Gaguine is counsel.

Mr. VAN DEERLIN. I understand that.

Mr. DINGELL. Are you saying that you are appearing as counsel?

Mr. RUSSELL BROWN. Yes, sir; we are not witnesses. We don't propose to testify at all.

Mr. DINGELL. I feel I am not qualified to decide, in view of the fact I am not chairman of the subcommittee. I will be willing to reserve this question and bring it to the attention of the chairman of the full committee.

However, gentlemen, under the circumstances the present occupant of the Chair is compelled to rule that persons not sworn and appearing as counsel may not testify.

Mr. RUSSELL BROWN. We have no intention of testifying.

Mr. DINGELL. In the event you testify—

Mr. RUSSELL BROWN. I assure Congressman Van Deerlin we have no intention of testifying.

Mr. DINGELL. It will be the responsibility of the Chair in accordance with the suggestion of the gentleman from California to assure that you gentlemen appear as counsel and that you will not testify.

Mr. RUSSELL BROWN. Yes, sir.

Mr. DINGELL. I am sure we can work this out appropriately, Mr. Lishman.

Mr. LISHMAN. Mr. Byrnes, is it not correct that in the application material supplied to the Federal Communications Commission a statement of earnings was not furnished because the surplus figure given was appreciation surplus and there were, in fact, no earnings?

Mr. BYRNES. I am sorry, sir. I don't think I understand the question.

Mr. LISHMAN. I will rephrase the question.

Mr. BYRNES. Please.

Mr. LISHMAN. At August 31, 1964, did you submit a statement to the FCC showing an increase in surplus?

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Mr. BYRNES. Well, to the best of my knowledge, sir, the statements which would have been submitted with any FCC applications, documents, would have been the last published official statement of the company.

I frankly am not familiar with what exactly would have been attached to any given FCC document.

Mr. LISHMAN. Is anyone here at the table familiar with this matter?

Mr. BYRNES. Perhaps if I could see—I might be able to answer your question if I could see the document in question. [Witness handed document referred to.]

Mr. LISHMAN. Mr. Chairman, to save time while these gentlemen are looking at the document, I would like to have it introduced in the record at this point.

It is a staff review of Overmyer's Federal income tax returns and a comparison with the application material submitted to the Federal Communications Commission.

The CHAIRMAN. Without objection, it will be included in the record.

(The document referred to appears in the appendix; see item 17, p. 546.)

This committee will have to go answer this rollcall. I don't see any better time than to do it right now. So, we will adjourn until 2 o'clock.

Mr. VAN DEERLIN. Mr. Chairman, before we adjourn may I ask if Mr. Robert Adams and Mr. Robert Bryan are excused or whether they will be recalled?

The CHAIRMAN. I assume that they will understand they are to be here at the call of the Chair for at least this afternoon.

Mr. Lishman, was the question completed that had been asked here?

Mr. LISHMAN. I have about 15 more minutes of questions for these gentlemen.

The CHAIRMAN. Is there any question pending right now?

Mr. LISHMAN. The only matter pending is putting in the record the exhibit showing the figures submitted to Internal Revenue Service as compared with the figures submitted to the Federal Communications Commission.

The CHAIRMAN. Permission has been granted for that to be included in the record.

The committee will recess until 2 o'clock.

(Whereupon, at 12:22 p.m., the subcommittee recessed, to reconvene at 2 p.m. the same day.)

AFTER RECESS

(The subcommittee reconvened at 2:15 p.m., Hon. Harley O. Staggers, chairman, presiding.)

The CHAIRMAN. The bells have rung for a vote. I think it would be wise if we just went ahead and voted now and came back, and then we will not have to stop. So, we will just have to adjourn now until 2:30.

(A brief recess was taken.)

The CHAIRMAN. The committee will come to order.

When we had the recess, I believe Mr. Lishman was doing some questioning.

Mr. Lishman, you may continue.

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TESTIMONY OF ARTHUR M. DORFNER, D. T. OVERMYER, AND THOMAS J. BYRNES; ACCOMPANIED BY COUNSEL, RUSSELL MORTON BROWN AND BENITO GAGUINE—Resumed

Mr. LISHMAN. Mr. Chairman, a statement was made this morning that the Overmyer companies had furnished complete information as to all their companies reporting of Federal income tax during the years 1964 and 1965.

In order to make the record clear, I would like to have inserted in the record a letter written by you dated May 27, 1968, to Mr. Daniel H. Overmyer, requesting the complete tax information returns that we were discussing this morning.

The attorney for Mr. Overmyer said that we had not requested this information. Well, we did and we did not get it.

I would like this letter to go into the record.

The CHAIRMAN. Without objection, that may be done.

(The document referred to appears in the appendix; see item 13, p. 499.)

Mr. LISHMAN. Now, I notice, Mr. Byrnes, that the balance sheet of August 31, 1964, and the one of August 31, 1965, were submitted to the Federal Communications Commission. It speaks of fixed assets at appraised valuation. Who did that appraising?

Mr. BYRNES. The appraisals on the individual pieces of real estate would be made normally by independent appraisers. I think we normally refer to them as MAIA's, members of the American Institute of Appraisal.

Mr. LISHMAN. You say normally. Were they AIA members in the instances here?

Mr. BYRNES. They were in most instances, sir, possibly all but at least in most. The exception that I can think of is one large mortgage lender which has its own staff which makes its own appraisals; none of our people ever made such appraisals.

Mr. LISHMAN. Were the appraisals based on cost less depreciation?

Mr. BYRNES. I don't know that I can speak with any great authority as to—

Mr. LISHMAN. Is there anyone that can?

Mr. BYRNES. I think Mr. Overmyer might know a lot more about that subject than I.

Mr. OVERMYER. I did not hear the question. I was consulting with Mr. Brown. Will you repeat it, please?

Mr. LISHMAN. I was asking whether the appraisals were made on cost less depreciation or some other basis?

Mr. OVERMYER. They were market value appraisals; fair market value.

Mr. LISHMAN. Getting back to the balance sheet supplied to the FCC for 1964—

Mr. MOSS. Will you yield at this point?

Mr. LISHMAN. Yes.

Mr. MOSS. How current were the appraisals?

Mr. BYRNES. The appraisals were made, sir, shortly before construction of the facility for the purpose of obtaining first mortgage funds for that facility. They would be, therefore, relatively current.

Mr. MOSS. Relatively; within 90 days?

Mr. BYRNES. No, sir; but within 1 year normally.

Mr. Moss. Within 1 year?

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. Getting back to the August 31, 1964, balance sheet that you submitted to the FCC and the August 31, 1965, balance sheet—looking at the two together, they show that you had an increase in surplus from \$3.2 to \$5.7 million.

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. What does that indicate?

Mr. BYRNES. Basically, that would be the result of the increase in real estate equity created during the intervening period. These additional appraisals on new real estate that have been created during the period which, as a matter of fact, if I can go off for just one moment, would also be part of the differences that you asked about before on the tax return balance sheet versus the published balance sheet since one is appraisal and one is cost.

There would also be a difference there, sir.

Mr. LISHMAN. Would you say that it indicated paid-in capital surplus due to appreciation in assets?

Mr. BYRNES. Surplus due to appreciation in assets, new assets specifically.

Mr. LISHMAN. Did you inform the Federal Communications Commission that was what was indicated?

Mr. BYRNES. I don't believe so.

Mr. LISHMAN. Wouldn't the FCC, looking at this, be likely to take your surplus figure as showing earnings and profits?

Mr. BYRNES. I really don't know. They are both statements at appraised valuation. I really can't answer how they would have taken it, sir; I don't know.

Mr. LISHMAN. You would expect that the word "surplus" with a difference of \$2 million or more would indicate earnings and profit?

Mr. BYRNES. The words "earned surplus" would indicate that.

Mr. LISHMAN. In 1964, isn't it a fact that you reported to the Internal Revenue Service an operating loss of \$29,000?

Mr. BYRNES. I don't have the return in front of me; I assume you have a copy of that.

Mr. LISHMAN. We will be glad to show it to you.

Mr. BYRNES. I am sure it is a photostat we gave to Mr. Druhan in our office.

Mr. LISHMAN. I want to be clear on this.

Mr. BYRNES. Yes, sir; it reads a loss of \$29,066.95.

Mr. LISHMAN. In 1965, you showed to the Internal Revenue Service an operating loss of \$94,000?

Mr. BYRNES. That is correct.

Mr. LISHMAN. Were these losses ever revealed to the Federal Communications Commission?

Mr. BYRNES. No. We gave the Federal Communications Commission our published statements, not the tax returns, with the differences I spelled out before.

If I may, sir, I may point out that the statements given to the Federal Communications Commission were labeled that the fixed assets were carried at appraised valuation.

Mr. LISHMAN. Now, in the balance sheet of August 1965 that you submitted to the Federal Communications Commission, you show a cash account of \$2,300,000.

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. At the same time, you were showing to the Internal Revenue Service a cash account of \$1,300,000.

Mr. BYRNES. I don't have it in front of me, sir, but I would have to assume again that this was the difference between the two groups of companies, one being all of the affiliates, the larger amount, and the other one being those already in operation.

Mr. LISHMAN. Were you projecting the cost of completing some of these affiliates' warehouses and using that as an actual figure?

Mr. BYRNES. Projecting cost of completion?

Mr. LISHMAN. Yes.

Mr. BYRNES. No, sir.

Mr. LISHMAN. When did these warehouses come into operating existence?

Mr. BYRNES. We began the major construction in 1964.

Mr. LISHMAN. These new companies I am talking about that you say you do not have figures on.

Mr. BYRNES. This would have begun basically in 1964, picked up tempo in 1965, go all through 1966. During this time, we constructed approximately 20 million square feet of space.

Mr. LISHMAN. When was the cash available for these new companies?

Mr. BYRNES. The cash would become available for construction when we actually had received a first mortgage commitment and would begin clearing land and construction.

Mr. LISHMAN. Was it available in 1965, August 1965?

Mr. BYRNES. If we had, in fact, begun construction.

Mr. LISHMAN. I am just asking. You don't know whether you had begun construction?

Mr. BYRNES. Well, there are hundreds of buildings, sir. On those that had started, yes, the cash had become available.

If they were just commitments that we had not started until 1966, the cash would not be available. This is mortgage funds we are talking about.

Mr. LISHMAN. Returning to your 1965 balance sheet which you gave to the FCC. You show current assets over liabilities of \$2,100,000. The figure you gave to the Internal Revenue Service was \$863,000.

How do you explain that difference?

Mr. BYRNES. Again, sir, I am sure it is because we are talking about two different sets of companies.

Mr. LISHMAN. We are going to get a verified statement reconciling this difference?

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. We will have an opportunity to check those figures?

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. Now, on your statement to the FCC concerning stockholders' equity, you have used the figure \$7,711,344, whereas you tell the Internal Revenue Service that the stockholders' equity was \$3,810,887.

How do you explain that discrepancy?

Mr. BYRNES. I would assume again the same reconciling factors. (1) a different group of companies and, (2) the difference between appraisal and cost due to the methods of accounting.

Mr. LISHMAN. Was the \$2,100,000 in assets over liabilities available for borrowing?

Mr. BYRNES. For borrowing, sir? You mean by other companies?

Mr. LISHMAN. To secure a loan from a bank.

Mr. BYRNES. No.

Mr. LISHMAN. Was it available to construct and operate a station?

Mr. BYRNES. It was free corporate funds which could be used for any corporate purpose. Working capital would be one of those.

Mr. LISHMAN. Could it be used to construct a station?

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. Yes?

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. When was the Overmyer interest established?

Mr. BYRNES. The Overmyer Co.?

Mr. LISHMAN. Yes.

Mr. BYRNES. The Overmyer Co. was formed, came into existence as an acting corporate entity, I believe, in September of 1966.

Mr. LISHMAN. Is that what you told the FCC?

Mr. BYRNES. I don't know if we ever had any conversations with the FCC concerning the Overmyer Co.

Mr. LISHMAN. I mean materials supplied in writing.

Mr. BYRNES. In the application?

Mr. LISHMAN. Yes.

Mr. BYRNES. I believe so, sir.

Mr. LISHMAN. Didn't you inform the Internal Revenue Service that such company was established March 28, 1966?

Mr. BYRNES. I think the difference was probably a corporate charter date, not necessarily the date that operations, as such, began.

Mr. LISHMAN. Did you also inform the Internal Revenue Service that the Overmyer Co. expenses had been recorded from January 1, 1966?

Mr. BYRNES. Recorded where, sir?

Mr. LISHMAN. Recorded on your own books, wherein you kept a record of the expenses.

Mr. BYRNES. Prior to September 1?

Mr. LISHMAN. Prior to March.

Mr. BYRNES. Prior to September 1, the figures, any expenses would have been included in the D. H. Overmyer Warehouse Co. I don't have copies of the tax returns that you are referring to, sir.

Mr. LISHMAN. I would like to ask a question about the August 1965 balance sheet difference with respect to current assets over liabilities. Is it not a fact that in that balance sheet you supplied to the FCC, assets exceeded the liabilities by \$2,100,000?

Mr. BYRNES. Yes, sir.

Mr. LISHMAN. Is it not a fact that in the balance sheet you furnished to the Internal Revenue Service current assets exceeded liabilities by only \$863,000?

Mr. BYRNES. That figure I don't have in front of me, sir, the tax return. Is that in these papers? Excuse me, sir; did you say 1965 or 1966? What is that? Was the question on 1965 or 1966?

Mr. LISHMAN. 1965.

Mr. BYRNES. The figures I have in front of me, sir, are run down without subtotals of the current assets and current liabilities. I can't immediately answer your question. However, again we would be talking about a different group of companies.

Mr. MOSS. If the gentleman will yield for a moment, I confess that my absence this morning can be what leads to my state of confusion but we keep getting the response, "The different set of companies."

Now, as I understand it, we are interested in the applicant companies, I assume corporate entities, for the five construction permits. Is that correct?

Mr. BYRNES. No, sir. The question of your counsel has been directed to our warehouse company groups.

Mr. MOSS. Were they applicants for licenses?

Mr. BYRNES. No.

Mr. MOSS. Did they operate under a consolidated balance sheet or consolidated set of books?

Mr. BYRNES. No, sir.

Mr. LISHMAN. The evidence in the record shows that the Overmyer affiliated companies were going to personally guarantee and stand behind the construction of these permits. It was on the basis—I will read it to you—

Mr. MOSS. Then the assets of all the affiliates were committed to the construction of the five stations which had been applied for by D. H. Overmyer Broadcasting Co., Inc., and D. H. Overmyer Communications Co.

Mr. LISHMAN. Yes. And the Commission, in approving the transfers, relied on the fact that Mr. Overmyer's personal resources and those of his warehouse companies were standing behind the whole deal.

Mr. MOSS. My next question is: Are we dealing with a consolidated balance sheet and consolidated tax returns?

Mr. LISHMAN. Yes.

Mr. MOSS. All of the affiliate companies were consolidated on a balance sheet and a tax return?

Mr. LISHMAN. Well, we don't know that.

Mr. MOSS. Well, why don't we find out?

Mr. LISHMAN. We have already asked them to supply that information.

Mr. MOSS. Don't they know?

Mr. BYRNES. Yes, sir; if I may. For the purpose of published statements—

Mr. MOSS. I am not interested in that.

Mr. BYRNES. That is the statement we gave the FCC.

Mr. MOSS. The published statement.

Mr. BYRNES. Our normal published yearend balance sheet.

Mr. MOSS. And that satisfied them?

Mr. BYRNES. Yes, sir; apparently.

Mr. MOSS. That does not require a lot of figures; does it?

Mr. BYRNES. I think it is a standard balance sheet.

Mr. MOSS. Is it standard practice on applications for permits or loan or anything of that type to hand them the published sheet or do you normally prepare a special one for that?

Mr. BYRNES. If I can put my answer, for loans the average lender does want to see the consolidated group and, yes, they did accept these statements; that is why we published them, for lenders, primarily. For the FCC, we did, in fact, use these same statements. What their requirements are, I don't have any expertise on it.

Mr. KETTL. Were they authenticated by a CPA?

Mr. BYRNES. No, sir. The warehouse company has never been audited by a CPA.

Mr. KEITH. Would that not be a logical requirement for the FCC?

Mr. MOSS. I might say to the gentleman it seems to me very logical. But apparently it is not the current practice.

Mr. LISHMAN. Mr. Byrnes, do you have in front of you now the footnote on the tax returns for 1965 which indicates that the expenses of the Overmyer Co. had been recorded from January 1?

Mr. BYRNES. Of 1965?

Mr. LISHMAN. 1966.

Mr. BYRNES. There is a footnote which reads, "Represents cost of acquisition period from January 1, 1966, to August 31, 1966."

But, frankly, I don't see that that implies that it is a note just for the Overmyer Co. There are several other corporations, sir, such as the Overmyer Warehouse Co. of California.

Mr. LISHMAN. You mean the note refers to all Overmyer warehouse companies?

Mr. BYRNES. It does, but the date of January 1 is the earliest date of any of the companies involved which would be one of the other warehouse companies which probably had been on a calendar year prior to consolidation.

Mr. LISHMAN. What was the amount of claimed out-of-pocket expenses that Overmyer incurred in connection with the transfer of his five permits to United States Communications?

Mr. BYRNES. May I refer to my files, sir?

Mr. LISHMAN. Yes.

Mr. BYRNES. Our computations which were labeled exhibit 3, schedule A, in the filing, showed a total invested cost of \$1,331,900.

Mr. LISHMAN. That was broken down into two large overall amounts?

Mr. BYRNES. Well, we have four specific categories, sir.

The net worth for the capital contribution for stock of \$53,500; the cancellation of moneys due to other Overmyer entities by these communication companies which Mr. Overmyer forgave and then in effect that became an additional capital contribution, or \$253,000; assets which were donated by Mr. Overmyer or at his direction by other Overmyer entities of \$358,000; and unreimbursed staff and facility charges incurred by other Overmyer entities of \$666,500.

Mr. LISHMAN. We would like to concentrate on the justification for the \$666,514 allocation of charges for services performed by employees of affiliated Overmyer companies for the benefit of the Communications Corp.

Mr. KEITH. Will the gentleman yield?

Mr. LISHMAN. Yes, sir.

Mr. KEITH. As a matter of curiosity, and because the answer will shed some light on how this was handled, I assume that your financial statement figures indicate, to a large degree, whether or not you could handle the effort required to operate one of these stations.

You show in one of your statements that was furnished to the FCC or to me, as a member of the committee, an extraordinary growth in capital assets and yet no taxes appear to have been paid in the intervening years or in the years involved.

My question is: Do these capital assets reflect a true picture of the corporate structure? Specifically, is it possible that by reason of a

value that has been assigned to these CP's, that rather than what they were incorporated for, which was very modest, they have a year or two later become worth millions of dollars and are used as assets in your corporate rate picture?

Mr. OVERMYER. Congressman Keith, if I may answer this question.

Mr. KEITH. Yes.

Mr. OVERMYER. We did have during the period 1963 through 1966 great growth in asset value. Mr. Byrnes has testified it was our policy and our practice to appraise each piece of real estate and to put its true market value on our balance sheet.

—In the year of 1966, because of economic difficulties, we commenced to sell these buildings. In most part, they had been sold at the appraised or market value.

In four specific instances, if I may quote some documents I have had prepared for me here, we had an asset value of a piece of property in Atlanta on an appraised basis of \$113,605. It was sold for \$70,000.

In Los Angeles, we had a building with an appraised value above the mortgages of \$226,367. It was sold for \$200,000.

In San Diego, Calif., we had a building appraised at \$227,222. It was sold for \$800,000, above the mortgage.

In Las Vegas, Nev., we had a building valued at an appraised value of \$480,838. It has been sold or is being sold for \$300,000.

The purpose of this is to show the asset growth was real and the value was real; the buildings were sold at or close to their appraised valuation.

Mr. KEITH. I think you missed the point of my question.

Mr. BYRNES. Mr. Keith?

Mr. KEITH. Yes.

Mr. BYRNES. I think I understood you.

Are you asking, Are the market values of the construction permits in that capital asset?

Mr. KEITH. Yes.

Mr. BYRNES. The answer is "No," sir; this is a warehouse company statement. The warehouse company did not own and had no title to the construction permits. There would have been no place in the warehouse company statements for such assets.

Mr. KEITH. That is the answer I wanted. This raises a question in my mind although it is not necessarily pertinent to the specific application but to the extent that your financial statements have been used by the FCC in determining your capability for developing these embryonic television stations.

We show here under fixed assets appraisal on a consolidated financial statement, \$9 million in 1964; \$18 million in 1965; \$17 million in 1966.

The instances that you gave were smaller amounts which when sold, generally speaking, were less than the appraised value.

Mr. OVERMYER. Sir, I think the aggregate total of the four is equal to the appraised value of the four. These four specific buildings are merely examples.

I could show you many, many others over and above these four. But they are examples that indicate the sale value of the building is equal in most cases to the appraised value and that the fair market appraisal

which we procured placed on that balance sheet, and so labeled, is a fair statement of the value of the property.

Mr. KEITH. I don't want to pursue this if counsel is ready to continue his questioning but if he is not ready or would like to have me continue along the lines that I have established I will be happy to do so.

Mr. LISHMAN, are you ready to resume or would you like to have me continue?

Mr. LISHMAN. I am ready to resume.

Now, this figure of \$666,000 was an estimate; isn't that correct?

Mr. BYRNES. Pardon me?

Mr. LISHMAN. That figure of \$666,000 allocable to charges for services performed for the benefit of the communications companies was an estimate?

Mr. BYRNES. No, sir. It was a calculation or computation.

Mr. LISHMAN. Will you briefly explain how that was computed?

Mr. BYRNES. Yes, sir.

We had at our disposal at that time I believe 4 months of what we might call the clean cost of the staff company, the Overmyer Co.

Mr. LISHMAN. Four months in what year?

Mr. BYRNES. 1966. I believe the months were September, October, November, and December of 1966, when we had switched all staff, nonline personnel into this management company.

Mr. LISHMAN. Will you describe the functions of the company?

Mr. BYRNES. Yes, sir.

The Overmyer Co. or the staff company, as we refer to it, housed all of the personnel of the various prior Overmyer companies who were not day-to-day line operating people but who were rather staff type people, service people, such as legal, personnel, advertising, accounting, and the like; service type departments.

So, we grouped them into this company so that the resultant figures in the operating companies, warehousing, leasing, and communications, would have only line cost directly charged.

This being the first time that we had grouped all of these costs under one corporate head, we used this base to determine through various percentages what effort had been expended by the service arms of the Overmyer Co. in connection with communications work.

Now, we did this by going directly to the department heads who were responsible for the functions, having them review what type of work they had performed for the benefit of the communications companies and assigned percentages of time to the people under their control. We chose the people, the salaries, since salaries and related expenses were, I believe, in the neighborhood of 70 percent of the total expenses of the service group. We therefore felt that this was a very logical and fair method of allocation under the circumstances.

Mr. LISHMAN. Now, Mr. Byrnes, is it a fact that for advertising and public relations department services provided to the communications company you set up, a figure of \$92,067?

Mr. BYRNES. I don't find the figure that you are referring to in my statement, sir.

Mr. LISHMAN. As I understand it, this was for the period 1964 through 1967.

Mr. BYRNES. The figures by department—

Mr. LISHMAN. You have the figures by department?

Mr. BYRNES. Yes, but the figures I have in front of me by department which was exhibit 3, schedule "E" of our presentation to the Federal Communications Commission, detailed the departmental expenses for the period September 1966 through December 1966; not from 1964 on, sir.

Mr. LISHMAN. I am going to ask Mr. Druhan, an accountant, to straighten this thing out because applying the same percentage that you used in the presentation to the FCC we derive the figure of \$92,067 as the amount of expenses which is attributed to advertising and public relations expenditures for the benefit of the communications companies.

Mr. DRUHAN. On your schedule "E" for advertising and public relations, you show the total expense of \$84,000 for your total expenses.

Applying that to the formula that you use, breaking down your \$666,000 by departments, by years, which can be attained through the figures you submitted to the FCC by applying the percentage formula to the departmental expenses of the Overmyer Co., we have been able to devise the individual expense items for the individual departments.

In other words, where you came up with a total expense of \$129,000 for your test period, applying that to the various periods by department, you can obtain what you allocated by department by period.

Mr. LISHMAN. Do you follow that, Mr. Byrnes?

Mr. BYRNES. I follow it mathematically; yes.

Mr. DRUHAN. Doing that, we have devised a schedule which shows the individual breakdown by department of the \$666,000.

Mr. BYRNES. Mr. Lishman, would it be possible for me to see this computed schedule?

Mr. LISHMAN. Yes, sir.

Mr. DRUHAN. You will note we have broken down each department and then taken into consideration undistributed general expenses and a deduction for the portion applicable to Toledo and the portion applicable to the leasing company.

In other words, this is a breakdown of your submission to the FCC by department and by period. So, we can from this point discuss the charges which were allocated to each department.

Mr. BYRNES. I follow your schedule.

Mr. DRUHAN. Now, the question is with regard to the advertising department which shows a total expense of \$92,067.

Mr. BYRNES. I see your figure.

Mr. DRUHAN. The question is, is the comparison between that and your out of pocket expense or direct expenses for advertising of \$84,000?

Mr. BYRNES. In what period?

Mr. DRUHAN. The total preoperating expenses of the communications companies is \$970,000. You had a direct advertising expense of \$10,000. The question we would like to ask is, What services were performed by the staff of the Overmyer Co. to justify indirect expenses of \$92,000 as opposed to direct expenses of \$48,000?

Mr. BYRNES. I certainly don't have all of that detail at my disposal at the moment. I can say this: In the area of both advertising and public relations we maintain staff departments during this period. Obviously, such staff departments would all be indirect cost. The in-

direct cost that you allude to I assume is actual bills from advertising agencies.

Mr. DRUHAN. If it is preoperating expenses, we are not questioning that. We are questioning the indirect expenses.

Mr. BYRNES. The indirect expenses would have all the staff people, however involved, plus any out-of-pocket expenses incurred professionally in either of these areas. You can and do spend a good deal of money with professional people in advertising and in public relations without necessarily ever putting an ad in the paper. You pay retainer fees to professional people in both of these lines.

Mr. DRUHAN. That would not be an indirect expense, though. That would be a direct expense, would it not?

Mr. BYRNES. That would be in this particular department's expense. The public relations department and advertising department would gather all of the expenses pertinent to its function.

Now, for the sake of argument, if you have a retainer to an outside professional firm for general public relations purposes, they don't or at least with us they don't bill us for breakdown of that retainer as to how many hours spent for communications or leasing or warehousing.

Mr. DRUHAN. What we are comparing now is the fact that Mr. Adams testified this morning that in 1964 and in 1965 the main thrust of your effort was to get sites for your stations.

Mr. BYRNES. That was the main thrust of his efforts.

Mr. DRUHAN. The main thrust of his efforts and the fact that the sites had not been obtained at the time he left. And we concluded that in 1964 and in 1965 the stations were not too far along toward completion. The question is, What advertising was done in 1964 and in 1965 that would justify an indirect expense between the 2 years of \$38,000?

What was done in that period when it has been testified that very little had progressed in getting the stations on the air?

Mr. BYRNES. I can only answer the question in a very general manner, but I will say this: As a matter of normal policy within our companies, we have always been firm believers in advertising and public relations and for all of the companies; giving an analogy of the warehousing company, before we would ever build a warehouse we would expend time, effort, and money in public relations and in advertising in given communities.

Now, we do the same thing, I am quite sure, to the best of my recollection, it was the same policy for the communications companies, to pave the way. I do know that I can recall seeing advertising material, the point of sale type of thing which was made up for individual stations like Cincinnati, San Francisco, to be distributed to pave the way for activation of the station.

For many, many months before we anticipated going on the air, we knew that it was our intention to put these stations on the air. We knew that we had many physical difficulties to overcome in the way of finding proper studio sites, finding proper antenna sites, et cetera, as you heard testified this morning. But we didn't believe as a company in waiting to prepare the community for this new facility.

So, public relations and advertising work went on all the time even though the thrust of the technical people in the communications company, as was testified, perhaps was on finding sites. That did not stop

public relations or advertising or other types of functions from going on.

Mr. DRUHAN. In point of fact, did they advertise for the Cincinnati station in 1964?

Mr. BYRNES. I, personally, cannot answer the question.

Mr. MOSS (presiding). We will short circuit this. The chairman will want you to prepare and present to the committee for this record a list of all advertising contracts for the promotion of the stations under discussion and all of those for which applications were made, all public relations contracts, copies of all advertisements utilized in each of the communities, and the names of any agencies employed.

I would ask that this be prepared and supplied very promptly to the committee.

Mr. OVERMYER. We will do so, Mr. Moss.

Mr. BYRNES. Sir, we will comply with it as promptly as we can. These are prior years. I don't know as to the immediate availability of information.

Mr. MOSS. I imagine if you are keeping reasonable records that this falls within the period of time for which those records must be maintained in definitive detail. We expect to receive those records in that detail.

Mr. BYRNES. We will comply as well as we can, sir.

(The information requested was subsequently supplied and placed in committee files.)

Mr. DRUHAN. On the same type of questioning, Mr. Byrnes, would you look at the tax and insurance department where you have a total charge of \$23,681 for the period 1964 through 1967?

The statement made to the FCC indicates that the bulk of this time by the staff company was directed toward preparing Federal tax returns, obtaining insurance, filing claims for insurance—I will read your statement. It says:

The department filed Federal, State, and local income/franchise tax returns; State and municipal sales-use tax returns; State, county, and local property tax returns; and applications for such local business and other licenses as may have been required. Correspondence with taxing officials or with other company personnel is handled by this department.

In determining the amount of time, and thus of expenses allocable to the Communications Company, I relied upon my personal experience in this field.

With regard to the insurance company, it says:

This department negotiated coverage in all fields for the Communications Companies and handled claims, correspondence and followed up on all insurance matters.

The allocation of time to the Communications Companies was based upon my personal knowledge and experience.

In that regard, we question how much effort was directed toward filing Federal returns for the communications companies.

Mr. BYRNES. I think the percentage of effort and time given by the department head was all inclusive in his judgment and certainly was not broken down as to how much was Federal income tax and some other.

Mr. DRUHAN. Did this statement come out of the Manual of Standard Operating Procedures?

Mr. BYRNES. What statement?

Mr. DRUHAN. That you filed with the FCC? The one that I read that the tax department filed Federal returns.

Mr. BYRNES. Comes out of an operating manual? Not that I know of.

Mr. DRUHAN. My question is: Who filed these Federal returns? Was it not Arthur Young?

Mr. BYRNES. For the communications companies? I don't honestly know. I would have to check. I don't have the returns in front of me.

Mr. MOSS. We will hold the record open at this point to receive this information.

(The information requested appears in the appendix; see item 12, p. 497.)

Mr. BYRNES. However, if I may add, whether or not they filed them does not mean that the internal people would not have worked in the preparation. The filing by a public accountant can be a very routine thing.

Mr. DRUHAN. You say here you had correspondence with tax officials. That is part of your allocable cost. How much correspondence did you have? Was there any? We didn't see any.

Mr. BYRNES. I don't recall your asking for any. I don't know.

Mr. DRUHAN. The tax returns that you showed me said that the company was inoperable in 1964 and 1965; it was a one-page form. It was signed by Arthur Young. To the best of my knowledge, your department did not enter into the tax field until the 1966 return which was filed after March 1967.

Mr. BYRNES. What was your last question?

Mr. DRUHAN. Did the tax department of the Overmyer Co. perform the service of filing the tax returns except for the 1966 return, which was filed after March 1967 which is the cutoff date for these expenses?

So, we are questioning what work would be performed by your department if they didn't file the returns.

Mr. BYRNES. Any type of underlying tax work plus other taxes, not just Federal, and insurance.

Mr. DRUHAN. By the same token—

Mr. BYRNES. I point out the \$23,000 we are referring to over the period of 3½ years comes down, I suppose, to about \$6,000 or \$7,000 a year.

I seriously doubt—I know that we couldn't have hired a competent tax and insurance clerk for that kind of money for that period of time.

Mr. DRUHAN. You did not have one man dedicating 100 percent of his time by your own submission.

Mr. BYRNES. That is right.

If we had proposed such a person and put him on the payroll, I think the money would have been a great deal higher than that.

Mr. DRUHAN. That would not be pertinent to this hearing, would it?

Mr. BYRNES. I don't know.

You are asking me to go into a figure which you have compiled over a period of years. It just occurs to me that that is not a great deal of money for that type of work over that period of years.

Mr. DRUHAN. You say here in regard to the insurance department that they handled the claims. Do you recall any claims that were handled by the department?

Mr. BYRNES. I, personally, have nothing to do with the handling of claims.

Mr. LISHMAN. Who would have?

Mr. BYRNES. The manager of the insurance department, sir.

Mr. LISHMAN. Could you supply for the record any claims that were handled by the department?

Mr. BYRNES. We will attempt to do so.

(The information requested appears in the appendix; see item 12, p. 497.)

Mr. LISHMAN. How much income did these five communications companies have during this period over which charges were allocated?

Mr. BYRNES. To the best of my knowledge, they would have had no income, sir. They were not operating.

Mr. LISHMAN. In this \$666,514 allocation of charges to the Overmyer Communications Co., you also have a charge of \$307,715 for the finance and development department; is that correct?

Mr. BYRNES. The combination of the last two amounts? That is Mr. Druhan's number, yes.

Mr. LISHMAN. Now, you stated that 37 of 61 employees in the New York office devoted 5 to 30 percent of their time to communication company activity.

Mr. BYRNES. I believe the department involved indicated that various persons had various percentages. I don't believe they were all involved.

Mr. LISHMAN. You also stated that 48 or 62 employees in regional offices devoted 10 to 30 percent of their time to these duties.

Mr. BYRNES. I don't know how many employees were involved, but various employees were engaged over a period of years.

Mr. LISHMAN. And you indicated the allocated amount for the seven regional offices was \$137,048.

The committee has sent letters to 106 former employees of Overmyer Co., and we have received answers from 70. We inquired as to what amount of time these employees—and they were former employees—what amount of time they devoted to communications company duties. We found practically without variation that very little, if any, time was ever devoted by them to the performance of any services for the communications companies.

With respect specifically to the finance and development charge of \$307,000, the letters we received from the persons engaged in that department showed that 17 out of 18 of the persons responding performed no services whatever for the communications companies.

Now, what justification can be offered for that type of situation where you used a base period of your own selection; and, with just a minimum amount of checking we find out that persons to whom you have attributed wages and salaries for performing services for the communications companies tell us they performed no such services?

Mr. OVERMYER. Mr. Lishman, may I answer this question? I think the best total explanation is quite simple. Our staff headquarters in New York, operating as we did, provided almost every service for the various companies in the Overmyer group whether they be warehouse, communications, leasing, construction, or whatever. We had seven regional offices. It should be clear from the testimony of the two gentlemen who preceded Mr. Dorfner in this position as head of the communications company that the communications staffs as well as the staffs of other operating companies were not large enough to provide the services necessary. The Finance and Development Department was responsible for the selection of sites and for the financing.

I am confident that many thousands of hours were spent by our staff people in these functions.

Now, Tom, if you want to add something, go ahead.

Mr. BYRNES. I can only say, of course, that we don't know who the ex-employees are and to whom you referred.

Mr. LISHMAN. At this point I would like to offer in the record a staff report on verification of Overmyer's claimed out-of-pocket expenses with copies of the inquiries to and answers from Overmyer's former employees attached thereto.

Mr. MOSS. Without objection the material will be received for inclusion in the record.

(The documents referred to appear in the appendix; see item 14, p. 499.)

Mr. BYRNES. Mr. Lishman, would it be possible to see the letter that is also directed to the employees?

Mr. LISHMAN. It is part of the record.

Mr. DRUHAN. His point was that for the Finance and Development Department, or any other department that we selected, we took the list of employees that you furnished with the percentage applicable to their efforts and those former employees that we had addresses for we sent a confirmation letter. Although I don't doubt Mr. Overmyer's explanation, our question is that the employees that you selected for your submission to FCC were not the ones that devoted this effort.

Mr. MOSS. The Chair is inclined to be extremely indulgent of the activities of counsel but he would direct counsel's attention to page 2 of the rules of the House which have been employed, and would suggest that counsel read them and so comfort himself as to being in conformity with that. I heard no request for consultation on a matter of constitutional rights. Therefore, I ask that the counsel be seated.

Mr. BYRNES. May I answer?

Mr. MOSS. Now we will have to recess for 10 minutes to permit the committee to keep within the rules, which require two to be present. Mr. Van Deerlin will be back shortly.

(Brief recess.)

Mr. MOSS. The committee will resume its sitting. I want to say that the Chair will not countenance an action by indirection which he would not countenance as direct action. So the caution to the counsel stands.

Mr. GAGUINE. I assume that the Chair will permit me to advise the counsel of his constitutional right?

Mr. MOSS. I was very explicit in stating that that was the purpose of your being here under the rules of the House. I do not intend to conduct these hearings in any manner not in accordance with those rules. It is up to the gentlemen who request that advice when there would be reasonable grounds to assume a constitutional issue is involved.

Mr. Lishman, you may proceed.

Mr. BYRNES. May I answer Mr. Druhan's last question, please?

Mr. MOSS. Yes, you may.

Mr. BYRNES. I can only say that in the first place, I had not before seen your computations or your letters or the answers of the ex-employees. So it is difficult, if not impossible, to comment on them until I have reviewed them. In addition, we received our information from what we believe is the best possible source, which was the department heads who directed the efforts of the many people.

It is entirely possible, and I think a normal occurrence, that the average employee, especially after a passage of time, either exaggerates the amount of work he did on something or completely eliminates it. I believe, we believe, and this is the reason we used this approach, that the opinions and the judgments of the executives who were in charge of these areas during this period were much more accurate since they had a much broader idea of what was going on, a much broader knowledge of why assignments were made to individuals as to the amount of work that was being performed, and for whom.

Now I don't think I can really say anything intelligent concerning these other schedules or letters.

Mr. DRUHAN. The supervisor would know more about what the man was doing, than the man himself?

Mr. BYRNES. I think in many cases, yes.

Mr. DRUHAN. We are saying 17 out of 18 employees from whom we received responses were allocated 30 percent of their time and they came back and said none. I would agree with you if it were semantics of different percentages but when you are talking of no time as compared to 10 to 30 percent of your time, there is a wide variance.

Mr. BYRNES. I appreciate your question. Since I have not had a chance to review your papers I can only reiterate that the department heads know what work their departments performed during those periods, and using their memory to the best of their ability, since they did not have diaries or anything of that sort, they did their best to recall which individuals did it and to what extent. This is their best judgment.

Mr. DRUHAN. The individuals for whom you are applying this percentage over a period, were they employed for the whole period?

Mr. BYRNES. Specifically, I don't know. We would have to look at each individual one at a time.

Mr. DRUHAN. Did you look at it at the time you made your computation?

Mr. BYRNES. The department heads would have; I didn't.

Mr. DRUHAN. Are we to assume that these employees that you allocated the time to when you were allocating on a percentage basis, a certain percentage in 1964, a certain percentage in 1965 and 1966, that they were employed for the whole period?

Mr. BYRNES. Not necessarily, no. But someone, if not they, would have done that work in 1964 and 1965, some counterpart. No, they used the employees, if you recall, who were on payroll during that test period as examples. It might have been a replacement of someone before him, that is possible. The questions are: What work was done, and what kind of problem, and what man? So there could be a substitution of employees over a period of time. It might be that a regional finance individual, just to make an example, on the west coast, was used 10 percent, or 15 percent, or whatever percentage the department head thought was adequate. Actually it might have been in 1965 or early 1966 some other employee was working at that 30 percent of his time. That is a possibility. This was an average composite recollection of effort expended.

Mr. DRUHAN. Are you saying, then, if we find employees who were only employed for a month or two during that test period that you had comparable employees, not like numbers, but comparable?

Mr. BYRNES. Comparable effort would have been expended.
Mr. DRUHAN. Comparable effort during the preceding period?
Mr. BYRNES. By someone.

Mr. DRUHAN. Is it not true that the test period was a peak in the Overmyer Co.?

Mr. BYRNES. A peak as to communications?

Mr. DRUHAN. A peak as to warehouse actions. In other words, the expenses for the communications company are based on a percentage of the warehouse company, is that correct?

Mr. BYRNES. Of the staff group.

Mr. DRUHAN. Yes, the Overmyer Co. You used 11 percent of those expenses.

Mr. BYRNES. That is correct.

Mr. DRUHAN. Is it not true that the test period of September through December, was that when the expenses for the Overmyer Co. were at this peak?

Mr. BYRNES. No. In general 1966 was our biggest year, yes. But whether these 4 months were the peak, I don't honestly know. I don't recall. But 1966 was our peak year, yes.

Mr. DRUHAN. We are getting back to the question that Mr. Lishman was asking previously as to why we were using that 4-month period. You are contending that the expenses started to be recorded in September 1966. We are questioning then why you didn't use the test period through March 1967 when the expenses of the warehouse company were certainly available after December.

Mr. BYRNES. Frankly, because at the time we were making this up our accounting has never been that up to date. We didn't have those periods on the books. This period was closed in the accounting department and therefore available to us.

Mr. DRUHAN. By May and June, December was not completed?

Mr. BYRNES. December was completed.

Mr. DRUHAN. January was not completed by May or June?

Mr. BYRNES. No; it wasn't, sir.

Mr. LISHMAN. Can't we test fairness and propriety of this base-period allocation approach by pointing out various examples of the real foolishness of it? For example, here is an employee, Albert E. Owens. He is letter No. 17. He was employed only 1 month. He earned \$665. Now a total of \$5,428 was charged to the communications companies for the services of this employee which is \$4,763 more than his total earnings.

In the first place, I don't understand why you have to have a base-period at all. Out-of-pocket expenses are out-of-pocket expenses. When you run it up on an estimated allocated basis of \$666,000 and work out some kind of formula that will take a peak period, I certainly don't see any equity or justice.

Mr. BYRNES. It was the only period in which these allocated expenses had been set out in such a way that they could be used, sir.

Mr. LISHMAN. We have a situation where you have five construction permits issued and nothing done on them. You had not even acquired the ground to put up the antenna. How could you be having this high-powered advertising, this high-powered tax service, this finance and development work, when you were not even drawing down loans from the banks and you did not even get firm commitment letters? I don't understand it. It is beyond me.

Mr. BYRNES. As to the financial element I don't know, perhaps we could find out, I don't know how many banks would have been approached before the ones who had decided to commit did commit. I do know that we took down three of those loans, three of those commitments that have been alluded to were taken down.

Mr. MOSS. How many employees would normally be engaged in the activity of contacting banks for the purpose of arranging financing?

Mr. BYRNES. Our finance and development department. I don't know the exact number of employees, sir, but it was the largest department in our company because the company was on a very large development program. It was the people who were employed in this department of finance and development. This is real estate people, land acquisition people, site selectors, negotiators with banks, insurance companies and so forth, who are used for this purpose in addition to their other duties.

Mr. MOSS. Let us try another approach. The \$666,000 was for the finance and development?

Mr. DRUHAN. No, sir; \$307,000 for finance and development.

Mr. MOSS. What percentage of the total cost of financing and development for the concurrent period does the \$307,000 represent?

Mr. BYRNES. There are two splits. One was 13.4 and the other was 14.2. So somewhere in the neighborhood of 14 percent of the department, sir.

Mr. MOSS. Roughly 14 percent of the department was allocated to the five inactive construction permits.

Mr. BYRNES. Fourteen percent of the department was allocated to the effort expended in searching out financing, real estate, sites, et cetera, for these five CP's.

Mr. MOSS. How many applications were made for financing of these CP's?

Mr. BYRNES. I don't have a number available, sir.

Mr. MOSS. But your records would reflect that.

Mr. BYRNES. I could discuss it with the department and get an answer from them, sir.

Mr. MOSS. I don't want an estimate. I want the exact contacts.

Mr. BYRNES. I don't think any such record exists, sir. We did not have our people keep diaries, or that sort of thing.

Mr. MOSS. You had to make out applications, didn't you?

Mr. BYRNES. Not necessarily, sir. A good deal of time would be expended and was expended, I personally was involved on occasion, on visiting with financial people and spending an hour or several hours with them, giving them verbally a presentation—

Mr. MOSS. When did you acquire your first site for the construction of one of the five licenses or construction permits?

Mr. BYRNES. I personally don't know, sir. I will have to defer to someone else to answer that.

Mr. DORNER. Congressman, you refer to the five particular CP's we are discussing here?

Mr. MOSS. That is correct.

Mr. DORNER. I believe Cincinnati would have been the first which would have been the property discussed in earlier testimony which was the Bald Knoll property which was obtained by the leasing company at the price of \$55,000.

Mr. MOSS. On what date?

Mr. DORFNER. I believe the option was contracted in March and it was exercised by June of that year, 1966.

Mr. Moss. June 1966, and the option was executed in March. And what did you have, a maximum of 30 days' negotiation leading up to the option?

Mr. DORFNER. No. I believe Mr. Adams indicated that negotiation had begun the previous fall and was concluded in March as my memory recalls. As I say, the option was picked up and exercised in June 1966. So it was 6 months or more of negotiation.

Mr. Moss. You acquired during this time one site. Subsequently, how many sites were acquired for the five?

Mr. DORFNER. Atlanta was another. San Francisco was another. Houston was already testified to, a filing which was an option to buy on the Texaco property.

Mr. Moss. Did you acquire four or five or six?

Mr. DORFNER. Three were acquired. Two were options.

Mr. Moss. How many sites or property packages or deals of finance and development were obtained for the affiliated companies in the same period of time?

Mr. DORFNER. I don't have that information.

Mr. OVERMYER. I believe I can answer that, Mr. Congressman.

Mr. Moss. All right.

Mr. OVERMYER. I would estimate that—

Mr. Moss. Unless you can give it precisely, I would not want the answer. I would rather hold the record and ask you to supply the precise figure, again, very promptly.

Mr. OVERMYER. Let me give you my answer. If you wish something further, we will furnish it.

Mr. Moss. Only, Mr. Overmyer, if you want to say that your answer is accurate. If it is an estimate, I do not want it at this point in the record because it will not add to the record.

Mr. OVERMYER. Mr. Moss, we have completed 350 buildings in approximately that period time. Each of those sites would have had to be investigated.

Mr. Moss. They would have been investigated by this same finance and development group?

Mr. OVERMYER. That is correct, sir.

Mr. Moss. 300 different sites?

Mr. OVERMYER. 350 sites.

Mr. Moss. 350 sites. Yet for the securing of three sites and two options, 14 percent of the total cost was allocated to those three sites and two others.

Mr. OVERMYER. Excuse me. I made an incorrect statement. We completed 350 buildings on approximately 175 sites.

Mr. Moss. Well, the buildings would also require, I assume, the arranging of finance. So the negotiation would be reasonably comparable; contact with financial institutions.

Mr. OVERMYER. We would look at at least 10 sites for every one we select.

Mr. Moss. A ratio would hold reasonably firm and I would concur in counsel's observation that that does not make too much sense out of the allocation of 14 percent of the total cost for this very minimal activity when you had such a massive amount going on.

Mr. OVERMYER. If I may read from the December 1965 memorandum prepared for Commissioner Lee of the Federal Communications Commission and submitted to him, a copy to me, which in substance is a progress report of the communications activities as directed by Robert Adams during the year 1965, I think this might clear up some of the—

Mr. Moss. I think you could submit it to counsel and he can examine it and determine whether or not it is pertinent.

Mr. OVERMYER. I will be happy to do so.

Mr. LISHMAN. I would like to have in the record the report prepared by Mr. Druhan reviewing the Overmyer transfer of the five construction permits to U.S. Communications Corp.

Mr. Moss. Is there objection to the request that the items be included in the record at this point?

Mr. LISHMAN. A copy has been furnished to Mr. Byrnes, I believe.

Mr. Moss. Hearing none, the material is received for the record.

(The document referred to appears in the appendix; see item 22, p. 370.)

Mr. DRUHAN. Mr. Byrnes, could I ask one further question there: Could you explain the difference between the finance and development department and the treasury department of the Overmyer Co. as to what each does with regard to trying to obtain financing?

It was explained in your submission to FCC that both departments worked on it. Was there a difference between the two?

Mr. BYRNES. The basic difference is that the finance and development department in our company is charged with the initial investigation, searching for methods of financing, for areas of financing, with any available financial institution which might be interested in financing our various enterprises, whether they be warehouse building construction, whether they be equipment leasing financing, whether they be television construction financing. They would also be responsible for the location of desirable real estate for the various companies for its construction program. The treasury department, on the other hand, would be primarily responsible for the handling of cash funds as received, as an internal function, but since most of your bankers, insurance companies, et cetera, financial people insist on having a relationship with the corporate treasurer, the man who handles the funds, the treasurer and assistant treasurer would also have to become quite familiar with all of these financing sources, visit them periodically to bring them up to date, and be in communication with them a good deal.

There therefore is a certain overlap but the basic difference is the time element. The finance and development people coming in very, very early, an exploratory group almost, an arranging group, a negotiating group, and when the arrangement has been consummated and a financial relationship has been established between one of our companies and a financial institution, a good deal then of the follow-through would be carried on by the treasurer's department. There would continue to be periodic overlaps, however.

Mr. DRUHAN. Do you feel that the \$28,000 plus is a reasonable allocation of charges by the treasury department to service drawing down three loans?

Mr. BYRNES. It would be the servicing of drawing down three loans, as you are implying, I suppose, the paperwork involved and so forth, and the controlling of the funds, the spending of the funds, the transferring of the funds, the routine treasury function plus, however, the

area you just asked me about, the other type of continual relationship of treasurer and assistant treasurer with bankers and financial institutions who either were already or might become interested in establishing a financial relationship with one of our communications companies.

While we might have a commitment from a bank for ultimate use we would also be constantly on the alert for the availability of other types of financing, whether it be pension funds or insurance companies, long-term financing possibly at more attractive rates than a bank loan might be and better payment schedules.

The treasurer in his contacts with these people would always be discussing the situations in the communications companies with the possibility of establishing another financial relationship there.

Again, there is that overlap. Again, if I may say so, over a 3½-year period that does not come down to an awful lot of money a year, a lot less, obviously, than you pay an assistant treasurer.

Mr. Moss. Would not the more important point be the total number of loans serviced by the organization and the percentage this represents of the total cost of the operation? You might undertake to develop those facts for the record.

Mr. DRUHAN. Well, sir, we tried that before when I was visiting Mr. Overmyer to find out why the breakdown was not made on the relationship of services performed by the whole. Their answer in their submission to the FCC is that they chose to use an allocation of employees' time and they did not choose to submit based on a relationship to total services. They say there is no way they could develop that figure. We did not attempt to develop it. I don't know whether it can be developed.

Mr. Moss. Normally would there not be a record of the number of loans serviced? You are talking of the number of 3. During that period was there concurrent servicing of x number of loans and the gross total cost of x number of television stations? What is that x factor? Do you have such records?

Mr. BYRNES. I would say there would be a mortgage loan, of course, on every real estate facility versus taking down a loan on a communications facility. This, however, alludes to the minor part of the treasury function, internal function.

Mr. Moss. You see, the important thing to determine here is the question of the validity of some of these allocations because under the custom of the Federal Communications Commission in the past there are certain rules applied which were not applied in the case of the five licenses here.

So figures do become very pertinent to the inquiry. I think that it is quite obvious on the scale of your operation that your accounting would be sufficiently sophisticated to supply those figures and, therefore, I direct that they be supplied and I direct that the record be held open to receive them very promptly.

Mr. RUSSELL BROWN. Mr. Moss, just for clarification will you tell us exactly what kind of papers you are interested in?

Mr. Moss. We are interested in knowing, during this period of servicing of three loans for \$28,000, the exact number of loans being serviced by that organization and the percentage of the gross total cost \$28,000 represented.

Mr. RUSSELL BROWN. We can do that very readily. Thank you, sir.

(The information requested appears in the appendix; see item 12, p. 497.)

Mr. Moss. You may proceed.

Mr. LISHMAN. Mr. Byrnes, are you aware of the FCC rules which require that substantial and significant changes occurring to an applicant must be furnished to the Commission so that it may be kept up to date?

I am referring specifically to FCC rules 1.65, 1.613, and 1.615.

Mr. BYRNES. No, I have not been familiar with the FCC regulations, sir.

Mr. LISHMAN. Is there someone at the witness table that is familiar with those rules? I can read them aloud to you if you wish.

Mr. DORFNER. I am familiar with it; yes, sir.

Mr. LISHMAN. Are you aware of the financial representations made to the Commission with respect to each of the original CP applications for Atlanta, Pittsburgh, Cincinnati, Houston, and San Francisco?

Mr. DORFNER. I am aware of them; yes.

Mr. LISHMAN. Why, then, did the Overmyer interests fail to disclose to the Commission prior to June 30, 1967, when they applied for the transfer of these permits, the following information; correct me if I am wrong about any of this information:

That substantial liens had been filed against the Overmyer organization in the late fall of 1966.

That these liens impaired the permittee's financial stability and precluded fulfillment of their financial representations made to the Commission.

That Overmyer intended to sell the five construction permits.

That a buyer for the five construction permits had been found, a stock purchase agreement executed on March 28, 1967, and \$1 million received as a downpayment pursuant thereto.

That a \$3 million loan agreement had been consummated with the proposed construction permit assignee on March 28, 1967.

That all of the permittee's stock had been pledged as collateral security for funds extended pursuant to the stock purchase and loan agreements and that \$1.5 million was received by Overmyer pursuant to the loan agreement on May 3, 1967.

Now, none of these items of a substantial factual nature pertaining to the qualifications of the Overmyer interests as permittees were disclosed to the Commission until June 30, 1967. Is that correct?

Mr. OVERMYER. I don't know whether it is correct or not, but I will attempt to answer your question.

Mr. LISHMAN. I want to know if that is correct, first. I have made reference to rules which require up-to-date information to be filed with the Commission respecting the capacities of the permittees. I have pointed out items which do bear on the applicant's capacity which were not supplied to the Commission prior to June 1967, the date an application was filed for approval of the transfer of these five permits to AVC Corp.

Mr. DORFNER. Mr. Lishman, I cannot answer to your specific allegations along the line but I would like the opportunity to suggest to you that every time, with respect to each of these CP's a statement was filed with the Federal Communications Commission along the lines—and I can identify each one but I am reading one sample:

Applicant has found the need for outside funds and has just concluded arrangements which will result in additional financial resources being made available. Appropriate application will be filed.

Mr. LISHMAN. We are familiar with that.
Mr. DORFNER. This is prior to the date that you gave in the statement that we had not notified them of any—

Mr. LISHMAN. You are referring to your application for extensions for Cincinnati, Houston, and San Francisco. That was a partial disclosure but it was in a context which indicated that Overmyer was getting additional financial assistance for himself to operate the stations. You read that in its context. No one told the FCC that he was in the market for a buyer and, therefore, was trying to keep these permits in a salable condition. That disclosure was never made to the FCC in writing until June 30, 1967. We have the files here. You had made your agreement in March, prior to June. By June 30 the deed had been accomplished.

Mr. DORFNER. I don't know it to be a fact, sir, but the material I was reading from is dated March 29, 1967 and is appended to the attachment to the filing of form—

Mr. LISHMAN. Just a moment. Isn't that 1 day after the stock purchase agreement had been executed?

Mr. DORFNER. It could be. I would accept your views on that.

Mr. LISHMAN. You gave me the date, March 29.

Mr. DORFNER. I certainly did.

Mr. LISHMAN. Why didn't you disclose on March 29 that you had already entered into a stock purchase agreement a loan agreement and a stock pledge agreement.

Mr. DORFNER. We filed an application in accordance with the regulations just as soon—

Mr. LISHMAN. Why didn't you disclose it to the Commission?

Mr. DORFNER. We did disclose it.

Mr. LISHMAN. You did not.

Mr. DORFNER. We filed it as quickly as we did. I would have to do some researching to determine it.

Mr. LISHMAN. Commission attention was officially brought to this on June 30, according to the record we have.

Mr. DORFNER. It was all done in accordance with the advice of our counsel.

Mr. Moss. Just a moment. Let me get that.

Will you repeat the statement you just made?

Mr. DORFNER. Yes. All our filings as a matter of procedure and as a matter of practical correspondence are done with the consultation and the advice of our counsel whose engagement is for the purpose of seeing that we comply and conform with the regulations and rules of the FCC.

Mr. Moss. In other words, your counsel advises you on the 29th day of March that you file a request for an extension, fully aware that on the 28th day of March, the preceding day, you concluded an agreement to sell?

Mr. DORFNER. Their advice was that that statement that said an application was being filed, with concern to that, was on their advice; yes, sir.

Mr. Moss. They did?

Mr. DORFNER. Yes, sir.

Mr. OVERMYER. For the purpose of answering your question, may I try to tell you what happened, Mr. Lishman?

Mr. LISHMAN. Yes.

Mr. OVERMYER. In the summer or early fall of 1966 we found that our general contractor building our buildings was having financial problems. We were not aware of the extent of the problem until about the first of the year. I ordered an audit made to determine the extent of the problem during that period of time which ran from the summer of 1966 until the winter of January of 1967. During that period of time we contacted a number of investment houses, Rhodes, the Du Pont people, with the idea of finding private or public funds to assist us in putting these television stations on the air.

In February of 1967 we sold the Overmyer network. In March we concluded this agreement to sell with the AVC Corp. This is a rough sequence of events.

Mr. LISHMAN. Mr. Overmyer, was any written record made of the negotiations with AVC pertaining to the sale or transfer of any of these construction permits?

Mr. OVERMYER. We have a signed contract and various loan agreements that have been executed.

Mr. LISHMAN. With respect to the negotiations themselves, you have no written record?

Mr. OVERMYER. I do not.

Mr. LISHMAN. Do you know of anyone that has?

Mr. OVERMYER. I do not.

Mr. Moss. Who carried on the negotiations?

Mr. OVERMYER. I did.

Mr. Moss. If there was a written record you would have it?

Mr. OVERMYER. That is correct.

Mr. Moss. Then the answer to the second question would certainly be that there is just no record.

Mr. OVERMYER. Sir, I am only one-half of the negotiating team. The other side also negotiating, Mr. Reichel.

Mr. Moss. Was there any kind of record taken during the course of the negotiations?

Mr. OVERMYER. No.

Mr. LISHMAN. What was the consideration for the stock purchase agreement?

Mr. OVERMYER. As I recollect it was our out-of-pocket expenditures, not to exceed \$1 million.

Mr. LISHMAN. Did the figure of \$1,131,000 odd represent your out-of-pocket expenses?

Mr. OVERMYER. Absolutely not. Most certainly not. It was much larger than that. I would estimate not less than \$2 million.

Mr. LISHMAN. Why didn't you press for the \$2 million?

Mr. OVERMYER. That is a very good question. I wish I could give you a good answer. I tried to convince my folks we should go in for a larger figure.

Mr. LISHMAN. Aren't you the sole owner of all the stock in the Overmyer interest?

Mr. OVERMYER. That is correct, I am. I could have forced the issue but I didn't do it. The best advice we had was to be as conservative in submitting this information as possible. We attempted to do that.

Mr. LISHMAN. What was the consideration underlying the option to purchase the 20 percent?

Mr. OVERMYER. It was part of the overall negotiations. It was something that we gave up to make the total deal. It is certainly not something we wanted to give up. We wanted to stay in television and continue our interest in this field. I have been in the communications business since the early 1960's. Even though we had problems we didn't want to get out.

Mr. LISHMAN. Isn't it a fact that the agreement provided that the maximum option price for the 20-percent stock interest was \$3 million?

Mr. OVERMYER. There is a formula which permits them during, I believe the fourth year, to figure 1 percent at a figure which is five times the gross sales, add the quick assets, subtract the debt and divided by 20 percent with a maximum of \$3 million.

Mr. LISHMAN. Isn't it a fact under the formula used in that option the price is bound to be \$3 million?

Mr. OVERMYER. Absolutely not.

Mr. LISHMAN. Isn't it correct that two methods are provided for computing the price of the option?

Mr. OVERMYER. I believe that is correct, sir. It depends on whether or not—

Mr. LISHMAN. Isn't one method that the price shall be the following share of the total broadcast revenues for the several markets as computed by the FCC, San Francisco, 3 percent, Houston, 5 percent, Atlanta 5 percent, Cincinnati 8 percent, Pittsburgh 8 percent.

Now isn't it correct that under that method the price would have been nearer \$5 million? Using the percentage figure that you used, of the broadcast revenues in those markets, isn't it a fact at that time, using those percentages the price would have been \$5,230,000?

Mr. OVERMYER. That could well be. But I, as I understand the deal we made, correct me if I am saying something I should not, but as I understand the deal I made that FCC method of calculating the gross sales by market only comes into play if the station isn't on the air.

As a matter of fact, if the station is on the air they have to be doing a gross volume of business in excess of \$3 million annually and have an excess of quick assets over debt for us to get \$3 million. If you ask me to speculate, and I am sure you are not—

Mr. LISHMAN. As I said, there were two methods of arriving at this \$3 million figure. Did you realize that under method one that you have just testified to that the formula used there would be that AVC estimated the gross receipts for the first year of operation at \$3,920,000?

Mr. OVERMYER. I don't know what their estimates are, Mr. Lishman. I didn't prepare them.

Mr. LISHMAN. Under that first method the price was to be amount of the gross receipts of the TV companies for 12 months preceding the date of purchase, provided the station has been operating at least 112 hours a week for 18 months preceding date of purchase.

Then if the station does not qualify by that method, then you utilized the second method calling for a percentage of total broadcast revenues.

Mr. OVERMYER. If the station wasn't on the air—

Mr. LISHMAN. Isn't it correct under either one of these methods there is practically no possibility of the price being less than \$3 million?

Mr. OVERMYER. No, sir, I don't agree with you. I think there is a very good chance that the price would be less than \$3 million. I didn't want

to give an option in the first place, but we are stuck with what we have contracted for.

Mr. LISHMAN. Here you have the transferee estimating the gross receipts for the first year of operation at \$3,920,000. Gross receipts would not decrease in succeeding years.

Mr. OVERMYER. If those are his estimates, I don't think I should comment on them.

Mr. LISHMAN. Do you think it is at all possible that the stations could be on the air 112 hours a week for 18 months? Where does this 112 hours-a-week figure come from?

Mr. OVERMYER. I am confident it was a formula calculated by our attorneys.

Mr. LISHMAN. Do you know any UHF station in the United States that has ever been on the air 112 hours a week?

Mr. OVERMYER. I think ours in Toledo is on the air almost that long. I was going to try to answer that first question, if I may.

We purchased Overmyer Communications from the gentleman by the name of Sherrill Corwin some 3 or 4 years ago, on the same formula or similar formula and I think this is how this formula got where it is today.

Mr. LISHMAN. That formula went through the FCC so you thought this one would go through, too, isn't that about it?

Mr. OVERMYER. No, sir. I wouldn't want to say that, no.

Mr. LISHMAN. I have no further questions.

Mr. MOSS. Mr. Keith, do you have any questions?

Mr. KEITH. I would like a clarification. What we are doing here, as I see it, is accumulating the background information so that we can assess more intelligently the FCC's action. Their judgment in granting the license depended on the evidence submitted to them and kept current so that they could approve or disapprove your extension request. Where did your initial interest in the several enterprises that are contained on your combined profit statement begin and on what date did you acquire them?

Mr. OVERMYER. I guess we had better start in the beginning if you wish to have that information, sir. I started in public warehousing business in Toledo, Ohio, on October 1, 1947. My dad and my grandfather had been in this line of business back to 1870, 1880, or thereabouts in the same city. About 1954 we were operating in seven towns east of the Mississippi: Cleveland, Tampa, Fla., Jacksonville, Atlanta, Memphis, and Newark, N.J. We kept on growing so today in that particular area we own or lease, having constructed 350 buildings in 46 cities, or being under construction, in this country and in Canada.

We operate a chain of public warehouse facilities. As to my interest in leasing, this goes back to the mid-50 period, I couldn't give you the exact year. We operate a company called the D. H. Overmyer Trucking Co., which leased equipment to various other interests, and my leasing company today, which is now called Intermodel Systems Leasing, Inc., leases all kinds of equipment all over the United States. I don't know whether it does in Canada or not.

In the banking field, Toledo has not had a new bank for 30-some years. So, myself and a bunch of fellows started a national bank in 1965.

In the area of communications, to be as specific as I might, I became interested in communications through the purchase of ownership of

a small newspaper in Toledo. I think our top circulation at one time was about 10,000.

From this, perhaps even prior to it, I became interested generally in communications. We applied first for—as I lived in Toledo at that time—for a UHF station there, channel 79.

Mr. KEITH. Did your father join you in the acquisition of that station?

Mr. OVERMYER. No; he did not. He passed away in 1960. This was subsequent to his death. My application actually was in early 1963. We commenced thinking about working on it in 1962. We subsequently were granted a license.

We built up a television station operation there that has been on the air since May 3, 1965—excuse me, 1966. We had been on the air 2 years. We have a very high tower. We provide 2 million several hundred thousand watts of radiated power and generally show network programs.

Toledo is the largest two VHF-TV station market in the United States. We are the “U” station there, the third station in the market.

Mr. KEITH. Has that station been an outstandingly successful one?

Mr. OVERMYER. No, sir. It has lost a lot of money.

Mr. KEITH. You built a large tower?

Mr. OVERMYER. Big tower and big power, big losses.

Mr. KEITH. You spent more than you received?

Mr. OVERMYER. By golly, we sure did.

Mr. KEITH. What I am trying to do is discover the grounds on which the FCC concluded you could do more of the same or change the pattern.

Mr. OVERMYER. I guess most newcomers in the field feel they are going to make a lot of changes and believe we have lots of new ideas. I think we thought we had our share of both. I will try to get into this as I go along with this little story.

In Toledo we lost \$1.3 million. Anyway, we became interested in this field. My warehousing business was growing very rapidly. Our prospects were excellent. I hired Mr. Adams after interviewing him, and two other gentlemen. He came to work with us in Toledo in June 1964. He never really came, he moved to New York because we were in the process of moving our headquarters office to New York at that time.

He was hired on the basis that he would look into UHF television and other areas of the communications field and we would formulate a program and plan to develop a communications business with the help and the strength of the warehouse company behind it.

We looked at V's. I remember one of our consultants was a young lady by the name of Sunny Miller, who went out to Douglas, Ariz., to look at a V there. We ultimately made a policy decision to attempt to acquire, either through purchase or grant, UHF stations in major markets where we would be the fourth station in that market. That is the reason that we sought and secured construction permits for the cities of Atlanta, Cincinnati, Pittsburgh, San Francisco, and Houston.

We also put in applications in Dallas which we withdrew; an application in Stamford which I think we dropped.

In 1964 and 1965 we were in the process of getting everything to get the new stations on the air. We committed ourselves during that

period of time to total expenditures of about \$1.8 million. Mr. Adams left and Mr. Bryan came in and took over, and during 1966 we committed ourselves to additional total expenditures of about \$8 million.

At the time we sold these stations to AVC, San Francisco could have gone on the air in our opinion within 2 weeks. The substantial work was done. Cincinnati perhaps was well on the way. I had a chat with the AVC folks the other day and I found that in every case they had used the sites we had selected and I believe in all cases but one they had used the studio facilities we selected. So we advanced their getting the stations on the air substantially.

Nobody has asked me what my intentions were but I want you to know because I think you are entitled to know. We never, until we ran into trouble, had any desire or any idea or any wish to sell any of these stations. We bought them; we sold for a single purpose of putting them on the air.

As a part of that purpose we tried to get off the ground a fourth network with the idea of providing new outstanding programming both for our U's, independent V's, such other users as were going to come on the air.

For my judgment for a UHF to be successful it will have to find new areas of programming because it is tough enough to get an audience, let alone to get an attentive, repetitive one without something interesting for them to watch.

Mr. KEITH. You have been talking about your hard times and yet your financial statement shows total assets of \$10 million, in 1965 \$21,250,000, and in 1966 almost \$96 million in assets.

Mr. OVERMYER. That is on the earnings.

Mr. KEITH. Well, if you gross \$70 million in a year, as is shown here, how do you account for it?

Mr. OVERMYER. I don't believe we ever made \$70 million in 1 year. I sure wish we had. We had asset growth but that isn't—I am certainly not an accountant but that is not a net worth or earnings. We increased our total assets but we also increased our total liabilities. We didn't increase that \$70 million but we didn't—

Mr. KEITH. Let us take the surplus. It goes from \$2 million in 1964 to \$5 million in 1965, to \$14.3 million in 1966.

What is the trick?

Mr. OVERMYER. I don't think there was any trick at all.

Mr. KEITH. I say that a little flippantly. I have been in Congress 10 years and my net worth is less than it was when I came here. My earnings have increased but my net worth has gone down. Your earnings have decreased but your net worth has increased.

Mr. OVERMYER. Let me try this point, if I might.

Mr. KEITH. In making its decision, the FCC must have been guided by thoughts along the lines: “This fellow made all this money, he manages warehouses and does very well.”

Mr. OVERMYER. I would hope that they would say that but the secret of our growth is that we developed and constructed an economical, unusual building, performing physical distribution services country-wide that had not been performed on that scale or in that manner heretofore. We were able to sell this idea to major lenders in the United States. I think we have 40 or 50 major insurance companies that have advanced funds to construct these buildings on first mortgages. If

there is a gimmick, or secret, this is what we have done. The rentals in those buildings are perhaps 60 percent higher than they were 5 years ago, because we have been able to develop a very unique service.

Mr. KEITH. I am a country boy.

Mr. OVERMYER. Me too.

Mr. KEITH. And I am confused. You were able to convince the insurance companies—and I assume you mean life insurance companies—in whose policies most of my reserves are invested, and they have loaned you \$70 million!

Mr. OVERMYER. A good bit more than that. I was going to try to get you the current figure. Substantially in excess of a hundred million dollars.

I don't have the exact figure in front of me.

Mr. KEITH. You apparently have enough expertise to satisfy their economists in that particular field, but you haven't done too well in the radio and television field as yet. I assume you thought you could and honestly were looking for a way to diversify your activities.

Mr. OVERMYER. That is a true statement, sir; yes.

Mr. KEITH. In all the years I have been in the life insurance business I haven't sold a total of \$18 million of life insurance. I have now met a single individual owning that amount of insurance. I know it must be on a term basis without cash value.

Mr. OVERMYER. We haven't been in the position of being able to enjoy building up cash value in life insurance.

Mr. KEITH. I have no further questions today. I will have some tomorrow for the FCC.

Mr. Moss. Mr. Van Deerlin.

Mr. VAN DEERLIN. No questions, Mr. Chairman.

Mr. Moss. Mr. Dingell.

Mr. DINGELL. No questions, Mr. Chairman.

Mr. Moss. Gentlemen, you are excused at this time. I want to impress upon you the urgency of the committee for the requests of you for information, that we expect the information to be supplied promptly.

Now I will call to the witness stand Robert F. Adams and Robert L. Bryan.

Mr. GAGUINE. Mr. Chairman, are they excused, or do you wish them to remain?

Mr. Moss. Mr. Lishman, do you have any further requirement for the witnesses that just appeared before the committee?

Mr. LISHMAN. No, sir.

Mr. Moss. They are excused.

Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

We gave a little more attention this morning to Mr. Adams than we did to Mr. Bryan. It seems to me that Mr. Bryan might well be questioned a little further in regard to the culmination of his association with the Overmyer interest.

Mr. Bryan, you did leave the employ of Mr. Overmyer. About how long did you serve with him?

FURTHER TESTIMONY OF ROBERT F. ADAMS AND ROBERT L. BRYAN

Mr. BRYAN. From approximately February to December 9, 1966.

Mr. VAN DEERLIN. You testified this morning that you were very pleased and encouraged by the amount of money that apparently was being made available to you to hire good talent, which in your view gave good promise of success in the broadcasting enterprise?

Mr. BRYAN. Yes, sir.

Mr. VAN DEERLIN. What prompted you to sever your connection?

Mr. BRYAN. I don't know. I thought I was doing a ——— of a job.

Mr. VAN DEERLIN. They were severed from you?

Mr. BRYAN. Yes, sir.

Mr. VAN DEERLIN. It is difficult to understand with the apparent financial commitments of these broadcasting enterprises why so little actually happened.

Now, we had testimony this morning that there was a matter of site acquisition for the telecasting tower in Cincinnati, a difference of opinion as to what the property was worth. I believe you, Mr. Adams, testified that there had been an appraisal at about \$100,000, that the only firm offer that was approved by your employer was \$30,000. Was that site finally acquired?

Mr. ROBERT ADAMS. As I understand, it was.

Mr. BRYAN. Yes; it was, sir.

Mr. VAN DEERLIN. What price was finally paid?

Mr. BRYAN. I am not sure. It was in the vicinity of \$50,000 to \$55,000. No more than \$55,000.

Mr. VAN DEERLIN. This was after how much delay?

Mr. BRYAN. One of the problems we encountered there was an engineering problem, where to position the anchor pads for the guys. When that was determined, then estimates had to be secured to get up to the mountaintop. This led to, I would say, 2 or 3 months' negotiations. The price did not seem, if I remember correctly, that big a point during these negotiations. We had pretty well settled in the vicinity of \$50,000 to \$55,000 that was acceptable to Rose, I believe the name of the man who owned the property.

Mr. VAN DEERLIN. There wasn't any question of your ability to commit a larger amount during your tenure, at least?

Mr. BRYAN. I don't remember a larger amount being mentioned.

Mr. VAN DEERLIN. Larger than the \$30,000, which is what Mr. Overmyer apparently told Mr. Adams?

Mr. BRYAN. There is no question in my mind that I could commit more than that. I had never heard the \$30,000 mentioned before until today.

Mr. VAN DEERLIN. In your opinion, Mr. Bryan, why did nothing happen then? Why, after you were able to buy the site, did you not take some action and put the station on the air?

Mr. BRYAN. About this time tight money became the situation, and we could not get a loan commitment in Cincinnati to go ahead.

Mr. VAN DEERLIN. Did Mr. Overmyer indicate to you that he had some backup financing that could be made available?

Mr. BRYAN. Yes; and in fact I had gone ahead with some road construction going up to the mountaintop and that was stopped. I had a transmitter building placed on top of Bald Knob. When the money

became tight we were told to cease and desist and hold on until we had a bank commitment.

Mr. VAN DEERLIN. Did you find, Mr. Bryan, that the estimates that had been made by your predecessor in regard to the money required for operating the station for the first year were going to have to be revised?

Mr. BRYAN. I did revise them quite drastically upward, as far as operating expenses are concerned; yes.

Mr. VAN DEERLIN. Did you see this as a result of absolute necessity for operating the station in a market like that?

Mr. BRYAN. Yes.

Mr. VAN DEERLIN. Was there any expression of discomfort by your many employers?

Mr. BRYAN. Yes; in fact my chief operations man and Mr. Dorfner and I spent many hours trying to revise them down and it just could not be done, and run a television station. I believe my operating expenses were about \$800,000 or \$900,000, as opposed to \$400,000 or \$500,000.

Mr. VAN DEERLIN. I assume that what you had in mind when you revised the expense upward was what the realistic cost of acceptable programing would be in a sophisticated market?

Mr. BRYAN. Right. One of the things we were really trying to do was become a community-involved station, not necessarily more news but just being the voice of that community. We needed people to do this. We decided we would have to do a lot of remote programing, live remote programing, and that is very, very expensive.

Mr. VAN DEERLIN. Just for engineering charges alone?

Mr. BRYAN. Right. We had contracted for film that had been higher than budgeted for in the original budget, some estimates. I had gone ahead and purchased, committed.

Mr. VAN DEERLIN. You had every expectation of being the manager of a going television property?

Mr. BRYAN. Yes, sir.

Mr. VAN DEERLIN. Mr. Adams, when you prepared these estimates of the cost of operating the television station in a major market, had you been given any ceiling under which you had to remain, within the bounds of which estimate you had to remain? Were you told don't go over a certain figure?

Mr. ROBERT ADAMS. The cash commitments of those loans, the commitment letters, the amount of money that would be required, the amount of capital that would be required was discussed, was always discussed with Mr. Overmyer. Mr. Overmyer always discussed that with me and often would suggest it was too high an operating cost in his opinion. If I did run the station could I operate for less.

Here again his operating philosophy would range from a thousand dollars upward.

Mr. VAN DEERLIN. Which prompted your resignation ultimately, and later Mr. Bryan's departure perhaps for other reasons. Did either of you ever get the idea that there was some stalling in the top echelon of the operation, that there was a desire not to go on the air?

Mr. ROBERT ADAMS. I was under the impression directly that that was so.

I would say if there was stalling I think Mr. Overmyer testified earlier when you first get in the water you test the water to see how

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it feels. I don't think Mr. Overmyer had looked at a piece of land which was not appropriate for warehousing as Bald Mountain was in Cincinnati for a hundred thousand or \$80,000. I think part of the early complications, the delays, his final decisions, might have very well been his realization that this was a business that did not include any men, the kind of wages that warehousing had, things that he had been accustomed to, \$65 for a secretary. The price of our land, as I recall, 50 acres was around \$30,000 in Toledo.

Here was 50 acres in Toledo for \$34,000 it was, here is 5 acres on a horrible bald piece of mountaintop which is really no good except for that tower, and a hundred thousand dollars, and other searches that we went through, was a rude awakening.

Part of my problem was not being successful in convincing him that we had good prices for some of these things. Back comes the matter of the operating philosophy. In that respect he is the president and a hundred percent owner of the stock. I am an employee.

Mr. VAN DEERLIN. Of course, what the FCC had to judge was not how good a warehouseman he is, but how well he could operate in a very different field.

Mr. ROBERT ADAMS. You see, again, when Mr. Bryan came in, he came in at a later date, 2 or 3 months following the date that I left, the end of December. It is not impossible to operate a station, television, UHF, independent television, for \$10,000 or \$15,000 a month. Now I am not going to say this is an ultimate, I am not going to say as a broadcaster this is what I would recommend. Everything is relative. Every city is different. Who is your competitor is as important as how many will be your competitors. There is a little station in Muskegon, Mich., on the air right now. The only station, but it is covered in that city by three VHF stations. It is operating for \$11,400 a month today and it is making money.

Again, while I might suggest that we should operate at five, six hundred thousand, or a million dollars, Mr. Overmyer, on the other hand, had every reason and, of course, had the prerogative to say, well, the cost of it should not exceed 200 or 300 or 500, and can it be done. Yes, anything can be done.

Mr. VAN DEERLIN. When the applications for letters of credit went out over your signature, the information that they contained probably didn't go as far as you would have liked in estimating the needs for credit.

Mr. ROBERT ADAMS. The credit letters?

Mr. VAN DEERLIN. Yes.

Mr. ROBERT ADAMS. You mean credit letters from the bank?

Mr. VAN DEERLIN. Yes.

Mr. ROBERT ADAMS. I don't believe I understand.

Mr. VAN DEERLIN. You presumably were not making the final decisions on ascertaining or determining what your needs were. You may have ascertained them; but what you went after in the way of money couldn't have been enough to satisfy your knowledge of what was needed; right?

Mr. ROBERT ADAMS. I would have liked to have had more money, yes; a considerable amount more money. Considerable additional moneys in each of the particular cities for each of the stations. I think the need for that money is today becoming more and more apparent,

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as I believe Mr. Dorfner testified, they have been on 2 years and they had \$1.3 million loss. You can very quickly see that that is \$650,000 on the average per year that they have lost. So the total operating expense over and above that has been considerable, I would just roughly guess on top of that he spent another \$1 million. So they probably operated 2 years and he averaged a million and a quarter dollars a year operating, total.

Mr. VAN DEERLIN. Mr. Bryan, after your very happy beginning, at what point did you begin to think that there were reasons other than your own management that might—

Mr. BRYAN. It is hard to put a definite date on that. I had felt that Mr. Overmyer had given me a go-ahead to commit for film product, for future films, for programing. On that basis, I went ahead and committed the company. I guess it was in excess of about \$3 million to my mind valuable property, first-run features in all of our markets, and some time about October or November I was told to stop purchasing, and attempt to renegotiate the contractual terms.

Mr. VAN DEERLIN. For a lower price?

Mr. BRYAN. Not necessarily a lower price. Yes; in some instances, a lower price. Extend the term, and I managed to do that in all instances. I was given the date at that time in November by Ollie Trez through Mr. Overmyer that everything had to be completed by December 9. It was, and so was I.

Mr. VAN DEERLIN. What did you assume was the reason for the orders to retrench?

Mr. BRYAN. We had expected lines of credit in Cincinnati that didn't come through. San Francisco came through, but a little late. Nothing in Pittsburgh and Atlanta. In the overall picture, we weren't able to secure the lines of credit that were necessary. We just had to cut down until we could get going again.

The CHAIRMAN. Does the gentleman have another question to ask?

Mr. VAN DEERLIN. I have here, dated January 19, 1967, Mr. Adams, a document headed "Overmyer Current TV Status," and a separate paragraph summarizing the situation in Toledo, San Francisco, Cincinnati, Pittsburgh, Atlanta, and Rosenberg, Tex.

Do you recognize this document as something you prepared?

Mr. ROBERT ADAMS. What was that date?

Mr. VAN DEERLIN. January 19, 1967. Would you like to take a look at it?

Mr. ROBERT ADAMS. Yes, sir; that is my work.

Mr. VAN DEERLIN. In what capacity were you then serving, Mr. Adams?

Mr. ROBERT ADAMS. I had my own consulting company, talking to broadcasting industry management, since January 1966, right immediately following my departure from the Overmyer company. This particular memorandum, or the set of facts and figures referred to, is a set of figures that I prepared in January 1967 that were my estimates.

Mr. VAN DEERLIN. On the state of readiness of the various projects?

Mr. ROBERT ADAMS. Yes. I was consultant for several companies. Under the retainer that I received, I am under obligation to such companies to report situations I think might be viable ones. As such I prepared this for a client with the thought that perhaps they would

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be interested in entertaining negotiations with Overmyer companies for the acquisition.

Mr. VAN DEERLIN. I think, Mr. Chairman, this should be admitted into the record without identifying for whom it was prepared, of course, because it does contain rather specific information. For example, this is in January 1967:

Tower footings in, Stainless won't deliver until payment from Overmyer. Stainless also built Pittsburgh tower which Overmyer has not yet paid for. He said he paid for the Cincinnati tower which was built after Pittsburgh which Stainless supplied toward unpaid Pittsburgh bill.

Rosenberg, nothing has been done here. Atlanta, land not tied down yet.

All this seems to me to indicate that, very near the time of planned divestiture, on a great many of the projects they were hardly nearer than they had been 2 years before.

The CHAIRMAN. That might be pertinent in the record. Without objection we will place it in the record.

(The document referred to appears in the appendix; see item 15, p. 539.)

The CHAIRMAN. Are there any further questions of these witnesses? If not, you may stand aside.

Our next two witnesses, Mr. Kinsley and Mr. Reichel. Do you want them both at the same time?

Mr. LISHMAN. No; I think Mr. Kinsley first and then Mr. Reichel. I shall be very brief.

The CHAIRMAN. Will you raise your right hand?

Do you solemnly swear or affirm that the testimony you are about to give before this subcommittee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KINSLEY. I do.

The CHAIRMAN. Mr. Lishman.

TESTIMONY OF GEORGE KINSLEY, FORMER CONTROLLER, OVERMYER CO.

Mr. LISHMAN. Mr. Kinsley, were you formerly employed as controller for the Overmyer Co.?

Mr. KINSLEY. Yes.

Mr. LISHMAN. For what period?

Mr. KINSLEY. The middle of August 1964 to November 19, 1966.

Mr. LISHMAN. What were your duties as controller?

Mr. KINSLEY. I wasn't controller immediately. I became controller I think around February 1965. I originally was the assistant controller. In that capacity as controller I was responsible for maintenance of all the books and records of all the Overmyer companies and issuance and preparation of financial statements and various reports to management.

Mr. LISHMAN. Did you spend any time on the activity of the Toledo, Ohio station?

Mr. KINSLEY. I did, but not any material amount. What I did was I had an accounting supervisor in charge of the communications group of companies who did most of the actual accounting work. I entered into consultations with Mr. Dorfner to devise a chart of accounts.

Mr. LISHMAN. Did you have a difference of opinion with Mr. Overmyer or Mr. Byrnes regarding acceptable accounting procedures?

Mr. KINSLEY. It wasn't a disagreement over acceptable accounting procedures or principles. I agreed basically with the principle that was used in the warehouse company for presentation of financial statements but there came a point where I didn't agree as to the degree that they might be adopted. In other words, it was my own personal opinion that the principle was correct but the way it was being applied might not be. I say might not be, because to my knowledge nothing was done.

Mr. LISHMAN. Were you fearful that at some time projected costs would be used as actual costs?

Mr. KINSLEY. I don't know whether I understand the question but the books and records were kept on an actual basis with the exception of the real estate which we booked at appraised valuation. But projections as such would not be entered into the books.

Mr. LISHMAN. Are you familiar with the balance sheets that were submitted to the FCC in 1964 and 1965?

Mr. KINSLEY. I don't believe so, no.

Mr. LISHMAN. When did you leave the Overmyer Co?

Mr. KINSLEY. November 19, 1966.

Mr. LISHMAN. I haven't any further questions.

The CHAIRMAN. Any questions of the panel?

Mr. Moss. Just one.

The CHAIRMAN. Mr. Moss.

Mr. Moss. During your tenure as controller, to your knowledge, was any value assigned to the construction permits?

Mr. KINSLEY. Do you mean for the intrinsic value?

Mr. Moss. Yes.

Mr. KINSLEY. The only thing to my knowledge that would be recorded on the books would be actual expenditures made by the companies.

Mr. Moss. Just actual expenditures?

Mr. KINSLEY. Yes.

Mr. Moss. Actual values?

Mr. KINSLEY. Right, actual values as they say on the warehouse company with the exception of the appraised valuation.

Mr. Moss. On the warehouse?

Mr. KINSLEY. Yes. The communications company as far as I know would be actual expenditures plus—

Mr. Moss. Did you have responsibility for the recordkeeping, supervising of the recordkeeping of the communications companies?

Mr. KINSLEY. Yes, up until approximately I think September or October of 1966. Then a controller was appointed specifically for the communications companies.

Mr. Moss. At that time how many were operating?

Mr. KINSLEY. Just Toledo, which is May 1, 1966.

Mr. Moss. Was that all handled out of New York or handled out of Toledo? Where were you headquartered?

Mr. KINSLEY. We were headquartered in New York. We had certain information funneled from Toledo which was recorded in New York.

Mr. Moss. Was the activity of that controller primarily confined to Toledo? Was there any part of his time directed to the other construction permits?

Mr. KINSLEY. That I couldn't specifically answer. I do know that his responsibility was for all the communications companies. How he spent his time I don't know.

Mr. Moss. Thank you.

The CHAIRMAN. Any further questions?

Mr. VAN DEERLIN. Do I understand it was you who prepared the estimates of the percentage of personnel time?

Mr. KINSLEY. No, sir. I left the company in November. This was prepared in 1967, I believe.

Mr. VAN DEERLIN. Did you have any discussions concerning those estimates?

Mr. KINSLEY. No, sir.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. If there are no further questions, you may be excused.

Mr. KINSLEY. Thank you.

The CHAIRMAN. Our next witness is Frank H. Reichel, Jr., president of the AVC Corp.

Will you raise your right hand?

Do you solemnly swear or affirm that the testimony you are about to give before this subcommittee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. REICHEL. I do.

The CHAIRMAN. Mr. Lishman.

Mr. REICHEL. I would like to introduce my counsel, Thomas Dowd.

The CHAIRMAN. Will you identify yourself for the record?

**TESTIMONY OF FRANK H. REICHEL, JR., PRESIDENT, AVC CORP.;
ACCOMPANIED BY COUNSEL, THOMAS DOWD**

Mr. REICHEL. Frank H. Reichel, Jr., president of AVC Corp.

Mr. LISHMAN. Did you participate in the negotiations for the purchase of five construction permits from the Overmyer Communications Co.?

Mr. REICHEL. Yes, sir; I did.

Mr. LISHMAN. At what time did you begin these negotiations?

Mr. REICHEL. Sometime in March.

Mr. LISHMAN. March of what year?

Mr. REICHEL. March of 1967.

Mr. LISHMAN. When were these negotiations consummated?

Mr. REICHEL. The purchase agreement was dated March 28. The time when we had established the parameters might have been 4 to 5 days prior to that.

Mr. LISHMAN. In other words, in 4 weeks of negotiations you went into an arrangement whereby the United States Communications Corp., a wholly owned subsidiary of AVC, would acquire these five CP's?

Mr. REICHEL. That is correct.

Mr. LISHMAN. Did you keep any written record of any of these negotiations?

Mr. REICHEL. I did not.

Mr. LISHMAN. How were these five CP's brought to your attention as being possibly for sale?

Mr. REICHEL. They were referred to us by Mr. Castle of Butcher & Sherreard, an investment banking firm that specializes in special situations and private placements.

Mr. LISHMAN. How did they bring it to your attention?

Mr. REICHEL. They mentioned that such properties might be available and would there be interest on our part to investigate further?

Mr. LISHMAN. Whom did you first contact in the Overmyer organization?

Mr. REICHEL. The first contact was after I had indicated, in a preliminary way to Mr. Castle, that there might be interest.

Mr. LISHMAN. Will you just summarize the main provisions of the stock purchase agreement with Overmyer?

Mr. REICHEL. The transaction was, of course, complicated somewhat by the necessity for us to go to our stockholders for stockholder approval. This concerned investment policy as well as the feeling that the stockholders should have an opportunity to review a purchase of this size. This necessitated a first closing which was, I believe, an option or deposit. The second closing occurred sometime early in May after our stockholders' meeting.

The actual purchase, of course, involved the purchase of the 80 percent stock equity in these five corporations for a price not to exceed \$1 million and there was negotiated at that time a loan of \$3 million.

Mr. LISHMAN. How much money have you disbursed to Mr. Overmyer under these arrangements?

Mr. REICHEL. In addition to the \$1 million for 80 percent equity and a \$3 million loan, there was disbursed \$777,962.59.

Mr. LISHMAN. When you acquired the controlling interest and you looked over the conditions at each of the locations of the five construction permits, did you find that there had been substantial progress in the construction of the station at any of these five locations?

Mr. REICHEL. Yes. There was substantial progress.

Mr. LISHMAN. At which ones?

Mr. REICHEL. At several, particularly San Francisco.

Mr. LISHMAN. How far along would you say—when did you make this inspection or have it made?

Mr. REICHEL. I can't answer that.

Mr. LISHMAN. Can you give me an approximate date?

Mr. REICHEL. May 1967.

Mr. LISHMAN. At that time what was the status of the progress in San Francisco so far as construction is concerned?

Mr. REICHEL. I cannot answer that specifically. I can determine that for you. I will have to refer to our engineer. I know that the site had been established. Considerable construction had been performed.

Mr. LISHMAN. What kind of construction?

Mr. REICHEL. I am referring primarily to the transmitter building. I was out there personally, I believe sometime in the summer of 1967. At that point the transmitter was in location but had not been completely wired. It was located at the Bruno location. The tower was semierected or perhaps even totally erected. The antenna, however, had not been delivered at that time.

Mr. LISHMAN. What was the situation at Houston?

Mr. REICHEL. They had very excellent studio facilities in San Francisco.

Mr. LISHMAN. How about Houston? What was its status?

Mr. REICHEL. In the case of Houston I think land exploration was perhaps the extent of the development there. There was a site located which we will probably use.

Mr. LISHMAN. How about Pittsburgh?

Mr. REICHEL. Pittsburgh, again considerable land development.

Mr. LISHMAN. By considerable land development, had the tower been erected?

Mr. REICHEL. No.

Mr. LISHMAN. What development had occurred?

Mr. REICHEL. The evaluation of a number of possible site locations. It is our intention that we will probably use one of the locations developed by Mr. Overmyer.

Mr. LISHMAN. And in Atlanta what was the status there?

Mr. REICHEL. Again, land development, location for a studio. To what extent buildings had been erected I am uncertain. The tower had not been erected, but the location determined.

Mr. LISHMAN. Cincinnati, what was the status there?

Mr. REICHEL. Cincinnati was well progressed. The tower was up. Transmitter building up, equipment on hand. Again the antenna had not been delivered.

I might also mention that in Cincinnati a manager had been hired, and I might further add that Cincinnati is currently on the air with a test pattern.

Mr. LISHMAN. When did you hire the manager for the San Francisco station?

Mr. REICHEL. Mr. Larry Turet came to U.S. Communications Corp. I believe in November of 1967. That station went on the air April 1.

Mr. LISHMAN. Are you familiar with the fact that Mr. Turet was a member of an advisory committee to the Federal Communications Commission so far as UHF matters were concerned?

Mr. REICHEL. I did not specifically know of Mr. Turet's affiliations.

Mr. LISHMAN. Did you inquire of his past expertise in broadcasting at the time he was hired?

Mr. REICHEL. The negotiations for Mr. Turet were carried on primarily by Mr. Stevens and Mr. Katz.

Mr. LISHMAN. What would your opinion be as to the usability of the equipment and the broadcast rights you purchased from Overmyer?

Mr. REICHEL. In the case of the equipment, with very minor exception the majority of the equipment will be used. For example, in San Francisco the fact that we were able to get on the air within 2 or 2½ months of transfer would indicate that it was essentially fully equipped and prepared to go on the air.

Cincinnati likewise. There will be, of course, with the passage of time the addition of equipment. We will upgrade some of the equipment and enlarge some of the equipment. In most cases it will be utilized.

Mr. LISHMAN. How much do you propose to put in for equipment at each of these stations?

Mr. REICHEL. Approximately \$1 million in Rosenberg, Tex.

Pittsburgh will be a similar amount.

I might also mention that in some instances, for instance in the case of Pittsburgh, we believe that it is desirable to go to more power and

will be putting in a 110-kilowatt transmitter. This application is being filed with the FCC.

Mr. LISHMAN. Are these amounts that you mentioned now in addition to what you have already paid?

Mr. REICHEL. The equipment acquired from Mr. Overmyer is included in this figure which was mentioned earlier.

Mr. LISHMAN. Could you give me the same figures for Atlanta and Cincinnati and San Francisco?

Mr. REICHEL. Atlanta, \$1,348,000. Cincinnati, \$1,550,000. The earlier figures that I mentioned were from the application filed with the FCC. As I indicated, we have upgraded the equipment in certain of these markets. More power, color.

Mr. LISHMAN. How many stations does the U.S. Communications Corp. have?

Mr. REICHEL. We have six stations.

Mr. LISHMAN. Included in the six are these five?

Mr. REICHEL. Yes, sir. The sixth station being the Philadelphia station.

Mr. LISHMAN. What background does that company have in broadcasting?

Mr. REICHEL. U.S. Communications Corp. or Philadelphia?

Mr. LISHMAN. U.S. Communications Corp.

Mr. REICHEL. U.S. Communications Corp. was a newly created corporation of which I am president. I have had no prior background in broadcasting.

Mr. LISHMAN. Is it a wholly owned subsidiary of AVC?

Mr. REICHEL. AVC owns approximately 70 percent of the stock in U.S. Communications Corp.

Mr. LISHMAN. What is the nature of AVC's activities?

Mr. REICHEL. AVC is an investment company. However, we have made similar investments into operating situations.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Moss.

Mr. Moss. The \$3 million loan, what are the terms of that loan agreement?

I mean terms. I don't mean the conditions under which it could be converted into purchase, an instrument of purchase, 20 percent of stock. But what is the interest, what is the method of amortizing?

Mr. REICHEL. The interest is one-quarter of 1 percent above the prime rate normal in transactions of \$1 million.

Mr. Moss. What would you say the interest is today?

Mr. REICHEL. This was fixed as of the date the loan was incurred so it does not fluctuate with fluctuations in the prime rate. There are two rates, since two separate transactions of \$1½ million occurred. In the first instance the prime rate at that time was 5½. So our note is 5¾.

In the case of the second loan of a million and a half, the prime rate had moved up to 6 percent, so the rate is 6¼.

Mr. Moss. Do they both have the same due dates?

Mr. REICHEL. Yes, sir.

Mr. Moss. And are they secured?

Mr. REICHEL. Yes, sir. They are secured.

Mr. Moss. By what?

Mr. REICHEL. By equity interest, second mortgages, of a considerable number, of Overmyer warehouses having an appraised equity in excess of \$6 million.

Mr. Moss. Not otherwise encumbered?

Mr. REICHEL. First mortgages. I could not answer what additional encumbrances there might be. However, it is my understanding that our equity is beyond any of these encumbrances by at least \$6 million. As has been stated here earlier, in order to permit the Overmyer warehouse operation flexibility in their operation, Overmyer has the right of substitution by which they can substitute properties of equivalent or greater value.

Mr. Moss. At their election?

Mr. REICHEL. At their election.

There has been evidence submitted by Mr. Overmyer that the market value obtained in a sale is very close to or approximates the appraised value.

Mr. Moss. Apparently Overmyer operated on a rather current method of valuation in order to create as favorable a position as possible on the balance sheet.

Mr. REICHEL. I cannot comment on that.

Mr. Moss. The fact they seem to be current appraisals all the time. You started the negotiations in March 1967?

Mr. REICHEL. That is correct.

Mr. Moss. You signed an agreement on the 28th day of March?

Mr. REICHEL. That is correct.

Mr. Moss. You stated that the parameters of that agreement had probably been reached and defined at least 1 week prior to signing the agreement?

Mr. REICHEL. That is correct.

Mr. Moss. That would be about the 21st.

Mr. REICHEL. Give or take 3 or 4 days.

Naturally being a public corporation it had to be presented to our board of directors. It was primarily concluded in approximately a week or 5 days later.

Mr. Moss. I am very much interested in the fact that the parameters of the agreement were reached a week prior to the signing of the agreement and yet we are told that no notes were kept during the course of negotiation.

I have negotiated, and I find it difficult to envision anyone trusting so completely to memory as would be apparent in this case, that it would be necessary to reduce the agreement to writing, that would have to be I assume dictated to someone in the intervening week's time and there would have to be a coming together of minds as to the fact that the final draft agreed with the preliminary definition of the type of agreement, that all of this was done solely from memory.

Mr. REICHEL. In this instance the final contract was really prepared almost concurrently with negotiations. So at the time of closing there was a final closing contract, prior to the 28th.

Mr. Moss. Prior to the 28th the matter was reduced to a final draft?

Mr. REICHEL. That is correct.

Mr. Moss. Did the negotiations continue over a period of a week, 2 weeks, 3 weeks? Did they start on the 1st of March?

Mr. REICHEL. I do not recall the exact date, but I would estimate that my first meeting with Mr. Overmyer might have occurred approximately March 10 or thereabouts.

Mr. Moss. Now you indicated that you inspected the San Francisco site in May.

Mr. REICHEL. I believe it was summer.

Mr. Moss. When did you inspect the other sites?

Mr. REICHEL. Pardon?

Mr. Moss. When did you inspect the other sites?

Mr. REICHEL. All sites of course were inspected I believe in all cases by our chief engineer. In most, if not all, by our consulting engineers.

Mr. Moss. My question was, when?

Mr. REICHEL. I would guess April and May.

Mr. Moss. Then you purchased sight unseen?

Mr. REICHEL. Properties.

Mr. Moss. Properties.

Mr. REICHEL. That is correct.

Mr. Moss. So you were purchasing really construction permits. That is a rather logical conclusion.

Now the gentlemen that are passing up notes, I am going to insist on my right as a member of this committee to deny you that. I have asked the question of the gentleman on the witness stand. If you want to stand and be sworn and answer for him and he wants you to do that, that is fine.

When I am asking questions of the witness, I want his answers, his recollections. If he cannot recall, if he doesn't know, he has but to say he can't recall.

Isn't the answer really that you did not have any site inspection made until after the agreement was signed?

Mr. REICHEL. That is correct.

Mr. Moss. So you did buy them sight unseen. It was purchase of construction permits. Now you may have had an inventory of equipment with a valuation on them. Some of that apparently was encumbered. There is indication in a memorandum which was placed in the record that some bills were owing on some of the equipment that had not been paid.

So, for the purpose of your negotiation, minus the permits, what was the worth of the package you were buying?

Mr. REICHEL. For this figure there were to be contributed equity in certain equipment. We of course knew from information supplied to us by Mr. Overmyer and by his associates, Mr. Dorfner, Mr. Byrnes, and others, of a considerable amount of development work that had gone on.

Mr. Moss. Let us talk about that development work.

Let me make one clear identification. I am, as I have been for a period of 30 years, a licensed real estate broker in my State of California. So let us know what we are talking about now when we talk about development work, site development work.

You mentioned the Houston site location, you said that you probably would use it. How do you have that tied down? Do you have an option on it, the Houston site?

Mr. REICHEL. We have made an offer on the Houston site. We use the same site that Mr. Overmyer—

Mr. Moss. Do you have an option?

Mr. REICHEL. I do not believe we have a firm option. We have made an offer which is now being considered.

Mr. Moss. An offer is one thing. That is not really binding on anyone until it is accepted. We are talking about a transaction now over a year old.

Mr. REICHEL. That is right.

Mr. Moss. The Houston site was either optioned or was not optioned. Was it optioned when you bought it?

Mr. REICHEL. I do not know.

Mr. Moss. Mr. Chairman, I would like to ask that the witness be directed to supply for the record very promptly an inventory of all real and physical property which was included in the negotiations, its value and in the case of sites under development whether or not they were optioned, the terms of the option, whether in the intervening time there has had to be a renewal of options in order to keep them available.

The CHAIRMAN. Can the witness supply this for the record?

Mr. REICHEL. We will supply it promptly.

The CHAIRMAN. As reasonably rapidly as you can.

Mr. REICHEL. Yes, sir.

(The information requested appears in the appendix, p. 541.)

Mr. Moss. I have no further questions.

The CHAIRMAN. Mr. Brown?

Mr. Van Deerlin?

Mr. VAN DEERLIN. I have no questions, Mr. Chairman.

The CHAIRMAN. Thank you very kindly.

Do you have any further questions?

Mr. LISHMAN. No, thank you.

The CHAIRMAN. This will end our hearing today. I want to thank Mr. Adams, Mr. Bryan, Mr. Dorfner, Mr. Overmyer, Mr. Byrnes, Mr. Kinsley, and Mr. Reichel for coming and helping us make a record. Thank you very much.

The committee will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 5:45 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, July 17, 1968.)

TRAFFICKING IN BROADCAST STATION LICENSES AND CONSTRUCTION PERMITS

WEDNESDAY, JULY 17, 1968

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will be in order.

We will start our session at this time, and for our witnesses we hope to change our schedule a little bit here.

We would like to have the Chairman, Mr. Hyde, come forward, and also the members of his staff if they are here. The rest of the Commission will be called shortly.

Mr. Alford, Mr. Rawson, Mr. Juntilla, Mr. Sheridan, Mr. Saady, Mr. Levy, Mr. George S. Smith, Mr. Stewart, Mr. Lloyd R. Smith, Mr. Oppenheimer.

I would ask that each of you gentlemen stand and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HYDE. I do.

Mr. ALFORD. I do.

Mr. RAWSON. I do.

Mr. JUNTILLA. I do.

Mr. SHERIDAN. I do.

Mr. SAADY. I do.

Mr. LEVY. I do.

Mr. GEORGE SMITH. I do.

Mr. STEWART. I do.

Mr. LLOYD SMITH. I do.

Mr. OPPENHEIMER. I do.

The CHAIRMAN. Mr. Chairman, would you identify yourself and the rest of them for the record.

(113)

TESTIMONY OF HON. ROSEL H. HYDE, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ROBERT H. ALFORD, CHIEF, TRANSFER BRANCH; ROBERT J. RAWSON, CHIEF, RENEWAL AND TRANSFER DIVISION; JAMES B. SHERIDAN, FORMER CHIEF, BROADCAST BUREAU; SAMUEL L. SAADY, CHIEF, TELEVISION BRANCH; MARTIN I. LEVY, CHIEF, BROADCAST FACILITIES; GEORGE S. SMITH, CHIEF, BROADCAST BUREAU; JAMES O. JUNTILLA, DEPUTY CHIEF, BROADCAST BUREAU; ROY J. STEWART, ATTORNEY ADVISER, BROADCAST BUREAU; LLOYD R. SMITH, ENGINEER, BROADCAST BUREAU; AND K. GORDON OPPENHEIMER, ATTORNEY, BROADCAST BUREAU

Mr. HYDE. I am Rosel Hyde, Chairman of the Federal Communications Commission.

To my left is Mr. George Smith, who is Chief of the Broadcast Bureau. To my immediate right, Mr. James Juntilla, who is the Deputy Chief, Broadcast Bureau. We have Mr. Sheridan, formerly the Chief of the Broadcast Bureau, next Mr. Martin Levy, Chief of Broadcast Facilities; Mr. Robert Rawson, Chief, Renewal and Transfer Division; Mr. Lloyd Smith, Engineer, Broadcast Bureau; Mr. Samuel L. Saady, Chief of the Television Branch; Mr. Robert Alford, Chief, Transfer Branch; Mr. Roy J. Stewart, Television Branch, and Gordon Oppenheimer.

The CHAIRMAN. Mr. Smith, will you start questioning.

Mr. ARNOLD SMITH. Mr. Chairman, with your indulgence and that of the subcommittee and witnesses I should like, first, to complete furnishing documents for the record, begun yesterday by Mr. Lishman.

It is important that these items be placed in the record at this time, namely: a staff memorandum, reviewing Mr. Overmyer's Federal income tax returns; a staff memorandum summarizing various aspects of the Overmyer acquisition of these five CP's and their transfer to the U.S. Communications Corp.; a staff memorandum reviewing the FCC's examination of loans made by AVC to Overmyer; a staff memorandum dealing with the formula that was utilized in helping to compute the out-of-pocket expenses that Mr. Overmyer had approved by the Commission; a staff analysis of the FCC's opinion about Mr. Overmyer's out-of-pocket expenses; a staff analysis of the Overmyer acquisition and transfer; a staff memorandum concerning the AVC option price discussed in the loan agreement; a letter from the Federal Communications Commission to you, Mr. Chairman, dated March 14, to which is appended a list of personnel who worked on the various Overmyer applications; next, some information that has long been outstanding, Mr. Chairman, dealing with station transfers, accompanied by a letter of Chairman Hyde to you of July 2, 1968. This information was requested several years ago and again this past January. Further, a list of questions prepared by the subcommittee and responses thereto by individual members of the Federal Communications Commission. Lastly, a memorandum by Mr. Zelig Robinson, staff consultant to the subcommittee, dealing with the multiple ownership rules of the Commission.

The CHAIRMAN. Without objection, they will be made a part of the record.

(The documents referred to appear in the appendix, items 17-27. See contents for individual listing.)

Mr. ARNOLD SMITH. At the outset, so that we don't become involved in a quagmire of detail, I should like to delineate the three basic areas that I have in mind for questioning.

First, the initial acquisition of these 5 CP's by Mr. Overmyer. Secondly, Overmyer's extension applications, and third, the Overmyer transfer to U.S. Communications Corp.

One other point for initial clarification: I am not able to determine from this FCC memorandum submitted to the chairman, describing FCC staff personnel who worked on these Overmyer matters, just exactly who, Chairman Hyde, specifically dealt with the various applications for the 5 CP's.

So, if one or more of you are able to answer the questions I pose, please speak out. I shall, therefore, address these questions to the gentlemen seated at the witness table as a group. First, let us deal with the Cincinnati application. I hope to discuss the acquisitions on a station-by-station basis: first, Cincinnati, then Atlanta, Pittsburgh, Houston, and San Francisco, taking them according to the date on which the applications were approved by the Commission. So that the Commission is able to follow my questions I have prepared a copy of the memorandums of the Broadcast Bureau recommending to members of the Commission that these five applications be approved.

First, with respect to Cincinnati, I have before me a copy of the memorandum dated February 8, 1965, signed by Mr. Alford for Mr. Sheridan, Chief of the Broadcast Bureau. Is it not true that at the time the Cincinnati application was processed an applicant had to show his financial ability to construct and operate for a period of 3 months?

Mr. JUNTILLA. Yes.

Mr. ARNOLD SMITH. Mr. Juntilla, where in this memorandum dated February 8 is there any discussion of such financial qualifications of Mr. Overmyer?

Mr. JUNTILLA. Not discussed.

Mr. ARNOLD SMITH. Is there any reason why it was not discussed?

Mr. JUNTILLA. Yes. In the transfer items that went to the Commission if a particular facet of the application did not present a problem it was not necessarily discussed in the Commission.

Mr. MOSS. Mr. Chairman, I would like to suggest, so that these hearings have some meaning, that the witnesses speak loudly enough for the members of the committee to hear them.

Mr. JUNTILLA. I am sorry.

Mr. ARNOLD SMITH. In dealing with this 3-month requirement—where you have to fit your cost and income within a 3-month operating period once the station is constructed—why there was no reference in the memorandum to such cost and income data?

Mr. JUNTILLA. Yes. The staff member who originally prepared the item would have gone over the financial showing of the applicant, would have concluded that the financial problem was not great and accordingly, did not write it up in the items of the Commission.

Mr. ARNOLD SMITH. Who was the staff member?

Mr. JUNTILLA. Mr. Higgins.

Mr. KEITH. Will you repeat the answer to the previous question, please?

Mr. JUNTILLA. Yes, sir.

If a particular facet of the application, and we are here talking about financial qualification, did not raise a problem in the mind of the staff member writing the item, he did not necessarily discuss it in the items of the Commission.

Mr. ARNOLD SMITH. You mentioned that Mr. Higgins was the gentleman who did the initial groundwork on this application. For the information of the subcommittee members, Mr. Higgins is no longer with the Commission. Who succeeded Mr. Higgins at the Commission or worked with him?

Mr. JUNTILLA. We have Mr. Alford here who is Chief of the Transfer Branch where transfer applications were processed.

Mr. Rawson was Chief of the Division. This is the Renewal and Transfer Division. They handled and immediately supervised the preparation items.

Mr. ARNOLD SMITH. Let me be more succinct. What I am driving at is that someone had to make an analysis for the Commission under the law's public interest requirement, that an applicant be financially qualified prior to the Commission grant of a CP. Although Mr. Higgins evidently was this gentleman, who in his stead can speak about any analysis he made and, further, tell us about any papers or records or written analyses that were provided Commission members?

Mr. JUNTILLA. Possibly either Mr. Rawson or Mr. Alford.

Mr. ALFORD. We have a staff accountant in the branch. If lawyers have any doubt at all about the financial qualification they would consult with Mr. Douglas, the staff accountant.

Mr. ARNOLD SMITH. Let me ask you this: Why was Mr. Douglas not listed in this letter to Chairman Staggers so that we would be able—

Mr. ALFORD. I am not suggesting that Mr. Douglas necessarily looked at this application. I am suggesting if Mr. Higgins had any doubt at all about the financial qualifications he would have informally consulted Mr. Douglas.

I am not even sure he had any qualifications and that he did consult Mr. Douglas.

Mr. ARNOLD SMITH. So we can assume he accepted this without any question?

Mr. ALFORD. At that time, our impression was that he was very well financially qualified.

Mr. ARNOLD SMITH. Let me also ask you this: Since a written record is the only thing that the public has to go on when it comes to the Commission's determination, how on the basis of the Cincinnati memo recommending approval and, in fact, the papers that the Commission submitted to us as being the complete record, could one see or determine that this vital public interest factor was considered?

How do we know, for example, that the financial requirements were perused and carefully scrutinized, or analyzed?

How are we to determine this? Were there any penciled notations made anywhere reflecting such consideration?

Mr. RAWSON. Mr. Higgins was a very competent, capable attorney and did an excellent job, analyzed every facet of an assignment application, and any time a problem was raised, believe me, he would raise it.

In this particular case, we, in the interest of bringing to the Commission excessive material that was unnecessary for the consideration of the case, were only bringing up those matters which were problems, and then we would discuss the problem and we would outline it in detail.

In this particular instance, this was one of the first cases we had; Mr. Higgins did unquestionably make an analysis on a 3-month basis and, of course, the public could always go to the application itself, because it is the application that you will go to as far as the public and not our flimsy.

The flimsy is not available to the public, the memorandum. But the application itself will disclose that beyond any doubt Mr. Overmyer was qualified to acquire this station and to build it and operate it for 3 months.

The CHAIRMAN. Mr. Keith wishes to question.

Mr. KEITH. I would like to make an observation, if I may. I have been sitting here, my silence acquiescing to the line of questions that is going forward.

Mr. Hyde is sitting there acquiescing to the answers that are coming. I, as a committee member who is trying to find out all about this matter, feel that your line of questions is being directed to the wrong party. We have a battalion commander down there and you are asking questions of the captain and lieutenant.

By now Chairman Hyde must be aware of the questions that have arisen, and certainly must be in a position to answer them. He is the one to whom the questions should be directed, in my opinion. If he wants to refer to his staff he should do so.

Mr. ARNOLD SMITH. With all due respect, Mr. Keith, I would agree that Chairman Hyde should certainly be able to provide the answers.

The line of questions was directed to the staff because we hoped to determine exactly who at the Commission prepared the nuts and bolts of these application approval recommendations and to question such persons directly.

Mr. KEITH. Those of us who sit here listening have gun control legislation coming up shortly and then the foreign aid vote. Congress will recess in a matter of days and I want to know if Chairman Hyde knows his job and has been fulfilling his responsibilities.

I would resent, if I were he, your asking his staff rather than him. I think you ought to begin directing questions to Mr. Hyde. I don't know whether the committee agrees with me but that is the way I feel.

Mr. ARNOLD SMITH. If it is agreeable, I will proceed to ask Chairman Hyde and he can inquire down the line if he wishes.

The CHAIRMAN. I might intercede briefly to say that I am sure if you do ask Mr. Hyde that he will have to call on some of these men as to what their actions were.

Mr. KEITH. I have read the memorandums given to me, stayed up until 12 o'clock last night doing so, and read some more this morning. I have read what Mr. Hyde said, what Mr. Cox said, as well as Mr. Johnson's rather cursory remarks.

If I were Mr. Hyde, I am sure I would be able to answer the questions which have been raised about the minority view.

The CHAIRMAN. I would like just one brief comment. Your name is?

Mr. RAWSON. Rawson.

The CHAIRMAN. You made the statement that you are sure Mr. Higgins made the analysis?

Mr. RAWSON. Yes, sir.

The CHAIRMAN. How are you sure? Did he tell you he did?

Mr. RAWSON. As Chief of the Division, it is impossible to go over every single application, but we hire attorneys and they have a checklist that they make. The checklist would indicate whether or not he had made an analysis.

The CHAIRMAN. Did you read that checklist?

Mr. RAWSON. No, but I am sure the Branch Chief read it.

The CHAIRMAN. That is not the kind of business we want to know. We are trying to find out where the records are and who did these things and how they did them. I will yield to the gentleman from California, Mr. Moss.

Mr. Moss. Mr. Rawson, it has been my observation, now after roughly 14 years of very active investigative responsibility as a Member of Congress, that that which cannot happen usually does.

So where is the checklist on the application in question? Let us establish firmly and finally whether or not the usual procedures were in fact followed.

And I might point out that if you have been with the Commission these many years, you know that it has not been too many years ago that we had the Commission before us and there were a lot of things that we developed that had happened that couldn't and shouldn't, but did.

So, we have the same problem here.

The CHAIRMAN. I might ask Mr. Hyde, do you have that checklist?

Mr. HYDE. Mr. Chairman, I do not have the checklist referred to by Mr. Rawson. This would be a Bureau tool used for purposes of management within the Bureau. We do have with us here this morning Mr. James Sheridan who was Chief of the Broadcast Bureau at the time the report we have been discussing was submitted to the Commission.

I am sure Mr. Sheridan could give you a more complete report on how these matters were handled than anyone else here.

The CHAIRMAN. Just a moment. I will let our counsel proceed with the questioning.

Mr. ARNOLD SMITH. Mr. Hyde, could you tell us exactly what gave the Commission, from the record, the idea that Overmyer's application indicated that he was financially qualified to obtain this permit?

Where in the record was a determination made that Mr. Overmyer was financially qualified to obtain this permit?

Mr. HYDE. The basic record on which the Commission would rely is the application, itself, and such additional information as might be required by the staff in the process of that examination.

Now we must, as in the case of any other agency, rely upon staff analysis, staff recommendation, and this is the way the Commission operated.

Mr. ARNOLD SMITH. What staff analysis did the Commission have to rely upon that was made in the instance of the Cincinnati application?

Mr. HYDE. We had a report from the staff recommending that the applicant was qualified.

Mr. ARNOLD SMITH. Where in that report does it show that the applicant was financially qualified?

Mr. HYDE. The Commission relied on the ability and competence of the staff. If there is any question about it it can be rechecked through the application, itself.

Mr. ARNOLD SMITH. Chairman Hyde, you and I may know what the Communications Act requires, and you may know that the staff does its job. But absent something specific in the record, I don't believe that one can make a determination from it that an analysis was in fact made.

Mr. HYDE. This was not a case where there was any dispute as to the representations in the application.

Mr. ARNOLD SMITH. Is it not true that in the case of all five Overmyer applications there were no hearings?

Mr. HYDE. As I recall, there was no hearing in any of the initial acquisitions.

Mr. ARNOLD SMITH. In a case where you don't have a hearing; in a case where there is no intervenor who has an ax to grind, so to speak, isn't it even more important that the Commission on its own initiative, make a careful analysis so the public interest is satisfied?

Mr. HYDE. It is important, it is essential that in any case where the Commission makes a grant that it be in a position to make a finding that the applicant is qualified and that the operation will serve the public interest, convenience, and necessity. Those are legal requirements.

For the purpose of making those findings we have a competent staff which must in the nature of things do much of the detail work for the assistance of the Commissioners.

Mr. ARNOLD SMITH. I won't belabor the point, Commissioner Hyde. I think if we talk about certain specifics in the Cincinnati application this point can be brought out more clearly.

Let us take the bank letter submitted for Cincinnati. This was briefly discussed yesterday. We won't dwell on it now too long but the Cincinnati bank letter, I think, will amplify the point of my question.

In this letter it was stated that certified financial statements were to be submitted by Mr. Overmyer in order for him to obtain the necessary loan.

Did Mr. Rawson, or whoever handled this phase of the application, ascertain whether Overmyer was in the habit of providing certified or financial statements in connection with outside financing for his various enterprises?

For example, did Mr. Overmyer at any time submit certified financial statements or audited financial statements to the Commission?

Did he not submit three financial statements to the Commission, in making application for these five construction permits, one of which was dated August 31, 1964 and another August 31, 1965 for his warehouse companies, and a personal financial statement also dated August 31, 1964. None of these statements were certified or audited?

Mr. HYDE. You have a complete record of our file in the Overmyer case.

Mr. ARNOLD SMITH. I would refresh the recollection of the Chairman. I think these will indicate that the financial submissions to the Commission by Mr. Overmyer were not certified—

Mr. HYDE. Mr. Counsel, all representations to the Commission are submitted under the penalty of a law which provides for severe sanctions for any misrepresentation to the Government.

Mr. ARNOLD SMITH. That may be correct, sir. But the specific point that we are talking about now is the reasonableness of this commitment and any questions which the Commission may have asked about it.

My question simply is, Did the Commission attempt to ascertain whether or not Overmyer could fulfill the conditions precedent to his obtaining this loan; namely, provide certified financial statements to the Cincinnati bank?

Mr. HYDE. May I have Mr. Rawson discuss that question?

Mr. RAWSON. As the Chairman indicated, these commitments are submitted and the staff accepts the representations made by the applicant because they are made, and if they turn out to be false there are severe sanctions.

This is the way the Commission operates in the processing of all applications because it would be impossible to get any of your work done if you had to go to the extent of trying to verify every answer given by an applicant on a material point.

The CHAIRMAN. Will the gentleman yield to Mr. Moss?

Mr. MOSS. I find that very difficult to accept as valid. It may well be that it would be a valid point as to a number of items on an application, but the financial ability of an applicant to perform under a permit, if it was finally granted by the Commission, becomes very important, almost an overriding element.

It is the custom in the financial community in the granting of loans and in the transaction of business to normally require certified or audited statements.

You are saying that it is the custom in the Federal Communications Commission not to require certified or audited statements from applicants.

Mr. RAWSON. That is correct, Mr. Moss.

Mr. MOSS. That is a loose practice that ought to be promptly corrected.

Mr. RAWSON. The application, itself, certifies that what the applicant has submitted is true and correct. If that turns out to be false, Congressman Moss, the applicant is subjected to very severe sanctions.

Mr. MOSS. What sanctions do you have right now if we establish the fact that the applications for Overmyer overstated the available cash and the available assets personally held back up the commitments made in the application?

What sanctions can this Commission now have?

Mr. RAWSON. Section 1001 of the Criminal Code would be applicable and it would not be the Commission, it would have to be referred to the Department of Justice for their determination.

Mr. BROWN. Mr. Chairman, I am having difficulty hearing.

Mr. RAWSON. Section 1001 of the Criminal Code, which is specifically referred to in the application form, is handled by the Department of Justice. When matters of this nature arise they are referred to the Department of Justice for prosecution.

Mr. MOSS. You abdicate the responsibility to the Department of Justice under the criminal laws of the United States?

Mr. RAWSON. I am sorry, I didn't hear that.

Mr. MOSS. You are saying that the Commission abdicates its responsibility—

Mr. RAWSON. The jurisdiction to handle 1001 is by statute under the Department of Justice, not under the FCC.

Mr. MOSS. I realize that. That is so very elemental, it hardly justifies repeating. I said what sanctions can the Commission impose? You talked about sanctions. Now you are talking about criminal prosecution by the Department of Justice.

What sanction does the Commission have available?

Mr. RAWSON. He has a station in Toledo, Ohio. If the matter was serious enough to disqualify him characterwise, revocation or renewal proceedings would be instituted against the station which he still has.

Mr. MOSS. Characterwise?

Mr. RAWSON. Yes, sir.

Mr. MOSS. Well, maybe you will find something.

Mr. ARNOLD SMITH. Might I just insert here that the issue of the bank letter is not whether the bank letter is true or false. I think you could read the bank letter and agree that there is nothing on its face which would be subject to questioning as to truth or falsity.

The issue is whether against the backdrop of the Commission's rules and policies this bank letter was an acceptable part of an application portfolio for these stations.

Are you familiar, Mr. Rawson and Mr. Hyde, with the provisions on your form 314 (see appendix, p. 344), for application for consent to transfer?

I have specific reference to question 4(c). I will read it to refresh your recollection:

For each person who has agreed to furnish funds, purchase stock or extend credit, submit a verified copy of the agreement by which each person is so obligated, showing the amount, terms of repayment, if any, and security, if any.

Are you familiar with these provisions?

Mr. RAWSON. I am familiar with the section; yes, sir.

Mr. ARNOLD SMITH. Are these provisions utilized in analyzing bank letters such as the bank letter from the bank in Cincinnati?

Mr. RAWSON. No, sir. We accept the bank letter generally. If an applicant seems to be healthy financially we have over the years accepted a bank letter for purposes of finding many financially qualified.

This is even done in some hearing cases and we make the finding based upon bank letters when designating an application for hearing and not including a financial issue.

That has been the practice since I came to the Commission in 1946.

Mr. ARNOLD SMITH. Mr. Rawson, I don't intend to engage in polemics, but I can cite you some decisions of the Commission wherein a financial issue was raised when the specifics of repayment, the specifics of interest, the specifics of dates when the moneys were to be provided were not spelled out in the letter.

Indeed, Mr. Overmyer, himself, was engaged at one time in attempting to raise such an issue about a competing applicant's financial submission for a CP. I would inquire then, that if, in fact, you don't utilize the provisions of paragraph 4(c), why then do you have such a provision in your forms?

Mr. LEVY. Mr. Smith, may I respond to that, since it cuts across not only transfers but we use the same form and requirements in new applications, also. That provision to which you refer speaks in terms of verification.

Mr. ARNOLD SMITH. Mr. Levy, was the letter verified from the bank in Cincinnati?

Mr. LEVY. No, sir; it was not. We do not require verification. Originally the act required verification. That was subsequently changed to certification which we now require and we never changed this particular provision of the application form.

Mr. ARNOLD SMITH. Why not?

Mr. LEVY. It is just a matter of getting to it, that is all.

Mr. ARNOLD SMITH. How long has this form been in existence?

Mr. LEVY. Several years.

Mr. ARNOLD SMITH. It has taken several years to revise this form?

Mr. LEVY. These forms are revised more or less continuously but the financial qualification section has not been revised in recent years.

Mr. ARNOLD SMITH. As a practicing attorney, how is one to ascertain exactly what the Commission's policies and requirements are if its forms, rules, and decisions don't spell them out? How does one go about making application for a construction permit if what you say on paper is not really so?

Mr. HYDE. I can tell you that the application form has proved workable. There has been no difficulty arising from the questions that you have asked. Our experience over a long period has proved it is adequate for administration of the act.

Mr. DINGELL. Mr. Chairman, that was not the question that was asked of you.

The question is, How is a practicing attorney, a practitioner, or a person who has a matter pending before the Commission, to know what the precise ground rules under which he plays happen to be?

Perhaps you might make the bald assertion that this has worked over the years. The fact of the matter is that you either expect somebody to operate through special friendships with Commission staff or Commission members, or to have a crystal ball or extraordinary prescience.

I don't think that is the way a regulatory body should work. I may be in error.

Mr. HYDE. Congressman Dingell, the standards required by the Commission are well known. There is no doubt in the minds of the practitioners—

Mr. DINGELL. We are discussing a situation wherein you have one set of standards which are publicly included in the forms and a precisely different set of standards supposedly well known by the practitioners.

It seems to me we have an extraordinary situation here. Somebody practicing before the Commission is supposed to know which items appearing in the rules and regulations and on the forms of your agency mean what they say they say and which do not mean what they say they mean. Some in fact may mean something else because of the practices of the Commission.

As I understand, the rules have been in good administration of law, that one is supposed to have a clear understanding of what the

policies of the agencies are. These are supposed to be spelled out with considerable clarity and all persons are supposed to be treated precisely alike.

If I am in error, I would appreciate being advised by you so that we can go into that matter.

Mr. HYDE. Congressman Dingell, I would like you to understand that the Commission policies on showings required as to proof of financial ability are well established. They are in no wise dependent on special knowledge of people who may have—

Mr. DINGELL. Now, the forms say one thing is to be done but you tell us the standard practice before the Commission is precisely something else that should be done.

Which is the case, may I ask you?

Mr. HYDE. I will have to concede that the Commission has not removed the word "verification" from the form subsequent to the change in the act by the Congress. Perhaps we were remiss in this. We ought to have taken away this requirement of verification because it is no longer required by Congress.

But I suggest that the counsel is asking about a detailed matter that has nothing to do with the substance of the matter.

Mr. DINGELL. When did Congress remove this requirement?

Mr. HYDE. I suppose they wanted to remove from the citizens the burden of going to a notary public.

Mr. DINGELL. I didn't say why. I said when.

Mr. HYDE. 1962 is my recollection.

Mr. DINGELL. Since 1962 the forms have shown that these things have to be verified in spite of the fact that the law is not so.

Now, I may be quibbling about a very minor point but I would expect the Commission as a part of its good housekeeping would keep its forms reasonably current.

Mr. HYDE. We endeavor to do that.

Mr. DINGELL. It occurs to me that it is now 1968, some 6 years since the change in the law.

Mr. HYDE. We wish we could be more up to date in these changes.

Mr. DINGELL. If it takes 6 years to change a simple thing like this I can see why it takes the Commission 30 years to solve some of the other matters they have before them.

Mr. Moss. Let me ask the gentleman seated next to you, Mr. Chairman, the one that wrote the note you just used.

Mr. GEORGE SMITH. I am George Smith.

Mr. Moss. All right, Mr. Smith, you give us the citation, the Code section. I recall voting for a bill to remove the requirement for swearing as to certain types of documents. I think it was aimed primarily at the convenience of the individual citizen on such matters as income tax and things of that type.

I think I want to pursue more carefully whether we intended that it apply to matters such as the applications filed before the Commission, financial documents in support of the application or whether it would require the Commission to remove that requirement.

Let us have the citation in the record.

Mr. GEORGE SMITH. Congressman Moss, I do not have the citation. Can Mr. Geller read this into the record?

The CHAIRMAN. I don't think he has been sworn in.

Mr. GEORGE SMITH. It is section 308(b) of the Communications Act and the change is deleting the words "under oath" or "affirmation" from the last sentence. So that it now requires certification of an application and all exhibits included in the application.

Mr. Moss. There is nothing to prevent the Commission from requiring a certified financial statement.

Mr. GEORGE SMITH. I don't quite understand what you mean by certified. You are talking about a certification of the financial statement separate and apart from the application?

Mr. Moss. I do indeed mean precisely that.

Mr. GEORGE SMITH. No; we do not require a specific attachment to each exhibit because the application, itself, includes all exhibits. They are identified in the application by number. When the application is certified to as being true and correct that includes the several exhibits that were filed as a part of the application.

The CHAIRMAN. Please proceed, counsel.

Mr. ARNOLD SMITH. I would like to read quickly the second paragraph of the bank letter in Cincinnati, which was written by Mr. Ralph H. Brookes, to Mr. Adams:

We are willing to extend such a credit which would be represented by a note guaranteed by or indorsed by Mr. D. H. Overmyer based on submission of certified audited statements satisfactory to us and the broadcasting company and Mr. Overmyer.

The loan would be contingent upon such terms and conditions as might be mutually satisfactory to both your company and the bank.

May I ask you, Chairman Hyde, under the provisions of section III, form 314, question 4(c), do you consider this bank letter to have "obligated the bank—I am using the language "obligated" in quotes which appears in this form—"obligated" the bank to provide these funds.

Mr. HYDE. No.

Mr. ARNOLD SMITH. Since you didn't consider the bank to have been so obligated to provide these funds, why does this specific provision of form 314 require such an obligation?

I will again read this provision:

For each person who has agreed to furnish bonds, purchase stock or extend credit submit copy of the agreement by which each person is so obligated.

Mr. HYDE. There are many instances where an applicant starting a new business will have enlisted the assistance of friends or associates and frequently they will undertake commitments to the enterprise and in those circumstances we would need evidence of commitments by the people who are depended upon to finance the operation.

This is a form that is used for application under many, many circumstances.

Mr. ARNOLD SMITH. Is the word "obligated" outdated, too? Should this word be stricken?

Mr. HYDE. The word "obligated," no; it should not be stricken.

Mr. ARNOLD SMITH. Let me ask you this, Commissioner: There are actually two areas of this policy, one, the form which we have been discussing, and, two, the Commission's own pronouncements in this policy area.

I have reference, for example, to Kokomo Pioneer Broadcasters Pike & Fischer Radio Regulation 6RR285, a 1960 decision. This, I think, enunciates the backdrop of another phase of this policy. It was stated in this opinion:

The Commission's primary concern is not whether the applicant company has legal recourse against the promisor. At most, said legal recourse would be productive of money damages and not forms of contract but whether the record indicates reasonable assurance that the promisor will fulfill his commitment to the applicant company.

Without getting into all the nuances of Commission policy over the years with respect to the bank letters, is it your opinion that this letter from the Bank of Cincinnati, particularly the second paragraph which I read, provides "reasonable assurance" that this bank will fulfill its commitment to Mr. Overmyer?

Mr. HYDE. I just answered your previous question saying that we did not regard that as an obligation or commitment by the bank.

Mr. DINGELL. Then, as a matter of fact, it has about as much relevancy in the record as an announcement of a program the bank might have with regard to increased interest rates to attract investors.

Am I correct?

Mr. HYDE. I think there could be an indication of credit standing short of commitment by the bank.

Mr. DINGELL. That is another matter. But this certainly does not indicate that the bank expects to take on any obligation in regard to the radio stations.

Mr. HYDE. We certainly did not rely upon this as a contract commitment by the bank to take on this responsibility.

Mr. DINGELL. If this did not indicate that the bank was going to sustain Mr. Overmyer's credit, his application, what precisely did this letter indicate to the Commission?

Mr. HYDE. I would cite that this is one of the evidences of Overmyer's financial standing but not the exclusive evidence of it.

Mr. DINGELL. What did it say about his financial standing?

Mr. HYDE. As I understand the letter, and I have not read it for some months, as I understood the letter, it gave some indication of the conditions under which the bank could extend some credit.

Mr. DINGELL. Under which it could?

Mr. HYDE. Yes.

Mr. DINGELL. What were the conditions?

Mr. HYDE. Counsel has read the letter. I don't have it in front of me.

Mr. DINGELL. Did the Commission scrutinize to see what these conditions were or when they would come into play or what effect they would have on the transactions?

Mr. HYDE. This would have been examined in connection with the other evidences of financial ability none of which was to be considered exclusive of the other evidences.

Mr. DINGELL. The letter here says, "We are willing to extend such a credit which would be represented by a note either guaranteed by or indorsed by Mr. Overmyer based upon the submission of certified audited figures satisfactory to us, the broadcasting company and Mr. Overmyer."

What that says to me is that they would, if he submitted figures and data on his financial condition. These figures have not been submitted. They have no way of knowing what they are, or what they will be.

Am I correct on this, Mr. Chairman?

Mr. HYDE. I think you are.

Mr. DINGELL. So that, as a matter of fact, all they are saying is that if he submits some figures and so forth that they will look at the figures and maybe give him credit. Is that right?

Mr. HYDE. Yes.

Mr. DINGELL. This is not a commitment to credit. This is a commitment to look at figures.

Mr. HYDE. That is all it is.

Mr. DINGELL. If you were going to engage in a commercial transaction with Mr. Overmyer, would you have entered into a commercial transaction based upon a document of this kind?

Mr. HYDE. It depends entirely, of course, on the venture that you might have in mind. I would not be inclined to treat this as an asset in itself.

Mr. DINGELL. It could hardly be called anything other than an agreement to take a look at certified figures. The bank further went on and said, "The loan would also be contingent upon such terms and conditions as might be usually satisfactory to both your company and the bank."

That, again, is another qualification.

Mr. HYDE. Yes.

Mr. DINGELL. Earlier they said, "You have asked us to consider in connection with construction of such a station a \$400,000 term credit."

There is nowhere in that letter that they agreed that they are going to extend him a line of \$400,000 of term credit, is there?

Mr. HYDE. All you have is an offer to consider a loan under conditions which they prescribed.

Mr. DINGELL. Would you loan money on reliance of a letter of this kind or would you regard this as something by which you could assume that Mr. Overmyer would have \$400,000 in bank credit?

Mr. HYDE. The letter does—

Mr. DINGELL. Where, Mr. Chairman, does this letter give you any reason to believe that the bank would extend a \$400,000 term credit to Mr. Overmyer?

Mr. HYDE. There is no firm commitment to extend.

Mr. DINGELL. Where do they in any way indicate they will talk to Mr. Overmyer on the subject of \$400,000?

Mr. HYDE. I don't find any commitment in the letter.

Mr. DINGELL. As a matter of fact, any blockhead walking off the street could expect roughly similar treatment to what Mr. Overmyer could get under this letter, could he?

Mr. HYDE. I am not sure of that.

Mr. DINGELL. He could expect that they would talk to him. And if he could establish that he was justified in procuring that kind of credit based upon certified audit figures he might get \$400,000.

Mr. HYDE. I don't believe the bank would issue a letter of that kind on such a casual basis.

Mr. DINGELL. I am going to ask you now if you can again tell me where in this letter is there anything that indicates the bank is going to do anything other than talk to Mr. Overmyer about this matter.

Mr. HYDE. I agree, Mr. Congressman, there is no firm commitment by the bank.

Mr. DINGELL. Then how can you regard this letter as establishing any kind of basis for credit for Mr. Overmyer?

Mr. HYDE. I also indicated that this would only be one of the evidences submitted to the Commission.

Mr. DINGELL. What other evidences were there?

Mr. HYDE. Well, sir; I would have to have the application file and have an analysis.

Mr. DINGELL. I yield back to Mr. Smith on this point and let him continue. But you will agree that this letter, far from establishing any basis of financial reliance, is quite worthless.

Mr. HYDE. I agree that it is not a firm commitment. Maybe I will have Mr. Sheridan, who was Chief of the Bureau at the time these applications were considered, to discuss this matter.

Mr. SHERIDAN. Mr. Chairman, I would like to try to clarify something that may be helpful in discussion of this. Counsel indicated he was going to take these items up by date of Commission grant. That is why this item of Cincinnati comes first.

There is a subsequent item which shows that the Commission did deal with the Overmyer financial qualifications. I am now referring to the Toledo item which will be noted is dated January 23, 1964, for Commission action on February 5, 1964.

Now this particular item deals with three mutually exclusive applications, Overmyer, Producers, two; Springfield Television, three.

At the time that this item was presented to the Commission it will show in the item that the staff raised financial qualifications against both Producers and Springfield Broadcasting and suggested in the hearing that it was necessary that the financial qualifications of these two parties be thoroughly explored and indicated in the item that it was satisfied with the financial showing made by the Overmyer organization.

I might add that when you have competing applicants the public is best protected by their own interest and if they felt on the basis of the information in the public files on Overmyer that there was any question whatsoever about his financial qualifications such petition would have been filed to add an issue against him.

As I see the file, one was subsequently filed and it was denied. I wanted to put it in the context of the fact that the Commission had discussed the Overmyer financial qualifications prior to the Cincinnati item.

As a matter of fact, the year before.

The CHAIRMAN. Are you saying that there was one opposition filed against the financial statement and you say it was denied?

Mr. LEVY. Mr. Chairman, after this particular application, the three applications for Toledo were designated for hearing; one of the parties in that hearing asked for an enlargement of the issues to raise the financial qualifications issue against Mr. Overmyer.

This petition to enlarge issues was then considered by the Commission Review Board. The Review Board considered this petition and wrote a decision finding that there was no sufficient showing that had been made by the petitioner to warrant enlargement of the issues to raise the financial qualifications issue against Mr. Overmyer at that time in that proceeding.

The CHAIRMAN. Then they were never determined, were they?

Mr. LEVY. Yes, sir; the Commission made an initial determination that Mr. Overmyer was financially qualified. Upon review of that by

the Review Board in the hearing and the submission of additional facts by the petitioner the Review Board again found that Mr. Overmyer was financially qualified.

The CHAIRMAN. For what? Financially qualified for what?

Mr. LEVY. To construct and operate the Toledo station.

The CHAIRMAN. Just one station?

Mr. LEVY. Yes, sir.

The CHAIRMAN. You took that for all of them?

Mr. LEVY. That takes into account whatever obligations he may have made before the Commission concerning other applications that may have been involved.

The CHAIRMAN. Is this before 1964?

Mr. LEVY. This was the first one.

The CHAIRMAN. That was for all the rest of them since then?

Mr. LEVY. I can't answer—

Mr. DINGELL. Was any subsequent review made in connection with other applications to ascertain whether or not there was a change in Mr. Overmyer's financial condition?

Mr. LEVY. Yes, sir; when we got down to the application for Dallas which we also designated for hearing we raised the financial qualifications issue against Mr. Overmyer.

Mr. DINGELL. What year was that?

Mr. LEVY. This was in 1965. The application was designated for hearing on December 30, 1965.

Mr. DINGELL. He withdrew his application?

Mr. LEVY. Yes, sir. When the financial issue was raised Mr. Overmyer subsequently dismissed that particular application.

Mr. DINGELL. Was there any review of Mr. Overmyer's financial capability between the first application for Toledo and the time he withdrew?

Mr. LEVY. Yes, sir.

For instance, in the Rosenberg, Tex., application, when the staff presented that item to the Commission in August 1965, I think it was, that particular memo to the Commission contained the review of Mr. Overmyer's qualifications at that time.

Mr. DINGELL. What was the staff finding at that time?

Mr. LEVY. The staff finding at that time was that Mr. Overmyer was still qualified.

Mr. DINGELL. Was still qualified?

Mr. LEVY. Yes, sir.

Mr. DINGELL. What other strong evidence did you receive of his qualifications since you got this first most meaningful letter from the bank?

Mr. LEVY. Well, in each application, and I can only speak for the applications which my division handled, we had similar bank letters and balance sheets from Mr. Overmyer.

Mr. DINGELL. Those bank letters were the first ones?

Mr. LEVY. Yes, sir.

The CHAIRMAN. Mr. Brown.

Mr. BROWN. I want to clarify the situation with reference to the Toledo station.

As I understand what you have said, the Toledo station was the first application and there were no others applied for while it was pending when the issue of financial responsibility was raised. Is that correct?

Mr. LEVY. I am not sure on that, sir. I think I may have something that indicates that, though. I think that is correct. Certainly the Toledo application was the first one received. There were, I think, other applications pending by the time that was designated but the financial qualifications or other qualification determination had not been made with respect to the other applications at that time.

So the way the staff would proceed would be to make qualifications findings on whether Mr. Overmyer could meet his commitments in Toledo and then in subsequent applications his commitments in Toledo would have to be taken into account in making qualifications findings when later applications came up for action.

Mr. BROWN. There were two other applicants for the outlet in Toledo?

Mr. LEVY. Yes, sir.

Mr. BROWN. When a competing applicant raises the question of financial qualification of another applicant, is it a comparative matter or is it a simple matter of he is or is not qualified?

Mr. LEVY. It is a simple matter of whether he is or is not qualified.

Mr. BROWN. Are you free to say who the applicant was that raised the question of financial qualification?

Mr. LEVY. I am free to say so, sir; but I don't have the information before me. It could be obtained. I might add that when this procedure is invoked in the hearing process the Broadcast Bureau, which is a party to that proceeding—I am told that it was the Springfield Telecasting that raised the financial issue.

Mr. BROWN. Is Springfield Telecasting in there merely questioning whether or not Mr. Overmyer is qualified financially, they are not raising the question as to whether they or Overmyer are more qualified?

Mr. LEVY. No; they are raising the question of whether Overmyer is or is not qualified.

Mr. BROWN. In other words, was Springfield at that time still under consideration for the license?

Mr. LEVY. Very much so; yes, sir. That would be the reason they are raising the issue, to have a chance to prove that the competing applicant is not qualified.

Mr. BROWN. That point of financial qualification could knock them out of competition?

Mr. LEVY. Yes, sir; if the Commission had made an adverse finding that would have been the end.

Mr. BROWN. So the staff could say this party is qualified to remain in competition but does not make a judgment between the three applicants for the station?

Mr. LEVY. No, sir.

The CHAIRMAN. Mr. Smith, you may continue.

Mr. ARNOLD SMITH. Might I just ask this question? Notwithstanding the Toledo application and the problem in Toledo with respect to competing parties, is it not a fact that under the Communications Act each application for each market must be given a separate public interest, convenience, and necessity determination before that application can be granted?

Despite what was written in Toledo, despite what was written in some other application, despite what analysis was provided therein, isn't that a fact?

Mr. HYDE. The law clearly requires that the Commission make the appropriate finding on each application.

Mr. ARNOLD SMITH. Let me continue—I think the bank letter matter has been dwelled on long enough—to two further points to try to bring out some of the other financial aspects of Overmyer's qualifications or lack thereof in obtaining this permit in Cincinnati.

Is it not a fact that Mr. Overmyer had in this application a letter signed by Robert Adams, that was accepted for the record yesterday, purportedly committing the resources of Mr. Overmyer personally and purporting to commit the resources of the D. H. Overmyer Warehousing Co. & Affiliates to the venture of the Cincinnati station?

To refresh your recollection I would like to give you this letter of February 2, 1965, signed by Mr. Adams (see appendix, item 10(g), p. 359) in which he purports to commit the resources of Mr. Overmyer personally.

There is nothing in the record as to what analysis, if any, was made of this letter. Is it your opinion that this letter does in fact commit the resources of Mr. Overmyer personally and does in fact commit the resources of his warehouse company?

While you are reading it, I might add that the reason for having dwelled so long on the bank letter is because in the financial submissions to the Commission for the Cincinnati station bank credit was virtually 50 percent of the money that Mr. Overmyer needed to construct and operate this station. Therefore, if in fact the bank letter was no commitment, then Mr. Overmyer in fact did not demonstrate his financial qualifications to operate this station.

Returning once again to the Adams letter, did it, in your opinion, commit Mr. Overmyer and the resources of his warehouse companies?

Mr. RAWSON. Mr. Smith, I would say that this particular letter, and we had obviously in this particular case raised a question with Mr. Overmyer concerning his financial qualifications and it was this statement along with the bank letter that I am sure led to the finding that Mr. Overmyer was financially qualified to construct and operate the Cincinnati station.

This we would take as a representation and we would hold him to this representation under certain circumstances that he was committing his funds, his personal funds and his warehouse funds to the construction of this particular station.

Mr. ARNOLD SMITH. I would request the chairman to ask the Commission to furnish for the record, because staff is unable to find such, any questions that the FCC may have raised in writing with respect to this letter or with respect to Overmyer's financial fitness for becoming a permittee.

Mr. RAWSON. Mr. Chairman, I think, of course, the letter that you have indicates on its face that the staff had conversations with Mr. Overmyer or his attorneys and that as a result of those conversations they submitted the balance sheets of Overmyer individually and the warehouse and made the decision that these would be favorable.

Now we do this frequently in order to save the time of the staff and to avoid the delay in processing applications. We will handle matters of this kind informally over the telephone. We will have the counsel over and frequently, of course, counsel can bring the applicant, discuss the problems we have so that there can be no misunderstanding and ask that they furnish the information.

This we find saves us considerable time and delay in the process of the application, it avoids the writing of a letter, avoids the time of a secretary.

Mr. ARNOLD SMITH. Mr. Rawson, did you receive orally or in writing, at the time of these conversations, anything which would have led to the conclusion that Robert Adams, executive vice president of a subsidiary operation of Mr. Overmyer's, could personally commit Overmyer and could personally commit another corporation, of which he was not an officer? Was there something in writing, such as a power of attorney that Overmyer may have given Adams, to enable him to make such commitments?

Mr. RAWSON. Mr. Adams, I notice, is the executive vice president of the Overmyer companies and as executive vice president he did commit the Overmyer Warehouse Co.'s and its affiliates.

Now we would take this and we would assume, and I assume the attorney who processed this application took this into account in finding that Mr. Overmyer was financially qualified to not only buy the construction permit but to construct and operate the station.

Mr. ARNOLD SMITH. Were any questions raised orally of the attorneys for Mr. Overmyer or for anyone else as to such commitments?

Mr. RAWSON. I am sorry, Mr. Smith. This is dated February 3, 1965. I just could not possibly answer that question.

Mr. ARNOLD SMITH. Is there anyone at the table that can answer the question?

Mr. RAWSON. No, sir.

The CHAIRMAN. Do you mean to tell me that you conduct the FCC without records; that you allow some people just to talk and ask questions and don't keep a record of what goes on? I should ask this of Mr. Hyde.

Mr. HYDE. No.

The CHAIRMAN. He says conversations. We don't know about conversations. We don't know about anybody picking up telephones. He says this is back in 1965, he does not recall. Maybe there were no conversations with anybody. Maybe they went ahead and granted it without anything.

Mr. RAWSON. The letter says, "Dear Mr. Waple: Pursuant to informal conversations with the staff there are submitted herewith balance sheets of D. H. Overmyer individually and D. H. Overmyer Warehouse & Affiliates.

I think it is reasonable to assume there were conversations. As I say, these are not formal hearings we are talking about. This is in the processing of the applications to avoid a lot of delay in assignment and transfer matters and to avoid a lot of work on the part of secretarial help we frequently handle these matters informally with the applicant or with the attorney.

The CHAIRMAN. It looks to me like it is public business, and you are handling these matters as if you were two individuals, bargaining. You have no right to conduct the Nation's business that way.

Mr. MOSS. You have identified Mr. Robert Adams as the executive vice president of the Overmyer companies and therefore you assume that he had the authority, the power to bind the Overmyer companies.

Wasn't he in fact executive vice president of Overmyer's communications, a wholly owned subsidiary of the Overmyer Co. or a wholly owned entity of Overmyer, himself?

Mr. RAWSON. Congressman Moss, you may be correct on that. We have a letter here which says the D. H. Overmyer Broadcasting Co., he is executive vice president.

Mr. Moss. Then if he was committing the Overmyer companies, the warehouse companies, he would certainly have to be a corporate official before you could make the assumption that he had the power to bind them.

What evidence do you have that he had any such power to bind?

Mr. RAWSON. I have no evidence at all. I was attempting to give a solution to Mr. Smith in connection with the financial qualifications, that the attorney who processed this particular case operated on the assumption that the letter he received together with the balance sheets, together with the bank letter which Mr. Smith thinks is inadequate, indicated that Mr. Overmyer was financially qualified.

I am sure he must have accepted this as a commitment of Mr. Overmyer's personal funds. Maybe he was incorrect in doing so. I think I would want a little bit more, I would want Mr. Overmyer's signature.

Mr. Moss. Do you review these letters yourself?

Mr. RAWSON. No, sir; I do not review every one of these letters.

Mr. Moss. You don't really want me to believe that there is no contemporaneous memorandum of these discussions? What happens if someone dies?

Mr. RAWSON. I don't know whether you believe me or not.

Mr. Moss. To be very candid, I don't, because I have been 20 years investigating in this particular field.

Mr. RAWSON. It so happens that on occasion—I can't say whether there would be a memorandum for the file outlining the discussion. I do know that most of the time there is no memorandum. That is correct.

Mr. Moss. How many cases do you handle a year?

Mr. RAWSON. 750 cases, and they run an average of sometimes 70 or 80 a month. It is quite a bit of work.

Mr. Moss. You have then verbal discussions going on?

Mr. RAWSON. Not on every occasion. It is only on occasion that we have a problem. In order to expedite and to avoid a lot of unnecessary work we, as a matter of fact it has been the practice for years, handle things informally to iron them out because, really, the only parties involved in these cases would be the Commission and the applicant. Now, if there were other parties involved we would have to go on the record and write a letter.

Mr. Moss. The public is involved the moment the case starts and this committee is involved in both the House and the Senate because in creating the Federal Communications Commission we did not legislate our responsibility in broadcasting. We legislated a board but not a responsibility. That we retained in the Congress. So we are involved. So there is not just the two of you involved but there are a whole group of us involved. The informality makes it difficult for us to know what you, as our agents, I assume in this instance, have done.

Mr. RAWSON. I can assure you, Congressman Moss, that this staff, my staff, the entire staff of the FCC, works diligently to protect the public interest and in each one of these cases the staff members look over and scrutinize these things with utmost care. I am sure on occasions there may be a mistake of judgment exercised but it usually would be a rea-

sonable mistake of judgment and certainly not incompetence. I think you have to rely, the Commission has to rely, upon the competence of the staff, and we think we have a very competent staff.

Mr. Moss. I have a very competent staff, but I expect them to keep pretty good memorandums for the files so that I know the substance of discussions if I want to call them in my office to discuss a matter that took place a year ago. I don't want them to rely on their memories. I think it is unfair to burden them, expect them to rely on their memories when they handle a number of items, even if it is only a half dozen.

Mr. RAWSON. I think, Congressman Moss, that depends entirely on the materiality of the matter that is being handled informally. If we had a very important matter you can rest assured that the discussion would be reduced to writing and a memorandum placed in the file.

Mr. Moss. I am very pleased that you have just characterized this series of applications as not a very important item.

The CHAIRMAN. Mr. Smith, will you carry on?

Mr. ARNOLD SMITH. Yes, sir.

Mr. Rawson, you mentioned that you did not do the reviewing in this matter. Who, in fact, made the review on the Cincinnati station?

Mr. RAWSON. Mr. Alford, I assume, who is chief of the branch, did the reviewing.

Mr. ARNOLD SMITH. Mr. Alford, do you have any thoughts in amplification of these matters with respect to the committal letter of Mr. Adams?

Mr. ALFORD. I don't have any personal recollection of reviewing it. I do remember at the time feeling that this man was well qualified, that he was quite a wealthy man.

Mr. ARNOLD SMITH. What did you base that feeling on?

Mr. Moss. If you will just yield at that point. I want to point out now exactly the point I was trying to make a few moments ago.

You just made a statement, "I don't recall," on a matter that is of importance and is now before a committee of the Congress. If there were contemporaneous memorandums written and placed in the files of this case you would know. It is still my opinion that those memorandums exist or did exist.

Mr. HYDE. Congressman Moss, I would like to say that we have endeavored to supply every scrap of paper that there is on this case. We have not withheld a thing purposely.

Mr. Moss. We have a fairly extensive number of instances which I will not bother to deal with at this time where that was not evidenced by the material supplied to this committee.

Mr. HYDE. You have been examining this case for 6 months. During that time we have made a number of requests. We have made a bona fide serious effort to give you every one of the papers that have been prepared by the staff for the Board and to supply everything about it.

Mr. Moss. I don't concur in that.

The CHAIRMAN. We will review that at the end of the questioning, as to the difficulty we have had.

Go ahead, Mr. Smith.

Mr. ARNOLD SMITH. Since Overmyer's personal and warehouse funds became an issue in the Cincinnati application, his financial statements, both warehouse and personal, became very relevant. I have in front of

me the financial statement referred to earlier (see appendix, item 10(c), p. 348), Overmyer's personal statement of August 31, 1964, which was submitted for Cincinnati, and his warehouse balance sheet at August 31, 1964, which was also submitted in that application. Do any of you gentlemen have a copy of these balance sheets?

Looking at his personal balance sheet, is it not a fact that Mr. Overmyer's current assets exceeded his current liabilities by \$963.14?

Mr. HYDE. On my sheet I have before me dated August 31, 1964, it shows total current assets \$10,299.19.

Mr. ARNOLD SMITH. And his total current liabilities of \$9,336.25?

Mr. HYDE. That is correct.

Mr. ARNOLD SMITH. Therefore, the simple subtraction, unless my figures are wrong, would result in a difference of \$963.14.

Mr. HYDE. That would be the difference.

Mr. ARNOLD SMITH. Is \$963.14 a sufficient amount to comply with the requirements of your form 314, section 3, question 4(d), wherein it is provided that current liquid assets must be sufficient in amount to meet current liabilities? Does this difference of less than a thousand dollars indicate, or did it indicate to you that Overmyer met the requirements of this provision?

The CHAIRMAN. Is there anyone who can answer that question?

Mr. HYDE. Obviously, a difference of less than a thousand dollars would not be a sufficient showing.

Mr. ARNOLD SMITH. Chairman Hyde, was this question asked of Mr. Overmyer in writing or orally, by yourself or by any of the other members of the Commission or staff members present here today, with respect to this sum of \$963?

Mr. HYDE. I never asked any such question. I don't know whether such question was asked by staff. We will find out.

Mr. ARNOLD SMITH. Is it your opinion, Commissioner Hyde, that this amount does not fulfill the requirement specified in the form?

Mr. HYDE. You are talking about net current assets on his personal account. I believe the application was filed in the corporate name.

Mr. ARNOLD SMITH. I am talking about Mr. Overmyer's personal financial sheet. I am talking about it because ostensibly his personal resources—Mr. Overmyer's personal net worth of more than \$5 million—which is referred to time and time again not only in Cincinnati but in Atlanta, in Pittsburgh, in San Francisco, and in Houston, would come to the aid and rescue of these fledgling permittees were they to need his cash.

My question is based on your own requirement in form 314. Is this requirement met on the basis of the current asset-current liability test?

Mr. RAWSON. I think possibly I might be able to answer. I believe you have a copy of the item that went to the Commission with the KDAY-TV application in San Francisco?

Mr. ARNOLD SMITH. Yes.

Mr. RAWSON. If you refer to that item that is dated October 20, Mr. Smith.

Mr. BROTZMAN. Mr. Chairman, I have been listening to testimony here and I am having a terrible time following the documentary evidence. I can't begin to make an evaluation here unless I can allude to and refer to the document being considered.

Do I understand you are replying from another document now? We have moved from the D. H. Overmyer balance sheet of August 31, 1964? I have that.

Mr. RAWSON. Mr. Smith had some questions about his personal commitment in connection with San Francisco and the various other fledgling permits.

Mr. ARNOLD SMITH. I am questioning Cincinnati at this time. Mr. Brotzman, the question is raised because Mr. Overmyer's personal finances, his own personal net worth, heavily supported his financial qualifications which were presented to the Commission.

I am questioning the Commission about its requirement that an applicant show current assets to meet the liabilities which come due.

Mr. BROTZMAN. I understand what you are driving at, and I understand that particular bit of evidence to some extent. I was trying to hold it up so that I would get the next document to understand the witness' response where he referred to another document. Am I correct?

Mr. ARNOLD SMITH. Yes.

Mr. RAWSON. Yes, sir. He then changed his question. He knocked off all the other stations and went back to Cincinnati. I thought I had already answered the question about Cincinnati that as far as that letter was concerned I certainly would want a signature from Mr. Overmyer as his personal commitment. I have assumed the effort in the Cincinnati case was made because of the fact that he did have this very small excess of current assets over current liabilities.

Usually when this happens we require an applicant to come in and make a much stronger showing as to under these circumstances how then are you going to be able to finance the construction and operation of the station. I assume that is where the Overmyer properties came in, and balance sheets, and the letter from Mr. Adams.

As I said before, I assume that the attorney processing the application used his judgment to believe that that was a commitment from Overmyer himself.

Mr. ARNOLD SMITH. I am only relating \$963 as it appears on this financial submission to the Commission with respect to Mr. Overmyer's financial qualifications in Cincinnati.

I have reference to these other stations merely to point out that his personal fortune and the fortune of his warehouse operations were heavily involved in all 5. Was a question raised in the Cincinnati application about this lack of sufficient assets? Was there anything written to Mr. Overmyer questioning it?

Mr. RAWSON. Not that I know of, Mr. Smith.

Mr. ARNOLD SMITH. Why not?

Mr. RAWSON. I thought I answered that question earlier, that it was probably done on an informal basis and we have no letter in our files which would indicate that we had gone back by letter to Mr. Overmyer raising question along this line.

Mr. ARNOLD SMITH. Let me go on to another point. We will drop the \$963 for just a moment. Looking at the same balance sheet, another question is provoked. I might add that these are questions which are raised from the face of Overmyer's submissions that were made to the Commission. We didn't need to investigate this matter for 6 months, as Chairman Hyde implied, to ask these kinds of questions.

Looking at the statement of August 31, 1964, isn't it a fact that virtually all of Mr. Overmyer's alleged net worth is comprised of closed corporation stock?

Mr. RAWSON. That is what it says.

Mr. ARNOLD SMITH. Was any attempt made to ask Mr. Overmyer what the value of these securities was?

Mr. RAWSON. He estimates the value on the balance sheet itself. I don't believe there was any effort made to verify it, no, sir.

Mr. ARNOLD SMITH. So you are saying, that there was no supplemental showing of any kind that Mr. Overmyer's liquid assets would provide funds when necessary based on this amount of over \$5 million in closed corporation securities?

Mr. RAWSON. I personally couldn't answer the question but I would suspect that there was no showing if the application does not show it and you have the application and there wasn't any showing made.

Mr. ARNOLD SMITH. Doesn't form 314, section III, question 4(d) require that there be such a supplemental showing; that if nonliquidity is going to be used in some way, it be indicated how such funds will be obtainable. Doesn't paragraph (d) refer specifically to this point?

Mr. RAWSON. Yes, sir; it does.

Mr. ARNOLD SMITH. Referring to the bank letter from the Bank of Cincinnati, they required that Overmyer personally guarantee this loan. Was any question raised about this contingent liability of some \$400,000 with reference to Overmyer's August 31, 1964, financial statement?

Mr. RAWSON. I don't know.

Mr. ARNOLD SMITH. Does anyone at the table know? Mr. Alford?

Mr. ALFORD. No, I don't know.

Mr. ARNOLD SMITH. Let me ask you another question about this financial statement: Doesn't the provision of section III of form 314, paragraph 4(d) require a showing of amounts payable during 1 year on long-term debt and amounts payable during succeeding years?

Mr. RAWSON. I didn't get the question.

Mr. ARNOLD SMITH. Isn't it a fact that section III of form 314 requires a breakdown of amounts payable on long-term debt both for the year for which the sheet is submitted and for succeeding years?

Mr. RAWSON. It does.

Mr. ARNOLD SMITH. Where was such a showing here with respect to mortgages payable?

Mr. RAWSON. I don't know whether there was any showing, sir. I haven't reviewed the submission.

Mr. ARNOLD SMITH. Was any request made that a showing be made?

Mr. RAWSON. I don't know.

Mr. ARNOLD SMITH. Let us leave the personal balance sheet for a moment and go to the warehouse balance sheet of August 31, 1964. Mr. Rawson, in your opinion what does "surplus" mean in that little block "shareholder's equity" down at the bottom of the page there? Surplus is shown as \$3,207,394.57. What exactly, in your opinion, does the word "surplus" mean?

Mr. RAWSON. To me it just means the balancing figure, that is all.

The CHAIRMAN. I didn't get that.

Mr. RAWSON. A balancing figure.

Mr. ARNOLD SMITH. Does it, in your estimation, signify earned surplus?

Mr. RAWSON. No, sir; I would not take it to mean that. I don't know how the attorney processing the application understood it.

Mr. ARNOLD SMITH. Who reviewed this application?

Mr. RAWSON. Mr. Alford reviewed it.

Mr. ARNOLD SMITH. Mr. Alford, does this word "surplus," in your estimation, mean earned surplus? Does it mean paid in surplus? Does it mean appreciated surplus? Since you reviewed this, what did it mean?

Mr. ALFORD. I don't know, sir; I probably checked with the staff accountant that we have because whenever we have an accounting problem, we have a staff accountant, and I ask him his opinion which he would give me orally.

Mr. ARNOLD SMITH. In layman's language, when you look at this surplus figure, does this indicate to you that the company is in good shape, is healthy?

Mr. LEVY. Mr. Smith—

Mr. ARNOLD SMITH. I was talking to Mr. Alford.

Mr. LEVY. I am sorry.

Mr. ALFORD. I have no recollection of actually checking this.

Mr. ARNOLD SMITH. So that to the best of your knowledge, surplus could mean any one of the three different possibilities; correct me, I don't mean to paraphrase you, to the best of your knowledge the matter of what surplus actually stood for was not questioned further of Mr. Overmyer or of those representing his interests?

Mr. ALFORD. As far as I remember, no.

Mr. KEITH. Would counsel yield at this point?

Mr. ARNOLD SMITH. Yes, sir.

Mr. KEITH. Do you know, Mr. Alford, how to read a balance sheet?

Mr. ALFORD. Very little about balance sheets.

Mr. KEITH. Yet you are the one who is supposed to review the information that comes in with reference to the financial disclosures.

Mr. ALFORD. Not the financial information. I have a staff accountant that whenever there is any question about finances I refer to him for his opinion.

Mr. KEITH. In order for you to supervise the work of that staff accountant it would seem to me that since you are going to recommend to the Chairman acceptance or rejection of this application, you would do more than ask that the form be filled out? The information is there for a purpose. At all levels reviewing this evidence there should be at least some ability to read and interpret the balance sheet. Otherwise, people could simply insert something that could be very misleading. Do you know what a net worth is, for example?

Mr. ALFORD. My knowledge of accounting is—

Mr. KEITH. I am talking about balance sheets.

Mr. ALFORD. I have a very senior accountant who has been with the Commission for many years who is responsible for processing the applications for many years. I trust his judgment and request his advice whenever I have any problems with accounting matters.

Mr. KEITH. Chairman Hyde, were you satisfied that the application and the information contained therein regarding financial ability of the applicant to construct and operate stations during the initial lean years was in fact present?

Mr. HYDE. I was satisfied, the Commission was satisfied. Mr. Congressman, I would like to say that in examining these applications we were looking for indications that they were bona fide applications, that the applicant would in fact undertake the construction of a station. That being so, the Commission was committed by general policy to encourage the development of UHF stations. It was not our policy to try to discourage applicants or to avoid grants but rather to encourage so far as we could on a responsible basis the investment of funds in the development of stations.

Mr. KEITH. Yes; but you also want to have men who can capitalize on their investment and actually make the system work. You were looking for men who had the financial ability plus the management ability, the resources, the manpower, and the money to make a success of these stations?

Mr. HYDE. Yes; we were.

Mr. KEITH. You reached the conclusion, it seems to me, which later circumstances indicated to be true, that the man did not have the financial competence to do this job.

Mr. HYDE. Congressman, you are right. Under changing conditions, under changing conditions of the markets, Mr. Overmyer was found to be beyond his capacity, that is true, but at the time these applications were considered I think the judgments which the Commission made were reasonable.

Mr. KEITH. It appears that the judgments were wrong and were so, perhaps, because of the inability on the part of the FCC to interpret the financial statements that were furnished in an effort to justify the granting of CP's and licenses. If you examine the financial statements you will find that the working capital is minimal and it is illiquid.

Mr. HYDE. Up until the point of his difficulties Mr. Overmyer had proved a very resourceful businessman. It is true that he came to reverses and this did result in his having to get out of the business.

Mr. KEITH. He was in a field where he had no knowledge or expertise. Apparently he was successful in his loan application on the basis of his ability in the warehouse business. But it is evident from statements which he has furnished, that once he got out of that field he was in trouble. As a matter of fact, it would appear that he was in trouble in that field, also.

Mr. HYDE. I believe, sir, that at the time of his initial——

Mr. KEITH. He was hard pressed for cash and he borrowed excessively.

Mr. HYDE. You are right, as matters developed he was unable to meet a financial crisis which developed later.

Mr. KEITH. Did you not have some indication early in the series of applications that perhaps he could not do in the television business what he was doing in the trucking business, that he was in need of more and more leverage?

Mr. HYDE. I did not feel that that was his approach. In the television business you cannot assign or transfer properties without approval of the Commission. We have a strict policy which prevents a sale in less than 3 years after a license is granted, absent some very compelling reason such as loss of health or financial collapse. We also have a policy against sale for more than out-of-pocket expense.

Mr. KEITH. Obviously, in this case, by retaining a 20-percent interest in each of the five stations, he, in effect, did not actually dispose of his television interest. He received far in excess of what he put in.

Mr. HYDE. As it appears to me, he retained about a fifth or 20 percent interest, he undertook the risk of getting more or less, dependent upon what happened in the further development of these stations.

Mr. KEITH. I don't want to interrupt the chain of thought but I realize that time is running out. I will cease my questions at this point.

The CHAIRMAN. Mr. Moss has a question.

Mr. Moss. You have stated you were not familiar with the reading of balance sheets.

Mr. HYDE. I did not say that.

Mr. Moss. Just a moment, Mr. Chairman. You listen to the question.

Mr. HYDE. I am sorry. I thought you were speaking to me.

Mr. Moss. You stated that you were not familiar with reading a balance sheet or financial statement. Then do you routinely refer all of them to this top-level chief accountant for review and evaluation or recommendation?

Mr. ALFORD. Whenever there is any question; yes.

Mr. Moss. Well, you do or you don't.

Mr. ALFORD. Not every one.

Mr. Moss. You don't know anything about them. You take one like this. You can't tell us whether you did or didn't. So you have no regular routine. You know what the record shows, as far as I am concerned? That you treat these in a most irresponsible manner. I think that is a very charitable characterization. Here you have a balance sheet and it is not a very impressive one and you are going to recommend that a construction permit be granted or at least you are going to the process of firming up a recommendation.

Mr. ALFORD. May I say this: Nine out of ten applications we have come in have very simple balance sheets, that I or anybody can understand. They are listed \$100,000 in assets, \$10,000 in liabilities, so we know he has \$90,000, which I don't refer to the accountant.

Mr. Moss. Was Overmyer's one of those?

Mr. ALFORD. No, sir. Anything that there is any question about——

Mr. Moss. Did you give this to your accountant?

Mr. ALFORD (continuing). I would refer to the accountant and he in fact probably consulted with the accountant who handles new applications for construction permits, because the problems involved in CP's with respect to cost of operation——

Mr. Moss. Did you give this to your accountant?

Mr. ALFORD. I have no personal recollection, but I am absolutely certain that I did because this is the type I would have done so routinely.

Mr. Moss. What kind of advice did you get back?

Mr. ALFORD. Obviously, I got back a reply that the accountant was satisfied that it met the test.

Mr. Moss. Mr. Chairman, I would suggest that in a subsequent session we have this top-level accountant in because if that was in fact his finding I think we should examine him with great care.

Mr. ALFORD. Well, there is one problem with that. We have two senior accountants. They are both retired. I am not sure which one was on duty at that time. I could find out.

Mr. MOSS. We have authority to subpoena a man who is retired.

Mr. ALFORD. We can do that.

Mr. MOSS. If that is the one you had, why, we can bring him back.

The CHAIRMAN. Do you have any further questions right now? Go ahead if you have something.

Mr. ARNOLD SMITH. I have just a couple of brief questions for Chairman Hyde.

Commissioner Hyde, is it not also important for the Commission to ascertain whether the applicant in fact can pay his bills, forgetting the problems of UHF? Isn't this something that the Commission has to determine before it can grant a permit? Whether or not he in fact can pay his bills?

Mr. HYDE. We must determine that he is legally, technically, and financially qualified. If there are any considerations that raise doubts as to his financial ability to perform construction we should look into it.

Mr. ARNOLD SMITH. What made the Commission feel that Overmyer could pay his bills?

Mr. HYDE. The reports and analyses supplied to us by staff.

Mr. ARNOLD SMITH. I think we went through the only analyses submitted for the record. It is this memorandum of the Cincinnati station that we have been discussing. Is that the analysis you have reference to, sir?

Mr. HYDE. These claims came up from time to time. I couldn't at this moment limit myself to a particular document. I would like to mention that there was lively discussion of these cases among the Commissioners in each instance.

Mr. ARNOLD SMITH. Were any of these discussions recorded?

Mr. HYDE. No, sir.

Mr. ARNOLD SMITH. Let me ask you this, Commissioner: It was mentioned before—I believe you mentioned it—that when these memorandums are prepared—I believe Mr. Rawson made reference to this—that where there is a controversial fact generally this controversy is made reference to in a memorandum. Mr. Alford just said, if I heard him correctly, that the financial submissions of Overmyer did in fact pose a problem, they were a little bit unusual, a little bit out of the ordinary. Why, therefore, wasn't this referred to in the memorandum recommending approval of the Cincinnati application?

Mr. HYDE. I believe that you are confusing the handling of different cases here. Mr. Rawson, or I believe it was Mr. Martin Levy, discussed a particular case where there was a challenge by another applicant. Mr. Alford discussed what was the regular practice for handling uncontested cases.

Mr. ARNOLD SMITH. Yes, but—

Mr. MOSS. If the gentleman will yield, I think it is quite clear on this record, if you want to review it, that we have been discussing Cincinnati just as consistently as we could. If there is confusion I think it is in your mind, not in the mind of the committee or of the staff.

Mr. ARNOLD SMITH. I asked the question with reference to Cincinnati. Can someone answer the question why the matter of the controversy did not appear in the memorandum?

Mr. ALFORD. I didn't say it was a matter of controversy. I said if there is any doubt in somebody's mind that there is a financial problem we refer it to the senior accountant. If he was satisfied there was no financial problem, we did not go into it at length in the memorandum because there was no problem.

Mr. ARNOLD SMITH. I have two short questions on the Cincinnati application and then I will be finished with it, Mr. Chairman.

Mr. BROWN. At that point, after you finish questions will you yield because I want to ask a question on the points just raised.

Mr. ARNOLD SMITH. Is it the Commission's practice to accept financial submissions whereby fixed assets show the appraised value of fixed assets rather than their cost less depreciation? Is this the customary procedure of applicants?

Mr. HYDE. I will undertake to answer that. There are no accounting regulations applicable to broadcast services except to the extent that we have an application form, we have an annual report form, but we do not regulate accounting practices as we do in the common carrier services. An applicant would have an election. He would have a choice as to how he presented his evidence of financial ability.

Mr. ARNOLD SMITH. So that this submission was not unusual? Is that the answer?

Mr. HYDE. In my judgment it would not be unusual in this sense that they used appraised value rather than original cost.

Mr. ARNOLD SMITH. In the applications you have seen, Mr. Alford, is this type of presentation of fixed assets at appraised value the usual practice of applicants?

Mr. ALFORD. I couldn't answer that.

Mr. ARNOLD SMITH. My last question, then: In this application did Mr. Overmyer provide his net income after Federal income tax for the previous 2 years of his operations, for himself personally or for his warehouse companies? Does anyone know? I ask this question because the record does not appear to indicate that such information was provided. Was such information requested?

Mr. ALFORD. I don't know whether it was in the application or not. If it was there it was there. We didn't ask it if it wasn't.

Mr. ARNOLD SMITH. Why wasn't it requested? I have reference now to your form again because I understand, and correct me if I am wrong, that this is what you require applicants to provide. I now have reference to section III, form 314, question 4(f) whereby the applicant has to present net income after Federal income tax for the past 2 years, "from each person who has furnished or will furnish funds, property, services, credit," and so on.

Why wasn't this requested if this in fact a requirement? Is this still a requirement?

Mr. ALFORD. The form calls for it.

Mr. ARNOLD SMITH. Is it therefore not a requirement still of the Commission?

Mr. ALFORD. Yes, it is.

Mr. ARNOLD SMITH. Why, therefore, wasn't it requested of Mr. Overmyer?

Mr. ALFORD. I don't know in this particular case.

Mr. ARNOLD SMITH. Does anyone else at the table know?

Mr. RAWSON. If it wasn't there it was material that certainly should have been requested by the counsel, Mr. Smith. Where this becomes a very material consideration the staff is under absolute instructions that they are to get the answer to this question.

Mr. ARNOLD SMITH. I have no further questions on Cincinnati, Mr. Chairman.

Mr. MOSS. Again I find myself very much dissatisfied with the last response because it does not answer the question asked by counsel. You modified your answer. I don't know what wording, I haven't seen form 314, question 4(f). As I heard it read it did not modify the request by saying "where material." It says, "Net income after Federal income tax received for the past 2 years from each person who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value. A statement of income for required periods wherein excess of certain specified amount will be sufficient."

It does not say "where material." It says this is requested. Do they have the right to pick and choose what they will supply the Commission, or are they required to supply what the form requests?

Mr. RAWSON. They should answer the question. There is no question but that the form calls for an answer to that question. There are occasions—and I haven't run across them, I am sure—but I suspect they have happened where it was so obvious that the applicant was financially qualified that the attorney processing the application may not have insisted upon the applicant filing that information. I suspect that. There may be instances. Probably in this case Mr. Overmyer did not answer the question. I don't know whether he did or not.

Mr. MOSS. If you had examined some of those income tax returns you might have found them rather interesting in contrast to the financial statements and balance sheets.

The CHAIRMAN. I might say that this is bearing out exactly what the attorney has said, there are three parts to this question: first, whether the license should have been granted in the first place; This shows that there is something wrong. All these things weren't answered, were not done. Second, whether these CP's should have been renewed; The third part is why five of these stations in the top 50 markets of the Nation should have been transferred without a hearing.

Mr. HYDE. These grants were made before that proposed policy was announced, Mr. Chairman.

The CHAIRMAN. It was the custom, was it not, to grant no more than three in the top 50 markets?

Mr. HYDE. No. These grants going back to 1964 were made before this policy order referred to was undertaken.

The CHAIRMAN. One of the witnesses said yesterday he did not even inspect the assets or anything. He was buying the license and was trafficking in licenses and I think the Commission would have known that if they had bothered to ask about it. This certainly bears out what we thought about the first part of it. Nobody has been able to answer the questions. They have said "we assume," "we don't know," "we can't recollect." We intend to follow it up a little bit more to find out exactly why and where.

Mr. BROWN. I have one observation to make, going back to the question of counsel, that I think we may be on somewhat delicate

ground in this committee if we insist on competent accounting practices or competent accounting usage in all application forms of the Federal Government, because we can't get various agencies of the Federal Government to go to a common accounting system.

I mention this in reference to the Government Operations Committee which has been trying to get this done within the Federal Government. It is desirable, certainly, but we may be on somewhat weak grounds in that regard.

Let me ask you two questions, however, with reference to the information which your forms require from applicants. Do these require any showing of cash flow of the applicant that will indicate his prospects of being able to meet the obligations of putting the station on the air?

Mr. LEVY. Yes. If the applicant in his application relies upon his personal balance sheet then he has to show an excess of current assets over current liabilities and over long-term liabilities becoming current next year to show he can meet that particular commitment. If, however, he has a bank loan of, say, a half million dollars and we have in addition to that his balance sheet which may not show current assets but shows assets of all kinds in excess of liabilities so that we can simply second-guess the bank and make some sort of judgment of whether the bank is crazy or not in offering funds that would be sufficient in that case.

But if he depends upon his own personal position, then he is required by the form and in our processing we determine whether he has current and liquid assets in excess of current liabilities, and that portion of the long-term liabilities becoming current in 1 year to determine whether he has funds personally to meet that commitment.

Mr. BROWN. But if he provides the bank loan as part of his financial statement then you assume the bank has made a good business judgment; is that right?

Mr. LEVY. That is right. All we attempt to do, we require him in addition to supply a balance sheet or the form calls for a financial statement which is not a term of accounting but gives us some idea simply of whether the bank is exercising some judgment in offering him the loan. It is just a matter of second-guessing but we do not in that—if he relies upon a loan from the bank then we do not require him to show in his balance sheet or financial statement that he has an excess of current assets over current liabilities.

Mr. BROWN. And a letter of intent is indication of the bank loan?

Mr. LEVY. Yes, sir. We have gone into this, of whether or not the letter from the bank is actually a commitment that does get very complicated. The Commission has changed its policy over the years, as a matter of fact. It requires more now than it did several years ago. It has gone through several proceedings that have indicated that it should have more, and it now insists upon more.

Mr. BROWN. You also require an estimate of the first year's anticipated operating expense and anticipated operating income?

Mr. LEVY. Yes, sir. We do not rely upon the estimate of income, however. We take the estimate of operating expenses, within very general terms we are able to make some sort of judgment of whether that is simply within the ballpark or not. Then we take that figure now—the figure used to be 3 months, the Commission changed it in 1965 to

require a showing of a full year. But it is on the basis of the applicant's own estimate unless we have some basis for making the judgment that that is entirely unreasonable. We do not rely, however, upon his estimate of expected income. We don't rely on that. We don't give him any credit on that.

Mr. BROWN. I am a little lost on what you mean by that, precisely. What do you mean you don't give him credit?

Mr. LEVY. I am sorry, I should modify that by saying that if he supplies some evidence of his ability to obtain actual income, in some cases an applicant will submit commitments that he has received from advertising or in other situations we have, ourselves, made an analysis of the particular market in terms of what television stations have been able to make in the markets in terms of gross income, and then on the basis of a judgment of ours, it has been generally our chief economist, we try to make some judgment that we can expect to rely upon his getting any income out of that market at all.

But it is usually a very minor consideration in a finding of financial qualifications. We can't, of course, give him any credit for this in terms of his ability to construct the operation and put it on the air in the first instance.

Mr. BROWN. Really, my question does not relate to construction. It relates to that first year of operation. Let me put the final question and you can go back and elaborate a little further if you will.

Do you have a judgment of what the prospects of profitable operation of a UHF station in various markets might be, and if the prospects for profitable operation are dim do you require any showing of sources of revenue which will sustain that station until anticipated profitable operation can be had?

Mr. LEVY. The Commission policy at present, the reason for the policy of requiring that the applicant show that he has enough assets on hand to meet the complete cost of operation during the first year—

Mr. BROWN. One year?

Mr. LEVY. One year—are because the Commission knows well that rarely is there a successful—that is, a profitable—UHF operation during the first year or, for that matter, even most VHF operations, unless you are talking about a major market and a station with a network affiliation.

We know that the station will generally operate at a loss. It is true that the station may operate at a loss well beyond the first year. But the Commission has made a policy judgment that its requirement for financing will include only a showing of its ability to meet the operating expense during the first year and that, as I say, was a change in 1965 from the requirement that the applicant show that he can meet the operating expenses only during the first 3 months of operation.

Mr. BROWN. The only observation I would make, and you verified some concern that I have, is that in the granting of a license—I am not sure that the policy of requiring that the applicant have enough liquid assets to cover the operation for 1 year, and the assumption of no income for that year is really a valid approach to the problem, because it seems to me that one has to consider the possibility of a loss of 20 percent over, say, 5 years, and then you get into a rather vague question as to whether or not the other resources of the applicant

are such that he is going to have in the third, fourth, and fifth year resources to cover the cost of his operation or, indeed, whether he has gone into this operation with the anticipation of loss and then trading in the license. I present it only as a collateral problem to the whole piece we are in in this situation but I do think that it is worth some consideration.

I presume that the Commissioners have given it some consideration. The CHAIRMAN. Mr. Moss.

Mr. Moss. I want the record to show quite clearly that my questions did not go to the matter of common accounting. I regard that as extraneous to any discussion I had.

Mr. BROWN. If the gentleman will yield, I was not referring to the gentleman from California.

Mr. Moss. I believe the comments of the Chairman of the Commission gratuitously injected the question of common accounting and utility practice. Your question on 314, question 4(f) asks for one or the other. That is the question which has been promulgated by the Commission, not by this committee nor by this member. And it does not require common accounting practice to answer it.

The fact is, that it was omitted in this instance, it was not answered. Then on this question of the long statement of policy here which is interesting, if we had found a single thing in the questioning this morning to back it up the fact is that there were not shown to be sufficient current assets in this instance on the balance sheet to operate a station. There was no commitment of a bank loan. However charitable one might be that letter from the bank in Cincinnati was not a loan commitment. It was no more of a loan commitment than an ad would be from a bank mailed to me at my home inviting me to do business.

Anyone who has the assets, anyone who can reach an agreement with a bank, can borrow money and get a line of credit. That is the bank's business and that is just about all that letter says because the conditions require that there be certified proof and that there then be agreed-upon terms. Those terms were not referenced in the letter at all as having been already submitted. So the matter of the deferred debt, which is supposed to show how it is amortized, that wasn't shown. So all your principles you stated in response to the statement of the gentleman from Ohio are interesting, but they appear to be principles and not practices.

Mr. BROWN. Will the gentleman yield?

My comment, and I fully agree that it is extraneous, with reference to accounting practice went to the comment made to the question by counsel that there was something wrong with the FCC in their accepting the Overmyer statement at appraised value of real estate property rather than depreciated value of real estate property. It is a small point, an insignificant point.

The CHAIRMAN. Mr. Smith.

Mr. ARNOLD SMITH. Just to conclude the record on Cincinnati, and in fact on the same point that Mr. Brown has referred to, since it has been the practice to receive financial sheets such as this whereby fixed assets are shown at appraised valuation, let me ask you this, Chairman Hyde: Does the Commission make any attempt to confirm the appraised valuations as shown on financial sheets such as Mr. Overmyer submitted?

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Mr. HYDE. We don't have a rule of general application on that. We might in a tax case. In this instance, in connection with the transfer, it is my recollection that there was an appraisal by an independent firm submitted to the Commission.

Mr. ARNOLD SMITH. Chairman Hyde, if such an independent appraisal was submitted to the Commission, it is not in the record which was certified by the Commission to the subcommittee.

I would request the chairman to have the FCC submit such an evaluation, if it in fact exists, so that we may have it in our record.

Mr. HYDE. Mr. Counsel, we have not withheld a single document in the record in this case. If the full supporting data is not in your possession now it is through some inadvertence. When we discussed this case last December the question came up as to the security for the loan which the Overmyer people had obtained from the transferee.

Mr. ARNOLD SMITH. That is correct.

Mr. HYDE. There was submitted in connection with this an appraisal of the properties that were given—

Mr. ARNOLD SMITH. Of the 23 properties, Chairman Hyde, that underlie the loans which were involved in the AVC transfer. But, sir, I am asking a question with respect to the appraisal of assets shown here on this statement, August 31, 1964, for Cincinnati.

Mr. HYDE. The only appraisal that I have any recollection of is the one discussed in the earlier hearing which I presume you have.

Mr. ARNOLD SMITH. Yes, sir, we have that.

Mr. HYDE. That is the only one I know of.

Mr. ARNOLD SMITH. May I conclude, that unless the Commission furnishes information to the contrary, there was in fact no appraisal submitted or requested with respect to the appraised valuation of these fixed assets shown on the balance sheet dated August 31, 1964. (See appendix, p. 348.)

And my last point, Chairman Hyde, refers to this problem which has been discussed here concerning language of the balance sheet; the fact that to someone an item may mean one thing and to another individual something else again; and indeed the complete absence of knowledge about just general aspects of balance sheet. Would it be a prudent policy for the Commission to request from its applicants copies of their income tax statements so that the Commission would in fact have standard financial information before it at the time it makes its determination that an applicant is or is not qualified?

Mr. HYDE. I hope we have not given you an impression here that the Commission is not knowledgeable as to the reading of balance sheets. Members of the Commission, themselves, members of the staff are experts in this area. Whether or not it would be appropriate for us to ask an applicant to submit a copy of his report to the Internal Revenue Service is one on which I would want to give some thought before answering. I am not sure that this would be good policy.

Mr. ARNOLD SMITH. I might inject a caveat here that as you are well aware, banks and financial institutions customarily request this kind of information as a basis for support of loans which they are requested to extend. I am only asking for the record whether or not you felt such a change for FCC purposes would be a wise one.

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The CHAIRMAN. The committee will have to adjourn for the time being. We will adjourn to meet here on Friday at 10 o'clock. We have an executive session tomorrow.

Mr. HYDE. Mr. Chairman, I just recall that I am on notice to meet with the Administrative Council on Friday at 10 o'clock. Perhaps you would not need me. I am a member of the Council.

The CHAIRMAN. If you can be here, be here; if not, we will have the rest of the Commissioners here.

Mr. HYDE. Thank you, sir.

(Whereupon, at 12:40 p.m., the committee was adjourned, to reconvene at 10 a.m. Friday, July 19, 1967.)

TRAFFICKING IN BROADCAST STATION LICENSES AND CONSTRUCTION PERMITS

FRIDAY, JULY 19, 1968

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will be in order.

Welcome back, Mr. Hyde. I did not think you were going to be with us this morning.

FURTHER TESTIMONY OF HON. ROSEL H. HYDE, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ROBERT H. ALFORD, CHIEF, TRANSFER BRANCH; ROBERT J. RAWSON, CHIEF, RENEWAL AND TRANSFER DIVISION; JAMES O. JUNTILLA, DEPUTY CHIEF, BROADCAST BUREAU; JAMES B. SHERIDAN, FORMER CHIEF, BROADCAST BUREAU; SAMUEL L. SAADY, CHIEF, TELEVISION BRANCH; MARTIN I. LEVY, CHIEF, BROADCAST FACILITIES; GEORGE S. SMITH, CHIEF, BROADCAST BUREAU; ROY J. STEWART, ATTORNEY ADVISER, BROADCAST BUREAU; LLOYD R. SMITH, ENGINEER, BROADCAST BUREAU; AND K. GORDON OPPENHEIMER, ATTORNEY, BROADCAST BUREAU

Mr. HYDE. I found I could be here.

The CHAIRMAN. We hope this will not take too much longer. We would like you and the same group to take the stand again.

Mr. DINGELL. Mr. Chairman, while we are waiting for the witnesses to assume their proper places, may I ask the Chair whether or not the letter of May 7, 1968, directed by the chairman of this committee to Mr. Hyde requesting a series of items of information, has been fully and properly complied with?

The CHAIRMAN. Could I ask counsel to reply to that?

Mr. ARNOLD SMITH. No, sir; it has not.

Mr. DINGELL. What information is yet outstanding?

Mr. ARNOLD SMITH. The information that is presently outstanding, is, first, the record of long-distance phone calls that were made between the periods of November and December of 1967 and January through March of 1968 of all of the members of the Commission as well as the employees of the FCC's Complaints and Compliance Division of the Broadcast Bureau. This record of telephone calls, both incoming and outgoing, to date has not been received.

Second, we have not been assured that all papers, documents, reports, memorandums, or writings (including individual work papers and other papers from the Commissioners' own files) which were before

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each member of the Commission at the time it took action on the various Overmyer applications—from acquisition of the 5 CP's through their transfer to U.S. Communications Corp.—have been turned over to the subcommittee. These important items were requested by Chairman Staggers in his letter to the Commission of April 12, 1968.

Mr. DINGELL. The questions that were submitted last December to the Commission, have those been received?

Mr. ARNOLD SMITH. Yes, they have been received.

Mr. DINGELL. Including the items requested by Mr. Moss and myself.

Mr. ARNOLD SMITH. Yes, sir. As best we can determine, the Commission has stated that the record which sits on this end of the dais is a complete record of the Overmyer transfer.

Mr. DINGELL. Under the circumstances, Mr. Chairman, I wonder if Mr. Hyde would want to comment when the requested information will be forthcoming from the Commission.

Mr. HYDE. Chairman Staggers, members of the committee, we have endeavored to supply to the committee all of the papers and reports that were prepared by the staff in the regular course of business. It is my understanding that the letter requested that we submit the papers which the staff had prepared for the Commission. I believe we have done that.

There was a request which counsel has referred to for information regarding incoming and outgoing telephone calls to members of the Commission, particularly to myself. There was a request for what seemed to me to be the individual papers within the immediate office of the Chairman and of other Commissioners.

I called the office of the chairman of the committee to ask for a conference on these matters. Then later I addressed a letter to the chairman, dated May 9, asking in writing for a conference to discuss these requests.

Mr. DINGELL. The short answer, then, I would assume, is that item 1 in the letter directed to you, Mr. Chairman, by the chairman of this subcommittee has not been complied with; is that correct?

Mr. HYDE. I have asked for an opportunity to discuss this with the committee, believing on the basis of discussion you would be persuaded that it would be inappropriate to insist upon a record of my telephone calls. This is suggestive of the kind of information that is sometimes obtained by wiretapping.

I also believe that asking for the individual papers that a Commissioner might use in his examination of a case is getting very close to the reasoning process of a member of the agency. I believe if I had had an opportunity to discuss this with the committee, it would not wish to intrude into this intimate, in the Commission, discussion of a case.

Mr. Moss. Would the gentleman yield to me?

Mr. DINGELL. Yes; I would be pleased to yield.

Mr. Moss. Mr. Chairman and Mr. Hyde, this is not a new issue. It occurred during the early stages of the hearing of the old Oversight Committee. It was determined not to be valid then and it is certainly not valid now.

The record of telephone calls was supplied to the committee then. Many internal memoranda requested by the committee were supplied to the committee notwithstanding the fact that there were meetings held by the members and the chairmen of the various so-called inde-

pendent regulatory commissions in an effort to act in concert against the committee.

I for one find no validity or no persuasiveness in the argument you have just put forward. For 14 years I have sat in this House as chairman of the Subcommittee on Government Information and dealt with many of these cases. I think that your role here is really to carry out certain of the delegated authority of Congress. As I pointed out the other day, we retain that responsibility.

Mr. HYDE. Congressman Moss, if you have any information, charges, irregularity that would be disclosed on which relevant information would be obtained by looking at a record of my telephone calls or my office papers, I will be glad to supply them to you, but absent some indication of some irregularity—

Mr. Moss. I don't know what this committee will do, but if we encounter a refusal from you and it is not overruled by this Chair and you are ordered to produce the record, I will bring you before my Subcommittee on Foreign Operations and Government Information and I guarantee you I will get the information I want.

Mr. HYDE. I have asked you, Congressman, to give this request some further consideration. I did very respectfully in a letter of May 9, giving the point of view I have expressed here previously, ask that it be given some attention. What I wished to do was to have the point I make examined on its merits.

I have not wished to defy the committee. I would like now if I may have your permission to submit a brief on this matter.

(The document requested appears in the appendix; see item 29, p. 685.)

Mr. DINGELL. I am curious to know of certain other happenings reported to us by the staff regarding the time when our staff went down there to secure certain books and records. I am advised that papers which were working papers and documents of the FCC, which were at that time being scrutinized by members of our staff, were taken from their hands by members of the FCC staff and our staff has been compelled to submit letters to the FCC identifying the decisions, the documents and so forth which this committee was interested in securing.

Is that part of the FCC's policy?

Mr. HYDE. The agency must, in order to do business, protect its records against unnecessary exposure. We believe it is good administration to have a reasonable security of papers prepared within the agency and we have a rule which protects them for official purposes, which says that they may not be released except upon written request.

All the staff would have been doing in this instance would have been complying with a rule of general application.

Mr. DINGELL. Do you regard that general application as applying to the officers of this committee acting on official business?

Mr. HYDE. Yes; I do. I don't think it is an unreasonable regulation. It merely requires when there is a request for such papers that a written request be made for them. They were supplied immediately upon receipt of the written request.

Mr. DINGELL. You have been under notice that this committee has been inquiring into two matters down at the FCC for some period of time. A written request was submitted to you by the chairman of this committee for a whole series of things, including memoranda,

correspondence, data received by each and every other Commissioner with respect to the individuals concerned, letters and writings, including field reports and interviews other than material which has been furnished above.

How much more than that do we have to submit to you, Mr. Chairman, to secure the cooperation of your agency?

Mr. HYDE. I believe the only matters not supplied were the ones mentioned by counsel.

Mr. DINGELL. What do we have to give you to secure your cooperation when investigators of this committee are sent down to look at the FCC's files?

Mr. HYDE. I believe we have cooperated.

Mr. DINGELL. Do you regard taking papers from the hands of our investigators to be cooperating with the committee?

Mr. HYDE. I have never had such a report of such an incident until this moment. I do expect the employees of the Commission to comply with our rule regarding—

Mr. DINGELL. Does your rule apply to investigators of a subcommittee?

Mr. HYDE. Yes; indeed it does.

Mr. MOSS. What is the statutory basis for your rules?

Mr. HYDE. I would like to supply you with a memorandum on that, Mr. Congressman.

Mr. MOSS. I would be most interested. I would hope it is better than a recast of the 1958 position of the regulatory commissions which I point out this committee did not honor then and I do not feel that we should honor now.

I will move, Mr. Chairman, that the Commissioner be directed to promptly comply with the requests addressed to him under the signature of the chairman of this committee on May 7, 1968.

Mr. HYDE. Congressman Moss, the statute does give the Commission power to make regulations necessary to the performances of its functions. It does have that general power. I would like to give you a more complete response if I may have time to do that.

Mr. MOSS. Whenever the Congress has wanted to have a statute applied to its own committee and to bar its own committees from access, it has spoken with great care and in your statute it did not speak in that manner.

I renew my motion, Mr. Chairman.

The CHAIRMAN. The Chairman of the Commission should comply with the request.

Mr. HYDE. I would like to be heard further on my request of May 7 before you make your ruling.

Mr. MOSS. There is a motion on the floor.

I move the previous question on the motion.

Mr. DINGELL. I support the motion, Mr. Chairman.

The CHAIRMAN. Will the Chairman comply with the motion?

Mr. HYDE. May I appeal this request to your full committee and submit a brief on it?

Mr. DINGELL. I have to raise a point of order on that, Mr. Chairman. I believe that is inappropriate. As you know, I have considerable respect for the Commission, but this is an internal matter within the committee.

Mr. HYDE. Chairman Staggers, may I respectfully urge that the request that you are addressing to me is one that would be of concern to every agency in the Government. It is one of very grave significance.

I believe, sir, that it would be worth more attention than we could give it at this moment.

Mr. DINGELL. I would like to continue if I may, Mr. Chairman. I will defer on this matter until we have this before us in executive session, but you indicated, Mr. Chairman, the function of the FCC was to protect its papers against all unnecessary intrusion. Do you regard the inquiries of this committee as unnecessary intrusion?

Mr. HYDE. No.

Mr. DINGELL. Does that mean, then, the inquiries of this committee will be handled in a more dignified fashion than in the instance to which I have referred?

Mr. HYDE. We have endeavored to honor them with respect and dignity and we have supplied you a very substantial file. We have deferred only, and that for the purpose of discussing the question, in respect to the request for telephone calls in and out of the offices of the Commissioners and their individual papers.

Mr. DINGELL. Are you preparing to tell us, then, that the files that were snatched from the hands of our investigators were personal papers of the Commissioners?

Mr. HYDE. I must inquire about this incident because this is the first information about this that has come to my attention. We have as a matter of policy endeavored to cooperate fully with the committee. If there has been an instance where papers have been snatched out of the hands of investigators, then I should like to look into it.

Mr. MOSS. I would like to point out, and I don't think the Chairman of the Commission is unfamiliar with the nature of the inquiry which was directed against former Commissioner Richard Mack in 1958 and 1959. I would point out there were very significant findings made by the then Oversight Committee of this House on the basis of some of the detailed telephone records.

Mr. HYDE. Is my personal integrity under examination here?

Mr. MOSS. Not unless you want to put it there by fighting over whether you are going to forthrightly respond to the requests of this committee.

Mr. HYDE. I would ask this committee to treat me with a little respect and dignity. I am an individual with some personal concerns.

Mr. MOSS. You are also Chairman of the Federal Communications Commission. This is an investigation by the Congress of the United States and it is asking for material that it requires and I believe it is the better judge of whether it requires it than you are. I do point out in the instant case there is a most unique series of developments which go contrary to the established policies and practices of the Commission itself. That in itself raises a question as to why.

Mr. DINGELL. If the gentleman will permit, Mr. Chairman, I wonder if perhaps maybe it could be the information on the incident referred to could be submitted in an appropriate form to the Chairman of the Commission for such comments as he chooses to make and for him to give us a clear statement as to the policy of the Commission on matters of this kind.

It is my purpose to find whether or not the behavior of the Commission employees are in conformance with official policy of the Commission, whether it be the official policy of the Commission to deny staff members of this committee access, full access to information sought by this committee, and to have a very clear pronouncement on

two points: One, a clear policy of the Commission on this matter, and, two, whether or not the behavior to which I have alluded, after careful screening by the Chairman of the Commission, complies with the policy of the Commission so we may judge in the future what further action is required by this committee in order to have the papers which are sought by this committee in the course of its official inquiry made fully available to the committee and to our staff members.

Mr. Moss. I would supplement that by asking for the memorandum of law and statutory basis for the policy.

I point out there was a law passed in 1966 which became fully effective in 1967, which requires disclosure except under certain conditions, and that law states that it is not intended to limit in any manner the availability of information to the Congress.

So in consideration of your policy, I suggest you read that law. If you are attempting to plead executive privilege here, I invite your attention to that privilege as it has been defined by the present and the past Presidents of the United States where it can be invoked only at their specific direction in each and every instance.

Mr. Hyde. Congressman Moss, of course, I am not undertaking to invoke executive privilege. We are not a part of the executive arm of the Government. We are an administrative agency. I am urging upon you not to subordinate, not to require us to impair the administrative process. I am also asking you as a matter of individual concern that I be accorded a measure of respect as an individual.

The fact that I am a public official, it seems to me, does not deprive me of all interests or concerns about my correspondence, my telephone calls, my rights to transact business without the feeling that there will be a subsequent review of my telephone communications.

Mr. Dingell. Mr. Chairman, I wish to respond to those comments by indicating that I intend to treat the Commissioner with accord and dignity and I intend to do the same with the other members of the Commission.

I have sought to make this inquiry I have made this morning in an extremely restrained and dignified fashion. I do not believe the questions you have raised are of any merit. The question is whether the requests of the chairman will be fully honored since he was acting under the direction of the committee.

We have submitted certain requests to the chairman. I hope the Chair will assure that these matters will be made fully available to us and I would like at this time, Mr. Chairman, to respectfully request that we proceed to the other matters before us.

Mr. Moss. Before proceeding, I would like unanimous consent to place in the record a memorandum of law which was prepared by use of the Special Subcommittee on Legislative Oversight, Committee on Interstate and Foreign Commerce, on October 17, 1967, when a similar question arose before that committee.

As far as I know, the law in this matter has not been diluted. If anything, it was strengthened by the enactment of the information statute in 1966.

The CHAIRMAN. I might say it is the "Right of Access of the Special Subcommittee on Legislative Oversight to Civil Aeronautics Board Files and Records." Without objection, it will be placed in the record and we will proceed on to our other business.

(The document referred to appears in the appendix, p. 687.)

The CHAIRMAN. You may proceed, Mr. Smith.

Mr. ARNOLD SMITH. As a fitting postscript to Wednesday morning's proceedings, and also as fitting framework for today's session, I should like to quote the Commission's words which were supplied to the subcommittee in answer to question 10 of the 26 questions submitted to the Commission members for their individual responses with respect to the Overmyer transfer.

I am now reading from page 12, and I shall just excerpt since the full answers have already been supplied for the record. (See appendix, pp. 609-673.)

Applicant's funds are analyzed both to determine their overall sufficiency and their actual availability. If an applicant intends to borrow money to finance his station, he must file a loan commitment setting forth the terms and conditions of the loans. Initial verification of cost of revenue estimates is limited to examining the supporting documents, balance sheets, letters of credits which are filed with the application.

If these documents show firm commitments, if the estimates appear reasonable and if there are sufficient funds to construct the station and operate it for the first year, the staff determines if the applicant is financially qualified. However, if estimates for supporting documents involve questionable items, the applicant is requested by the staff to furnish additional information.

Proof of financial qualification is further governed by section 3 of application forms for new stations, FCC form 301 for assignment of CP's or licenses, FCC form 314.

As can be seen, this financial qualifications section is designed to elicit detailed information concerning an applicant's financial ability. Page 2 of Section 3 sets out extensive requirements for the manner in which the availability and the liquidity of funds must be demonstrated.

The matter of liquidity is covered in considerable detail in the application form. Further in the case of thin corporations, the applicant's financial proposals are carefully scrutinized to assure that the licensee's liquidity will not be unduly impaired in early years of operation. Net worth is an additional factor used in appraising financial ability.

Where the net worth is substantial and relatively unencumbered and some indication that an applicant has some financial resources beyond those immediately relied upon. Of course, net worth is inconclusive when it rests upon security, closed corporations, personal household goods, et cetera, absent a specific commitment to use such properties if needed.

With those words of the Commission in mind, we should like this morning to turn, first, to a discussion of the Atlanta CP application which Mr. Overmyer submitted to the FCC.

Chairman Hyde, where in the memorandum of your staff, dated December 15, 1964, was a determination made that Mr. Overmyer was financially qualified to obtain this permit, and on what basis, Commissioner Hyde, was this determination made?

Mr. Hyde. May I ask Mr. Juntilla, the Deputy Chief of the Broadcast Bureau, to answer that question? He has the staff report before him.

Mr. ARNOLD SMITH. Please identify yourself.

Mr. JUNTILLA. James Juntilla, Deputy Chief of the Broadcast Bureau.

On page 2 of the item you refer to, there is a definition of the construction costs, estimated cost of operation for the first year, the estimated revenues, the statement that Mr. Overmyer's net worth is in excess of \$5 million, has agreed to guarantee all cost of constructing and operating it. Then there are references to loan commitments.

This is the discussion I think you averted to.

Mr. ARNOLD SMITH. Mr. Juntilla, where, sir, in that paragraph that you refer to, is there any discussion of the bank interest charges on

the alleged \$400,000 bank loan; where in that paragraph is there any discussion of the equipment installment payments; and, where is there any discussion of interest payments on the equipment credit allegedly extended to Mr. Overmyer?

Mr. JUNTILLA. There is none.

Mr. ARNOLD SMITH. Why was there no mention of these costs in this particular paragraph, Mr. Juntilla?

Mr. JUNTILLA. There is a generalized discussion of the costs and of the funds that would be forthcoming with obviously heavy reliance on the position of the Overmyer companies.

Mr. ARNOLD SMITH. Mr. Juntilla, there is, sir, I believe, a pad and pencil in front of you. I would like to take just a very brief moment to go through some rather simple mathematics. To refresh your recollection of the actual statistics, I am having handed to you a copy of that part of the financial application wherein there are indicated the various estimated costs to be incurred with respect to the permittee.

I also have reference to appendix A in the San Francisco application and in the memorandum submitted by the Broadcast Bureau, dated September 22, over Mr. Alford's signature wherein the same cost figures are listed.

If you do not have an extra copy of this, you can certainly refer to your San Francisco memorandum. (See appendix, p. 365.) If we look first at the cost or expense side of the ledger, it would appear that if we total up the purchase price of \$100,000, construction costs of \$455,000, and operations costs of \$300,000, we would derive a total of approximately \$855,000.

Mr. JUNTILLA. All right.

Mr. ARNOLD SMITH. Then, we add estimated revenues of some \$200,000, and bank and equipment credits of \$700,000. We total to \$900,000.

Mr. JUNTILLA. Yes.

Mr. ARNOLD SMITH. On the face of it, therefore, making reference again to your paragraph on page 2 of the memorandum, it would appear that Mr. Overmyer by some \$45,000 is qualified to obtain this permit. However, if we take your figures, gentlemen, which are listed in appendix A of the San Francisco station, perhaps a different picture is seen.

For example, utilizing figures listed in appendix A of the San Francisco application memorandum, dated September 22, it would appear that there are some additional sums to be added to the figures already supplied. First, we shall have to add 16 monthly equipment installments of \$80,000 and interest payments of \$42,000. This results in some \$120,000 to be added to the cost figure of the ledger.

If my mathematics are correct, it would appear that Mr. Overmyer on the face of the application is some \$80,000 shy of being financially qualified, based on your own figures.

Mr. JUNTILLA. Reliance is also placed on the ability of Overmyer and his companies to provide any further financing that may be necessary.

Mr. ARNOLD SMITH. I see. You mentioned further reliance is placed.

Isn't it a fact that since Mr. Overmyer on the face of his application is \$80,000 under that amount projected as necessary to put the station

on the air for 3 months, virtually all of the reliance is placed on his alleged commitment of personal and warehouse resources?

Mr. JUNTILLA. There is no doubt great reliance was placed on that facet.

Mr. ARNOLD SMITH. Did we not determine on Wednesday that it was dubious at best, that Mr. Adams, executive vice president of the communications company, could in fact commit Mr. Overmyer personally in these permittee applications without Overmyer's own personal guarantee, his own signature readily apparent to support such a commitment.

Mr. JUNTILLA. It was accepted as a reasonable assurance coming from Mr. Adams as vice president of the broadcasting companies that he could not make this commitment without practically committing Mr. Overmyer, who would be the sole stockholder.

Mr. ARNOLD SMITH. I thought that we were all in agreement that the commitment of Mr. Adams was of questionable validity. However, putting that fact aside, assuming that the commitment was, in fact, a valid one, was it not also established that Mr. Overmyer's personal financial condition at August 31, 1964, showed a liquidity of only \$963.14?

Mr. JUNTILLA. Yes, I believe you are right on that. However, the warehouse companies showed net assets over current liabilities of roughly a million dollars.

Mr. ARNOLD SMITH. To refresh your recollection, Mr. Juntilla, did we not also establish that the Commission was not certain exactly what the word "surplus" meant on the balance sheet that Mr. Overmyer submitted on that date and that it was also established, was it not, that there was no attempt made by the Commission to ascertain exactly what these fixed assets of Mr. Overmyer were, what their valuation was.

Mr. JUNTILLA. I was not referring to the fixed assets. I was referring to the net liquid position of the warehouse company.

Mr. ARNOLD SMITH. Mr. Juntilla, it is a matter that is really self-evident that the financial condition of Mr. Overmyer submitted to the Commission is based on appraisal values given to assets. And that notwithstanding Overmyer's appraisals, his liquid assets—the ones that he might be able to convert quickly into ready cash for permittee purposes—would not be sufficient to put both the Atlanta and Cincinnati stations on the air.

Mr. JUNTILLA. In response to that, Mr. Smith, you referred to the appendix on the San Francisco item, using it as a working document.

It there sets out the assumptions on each of the items, assumptions as to bank credit and assumptions to all outside financing. In the item itself, it also makes an assumption with respect to a reasonable revenue projection and reasonable reliance on Mr. Overmyer's asset position in the companies.

The Commission made the determination that it was a reasonable risk to find him qualified for these six permits.

Mr. ARNOLD SMITH. I do not wish to jump the gun. We will consider this in full detail when we arrive at the San Francisco application. Suffice it to say, however, on the face of your memorandum submitted to the Commission for its determination in the public interest that Mr. Overmyer was financially qualified to have these permits, there was an absence of these very crucial cost factors such as install-

ment payments and bank interest, that would have indicated to the Commission that Mr. Overmyer, excluding any personal net worth and net worth of his warehouse company, was not financially qualified.

Mr. JUNTILLA. The entire cost of construction is set out, Mr. Smith. The particular items that you stated are not included. You are quite correct.

Mr. ARNOLD SMITH. Chairman Hyde, were you aware at the time the Commission passed on this application that Mr. Overmyer's financial condition, as indicated in this paragraph—did you determine, excluding his own personal statement and the assets of his warehouse company, that he would in fact be able to construct and operate this station for the required 3-year period.

Mr. HYDE. The recommendation of the staff was that he had the qualifications to undertake this project.

If the Chair would permit, I would like to discuss this matter of financial qualifications very briefly. I would like to present a viewpoint which I trust you will find reasonable.

The act authorizes the Commission to prescribe what facts should be required in an application to show legal, technical, and financial ability. If the Commission wished to, they could set up conditions which would require an applicant to show that he had money in hand sufficient to construct and operate a station for a full license period of 3 years.

Mr. KEITH. Mr. Chairman, you said "legal, technical, and financial." It would seem to me, sir, that prior to the entertaining of the financial qualifications and technical qualifications of an applicant, you would be concerned about the legal qualifications.

Mr. HYDE. We would, sir.

Mr. KEITH. If you are going to discuss all three, I am particularly interested in the legal. I admit that the emphasis of the discussion here has thus far been on the financial. Perhaps you should pursue the financial, which you started to do, but I want you to know that I at least am concerned to an equal extent with the legal aspects.

Mr. HYDE. As a matter of fact, the test of qualifications is very broad. It covers legal, technical, and such other qualifications as may be relevant. Of course, the primary legal qualification is to be a citizen of the United States or, in the case of a corporation, no more than one-fifth of its stock may be held by, and no officer may be, an alien.

Mr. KEITH. If I understand the legal qualifications correctly, the law spells out certain intents with reference to the policy of the Congress. To my way of thinking, that is a major issue.

Mr. HYDE. You are quite right. This short statement does not comprehend the entire series of legal requirements. There are such things as a waiver of any property right to the frequency. An applicant must, of course, present a case that will assure the Commission the operation will be in the public interest.

Mr. KEITH. The public interest is what I am speaking of from a legal point of view. Counsel has been pursuing the particular train of thought. I have read the dissenting opinions and I have been impressed by them and they do not deal with the details as much as with the philosophy established as a matter of policy by your Board.

As I have said, on other occasions from this rostrum, I hope we are going to get back into the philosophy.

Mr. HYDE. I did wish to discuss the policy of the Commission in relation to financial qualifications.

Mr. VAN DEERLIN. Would the gentleman yield?

Mr. KEITH. I would be pleased to yield to the gentleman from California.

Mr. VAN DEERLIN. As a matter of curiosity, what in Mr. Overmyer's background commended him to the attention of the Commission to spread his influence in five additional major communities in the United States?

Mr. KEITH. That is very pertinent. We have an important question here, it seems to me. It is his acquiring influence in a particular community where we find that he is interested in commerce, industry, banking, perhaps even a newspaper.

Mr. HYDE. I know of none.

Mr. Moss. In Toledo he had a newspaper, according to his own testimony.

Mr. KEITH. We have the announced policy, as I understand it, of trying to inhibit the control of the news media from devolving into the hands of one individual.

Mr. HYDE. Congressman Keith, may I respond by discussing, first, the policy as to financial qualifications, the reasons for the policy which the Commission has established, and then take up these other matters?

Mr. Moss (presiding). I think we will permit the counsel to proceed. This is not foreclosing you and I would be interested, but I want the matter confined to the specifics. I realize the Commission has broad grants of authority to make rules and regulations, issue standards for which applicants must adhere to in order to be considered.

The question of counsel have gone to the form which the applicant is required to submit to the Commission, the backup data and the evaluation within the Commission. Would you address yourself to those specifics and then the committee would be most interested in hearing your discussion.

Mr. HYDE. I did wish to discuss the overall policy in relation to just the financial responsibility at this point, if I may.

Mr. Moss. We want it tied more into this case. In other words, if you want to use this case and the manner in which it was handled to illustrate the broader policy, that is all right, but we are always faced with problems of time.

I do not want a long discourse on policy matters which I have heard repeatedly during my 14 years' service on this committee.

Mr. HYDE. I will make it very brief.

Mr. BROWN. There are one or two things I would like to suggest or ask.

In this case are we not dealing with two things, first, the question of facts, whether the facts were presented and the requirements of the Commission that were factual were met? In other words, whether all of the blanks on the form were filled out and were filled out properly, and, secondly, whether the judgment of the Commission was proper in regard to the decisions it made based on those facts which it had as well as the general principles of policy by which the Commission guides itself or is guided by law.

It seems to me that counsel is still pursuing the question of whether or not—and correct me if I am wrong—all of the facts were gathered

on which this judgment should be made and then whether or not the judgment at least in the financial area of the Commission was proper.

I think it is appropriate that we hear with reference to the financial area from the Chairman of the Commission. But I do think in response to Mr. Keith's remarks that there are many, many other areas here which we ought to get into and some of them, as he stated them, are not exactly what I understand Commission policy to be.

Mr. Moss. I think it might be well to proceed or else we are going to spend all of our time in a discussion that will not be devoted to the paramount matter here.

Mr. KEITH. I would be willing to do so, Mr. Chairman, and I have been trying to do so for the last 3 days, but it seems to me we are just building one brick in a foundation and that is not the keystone. I hope we are going to get down to fundamentals pretty soon.

Mr. DINGELL. I am in accord with what the gentleman from Massachusetts said.

Mr. KEITH. You will lose the attention of your committee and destroy continuity of interest if we just keep on building this wall so slowly. I want to lay more bricks today.

Mr. Moss. We have just had read the requirements of the Commission. Counsel is endeavoring to determine whether those requirements were met by the Commission and the Chairman has been asked to address himself to that.

Mr. KEITH. I have asked for the law and it says "shall set forth such facts as the Commission may by regulation prescribe as to the citizenship, character, financial, technical, and other qualifications."

Mr. Moss. It is the rules and regulations of the Commission which shall be examined at this point in order to find out what the requirements are. This is broad authority that the Congress has made and we are questioning what the Commission has done with this authority.

You may proceed, Mr. Hyde.

Mr. HYDE. Counsel asked me what was the basis of the Commission's decision that this applicant was qualified. I could undertake in about 2 minutes to give you the basis of my answer that the Commission's judgment under the circumstances was reasonable.

I had previously stated that the Commission might under the grant of authority from Congress require an applicant in each instance to show that he had money in hand, liquid assets sufficient to build and operate a station for a full 3-year license period if we wished to do so.

I would suggest to you that any such policy would be very restrictive, that it would bar everyone except those—

Mr. Moss. Mr. Chairman, you are going far afield. We know you have that authority. Let's discuss the authority that the Commission by formal action has decided to operate under.

Mr. HYDE. I will only be a minute to do this.

On the other hand, the Commission might be so lax in its requirements as to financial ability as to find itself in the position of handing out grants to people who had no substance and who could not reasonably be expected to put a station on the air.

I think what the Commission has done has been to make a reasonable compromise. They have seen fit to require a sufficient showing to indicate ability to build this station and under our more recent test to operate a year. Previously it had been 3 months. Now it is 1 year.

Now, it is important that there be access to this industry by new blood, by new interests. It is very important that the development of UHF be encouraged, not restricted, in order to implement the policy of Congress as enunciated in the all-channel law.

It is particularly important to encourage construction of UHF stations because it is in this area where we have most of the reservations for educational TV and where we have the possibility of enlarging the basis of the television industry, perhaps making provision for a fourth network.

Mr. DINGELL. I am interested in what the Chairman has been saying, but I would hope we could get ourselves back on the track. It is now 5 minutes after 11. The House will meet at 12.

I would respectfully request at this time that the Chairman of the FCC be requested by the Chair to defer further comments of this kind and we get back to the question of whether the FCC policy in the Overmyer case was fully followed. I don't think whether we have a fourth network for UHF or VHF used for educational TV is of any relevance to the matter before us.

Mr. BROWN. Mr. Chairman, one of the problems in this case, it seems to me, relative to financial opportunity of Mr. Overmyer to make a success of the licenses he acquired, is whether or not the FCC considered his applications and the granting of construction permits en bloc, or whether the cumulative effect was taken into account or whether they were considered as individual applications and, as granted, the financial base which he showed was applied to each individual application without consideration of the fact that he was building an obligation of some size by the cumulative effect of the applications he had received.

Mr. HYDE. We did take into account the possible cumulative effect of the several applications. The grants were made one at a time, but in each instance there were cross-references and the Commission was concerned as to what the cumulative effect might be. As a matter of fact, in the last one which I think was the Dallas, Tex., application, we thought he had gone as far as he ought. We raised a question in a hearing notice on this.

Mr. BROWN. What weight, if any, is given to the fact that he had been granted construction permits? I don't want to make a judgment here, but it would appear they had not been pursued with diligence or dispatch, and that then there was no return on the investment that he might be putting into those construction permits.

Mr. HYDE. We were concerned about these matters. We have been concerned about applications for UHF stations in particular.

Mr. BROWN. Why?

Mr. HYDE. Because concern that applicants might be asking for the franchise to speculate on, perhaps to resell, to defer building until someone else, let's say, developed this phase of the industry to where it would be obviously profitable to invest your money.

Mr. BROWN. That is exactly the point and I just want to pursue this for a minute. Isn't it true at the time these applications were being made, a UHF construction permit would be an extremely speculative property because nobody really knew then whether a third or fourth station in some of these markets that was UHF was going to be successful or was going to be unsuccessful?

The fact is very few of them had been successful and now history has developed a rather significant pattern of their not being successful very quickly.

Mr. HYDE. That is exactly right, Congressman Brown.

However, Overmyer's first application was Toledo. I think he applied in 1963 or 1964 and got the permit in late 1964 and put the station on the air within a year. This is rather better than the usual one.

May I correct that statement?

He went on the air in 1966. There have been a number of instances where grantees of UHF have failed to do this. Overmyer's record was relatively good.

Mr. BROWN. The prospect or the fact of success in the case of that UHF station—in other words, I want to know whether the FCC considered the fact that a second, third, fourth, and fifth station was going to cost him money not only to get on the air, but cost him money perhaps in operating losses and thus would have an effect on your judgment of his balance sheet.

Mr. HYDE. Yes, sir. We did take that into consideration and that is when we became interested when the application for Dallas came up.

Mr. BROWN. Because of the Toledo station?

Mr. HYDE. But there were substantial amounts gained from experience.

Mr. BROWN. What was the experience with the Toledo operation?

Mr. HYDE. I think that went on the air in 1966.

Mr. KEITH. I don't want to let stand what you and Mr. Brown agreed upon, and that is that it was possible that one could speculate in these things.

Mr. BROWN. Don't misunderstand me.

Mr. MOSS. He means in the speculative sense.

Mr. BROWN. I did not mean speculative in terms of buying and selling, but it was a risky operation.

Mr. HYDE. And not an attractive one in which to speculate because of the rule which prohibits a transfer at more than out-of-pocket expenses.

Mr. KEITH. That is the main question we are going to come to eventually when we stop building this one particular brick.

Mr. MOSS. I must submit with respect to the kind of questions by counsel, I have sat on investigating committees ever since I have come to Congress and I don't see how it would be possible for him to build a foundation upon which this case must finally be judged without the line of questioning he has now initiated.

Mr. KEITH. I will abide by your judgment as long as I can constrain myself.

Mr. MOSS. I hope you will act with due restraint.

Mr. ARNOLD SMITH. Mr. Chairman, in the Communications Act, for an applicant to be legally qualified, he must be financially qualified and each application must stand on its own, and there must be a separate in-the-public-interest determination for each application.

In the first stage of our discussion, we are inquiring into the public-interest determination made for each of the five stations to see whether, in fact, Overmyer was financially qualified, hence legally qualified, to obtain these permits.

Secondly, we would hope to proceed to see whether or not when he had these permits renewed, he did so to keep them in salable status so that, third, he could traffic in licenses by virtue of his sale to AVC Corp.

These are the three areas that we hope to explore. We are now concluding our discussion on the Atlanta station.

Mr. BROWN. May I ask counsel one very quick question because I think it will eliminate some areas of concern.

There is no indication, and I don't want to tip your hand on the case or anything, but there is no indication in terms of the factual nature of legal qualification—citizenship and so forth—there is no question in that area that Mr. Overmyer was qualified.

Mr. ARNOLD SMITH. That is correct.

Mr. BROWN. The question you are pursuing in terms of legal qualification is primarily financial. I gather there is not a great deal of question in the technical area about his ability there.

Mr. ARNOLD SMITH. There may be some. We don't wish to pursue that. We wish to pursue only the matter of his financial qualifications because it is on the basis of his original financial qualifications that the transfer to AVC became necessary.

What in the Commission staff's memorandum, Chairman Hyde, justified Overmyer's \$200,000 revenue estimation for the first year of operation of this station? What support was offered for this figure?

Mr. JUNTILLA. None.

Mr. ARNOLD SMITH. Why wasn't support requested from Mr. Overmyer?

Mr. JUNTILLA. Revenues, if they are to be relied on by the Commission, do require support under Commission policies except that I think you will note in some of the items a projection of what the staff believed was a rather minimum revenue that could be expected from the operation of a UHF station, was projected, for example, in the San Francisco item. It did advert to what would be a reasonable projection of revenues for the station.

Mr. ARNOLD SMITH. I don't wish to interrupt, but that discussion of the \$1 million revenue projection for the six Overmyer stations came at a subsequent date.

My question is directed to this memorandum and the Commission's alleged finding in the public interest that this transfer should have been effected.

What support for the \$200,000 was provided?

Mr. JUNTILLA. \$200,000—none.

Mr. ARNOLD SMITH. What determination was made in this particular memorandum, or in any other supporting papers, in considering Atlanta and Cincinnati together as a group?

I would refer to Commission's pronouncements in the Sony broadcast decision and the Nelson decision which, if valid today, require that financial arrangements for all of the applicant's proposed stations be considered together to determine whether such applicant is financially qualified to construct and operate any of the proposed facilities.

It is true that the Commission did attempt such a review in connection with San Francisco and Houston.

But my question concerns Atlanta. Where was this determination made pursuant to the above decisions?

Mr. JUNTILLA. There was no such discussion in the item.

Mr. ARNOLD SMITH. I think we can now proceed to Pittsburgh after one last question on Atlanta.

Why wasn't this policy carried out with respect to Mr. Overmyer's application?

Mr. JUNTILLA. The Newport-Cincinnati item was granted on March 10, 1965. The grant of Atlanta was May 12, 1965. They were in rather close proximity in time. I think the Commission was quite aware of the Overmyer applications and the fact that there were multiple applications, but there was no specific discussion in this item.

Mr. ARNOLD SMITH. One concluding question with respect to Mr. Overmyer's warehouse company and the balance sheet which we discussed at some length on Wednesday in connection with Cincinnati. The balance sheet shows the current portion of long-term debt as \$257,188.

Mr. JUNTILLA. I just got out the document.

Mr. ARNOLD SMITH. Look where it says current portion of long-term debt. What did this represent? Was this amortization?

You were saying earlier, as I recall, that you were placing great reliance on Mr. Overmyer's warehouse operations and his quick assets. of \$1 million.

With respect to this figure, what does it represent?

Mr. JUNTILLA. It means that amount of long-term debt that is due within a year.

Mr. ARNOLD SMITH. Does that mean that only approximately 3 percent of his long-term debt then was due within the year?

Mr. JUNTILLA. Yes; that is what it shows.

Mr. ARNOLD SMITH. Isn't that somewhat unusual, Mr. Juntilla, for commercial financing, when you have \$8 million in mortgages outstanding?

Mr. JUNTILLA. There is no explanation of each item.

Mr. ARNOLD SMITH. Did you request an explanation?

Mr. JUNTILLA. No, we did not.

Mr. ARNOLD SMITH. Why not? In other words, how can you analyze a balance sheet that you admit you don't understand and make a recommendation to the Commission that it approve this transfer application?

Mr. JUNTILLA. This was a balance sheet submitted, the truth of which would have to be assumed because of the certification of the applicant that all matters filed with the application were true and correct.

It does show current portion as stated.

Mr. ARNOLD SMITH. Did you then accept the current portion of this long-term debt figure as is stated on the face of this statement?

Mr. JUNTILLA. Yes.

Mr. ARNOLD SMITH. Without question.

Mr. JUNTILLA. There were no questions; no, sir.

Mr. ARNOLD SMITH. That concludes my questions on Atlanta.

I would like to proceed to Pittsburgh.

Pittsburgh is one of the last three stations we shall talk about—Pittsburgh, San Francisco, and Houston.

The Commission's Ultravision policy was promulgated into law in July of 1965, and at this time I should like to read excerpts from the

Ultravision Broadcasting Co. decision, 5 RR 2d 243, which set the framework for our discussion with respect to these last three stations.

Ultravision deals with the financial ability of CP applicants.

(The excerpts referred to appear in the appendix, p. 403.)

Mr. ARNOLD SMITH. Chairman Hyde, Mr. Overmyer in his Pittsburgh application presented a letter ostensibly purporting to commit the Western Pennsylvania Bank to a \$350,000 loan.

However, as the record will show, this loan was not provided because once again the problem of submitting certified financial statements was one which Mr. Overmyer could not overcome.

My question is this: Would it not be prudent policy for the Commission to require, along with these bank letters, a list of the conditions precedent required by the bank which the applicant has to meet, so that the Commission can peruse these conditions precedent and make its determination as to whether the applicant might or might not be able to meet them?

Mr. HYDE. We have found it appropriate to tighten up our policy as regards use of letters from banks.

Currently we do require a more explicit representation from the bank than was the case earlier.

I may say in the Overmyer series and I notice you omitted it, the bank loan negotiated at Atlanta was implemented.

Mr. ARNOLD SMITH. It was implemented a year and a half after the application in question, almost 18 months after the application was approved by the Commission.

Mr. HYDE. My point is the statement from the bank did have meaning.

Mr. ARNOLD SMITH. The vice presidents of the Girard Trust Co. who negotiated this loan indicated to me, and I am sure they would do the same under oath, that their letter was in no way a commitment to extend Mr. Overmyer funds.

Mr. DINGELL. Would counsel yield at that point?

Commissioner, would you advise the committee what there was in the particular item of correspondence that would lead you to believe that this was a commitment by the bank to extend the loan?

I will accept an answer from any member of the Commission.

I would like to know what there was in this document that constituted a commitment to extend the loan.

Mr. LEVY. My name is Martin Levy. Are you referring to the one from the Girard Trust Co.?

Mr. ARNOLD SMITH. I am talking about the Western Pennsylvania one now.

Mr. LEVY. That was about as good a commitment as you would find anywhere. The conditions of the Western Pennsylvania Bank as stated by the bank itself in an exhibit which has been put in here with the conditions that were put in are ordinary conditions, the company securing the necessary equipment credit which it had already done, the approval of the FCC which was about to be obtained, a guarantee by Mr. Overmyer personally, which he had already given, and another condition which any bank in its right mind would make, that is, that his financial condition did not substantially change.

Mr. ARNOLD SMITH. I would just add, Mr. Levy, as you are well aware at one time the Commission early in its history made it manda-

tory that such letters be legal commitments before they would be acceptable by the Commission.

Mr. LEVY. That is not so today.

Mr. ARNOLD SMITH. My question to Chairman Hyde was whether the Commission might make a better decision that the commitment was reasonable if the conditions precedent to their fulfillment were submitted along with the letter?

Mr. HYDE. I have already answered we have undertaken to require a more explicit statement from the bank in such cases.

Mr. BROWN. If counsel would yield for a moment, let me ask a question in this regard:

What does the interest rate have to do with this? Currently, because the interest rate has been changing over the last few months on a rather regular and kinetic basis, I think most businessmen and most banks would indicate in their letter a willingness to lend funds at a specified interest rate.

This was not in any of the letters which were indicated in the material we have.

I wonder whether, first, the Commission did not think that was appropriate or whether maybe because of the timing of it that nobody was doing that in 1964.

Mr. HYDE. If the Commission wishes to be tighter on this question of financial ability to require a greater degree of proof, they could, of course, insist that any statement from a bank be a commitment, in which event I understand that there would likely be a charge of some kind, perhaps a requirement of payment of some amount of interest.

As a matter of policy, we could put this added burden upon an applicant. It might extend for substantial periods.

When an application is filed, an applicant does not know whether he will be challenged by a competing application.

In the case of a challenge, the process through a comparative hearing might take years and, of course, this financial burden would be an added cost for the broadcast station being erected.

As I stated earlier, we have tried to insist upon an appropriate showing of financial responsibility but not so onerous as to discourage entry into the business, and particularly we do not want to discourage getting into the business people who will undertake or exploit the UHF television because of the promise it offers to a more diversified industry.

My answer is this would be an added burden, we thought, not appropriate to impose.

Mr. BROWN. In other words, you are suggesting that the letter of intent in supplying financial assistance not be in the form of a contract but rather just in the form of a letter of intent, in which case we get into the semantic area of how emphatically the bank writes that kind of letter; is that right?

Mr. HYDE. That is right. However, we would reserve the right to require more in one case than in another.

For instance, if an applicant has a showing of pretty substantial net worth in assets, then one letter from a bank might suffice. But if he is a party it appears is going to be quite dependent upon bank financing, then in that instance we could require a more explicit showing.

The CHAIRMAN. Mr. Moss.

Mr. Moss. I suppose we are referring to the letter of January 29, 1965, which was received by the Federal Communications Commission, Office of the Secretary, on May 7, 1965, from the Western Pennsylvania National Bank.

Mr. LEVY. I am sorry, sir; I do not have a copy of that letter.

Mr. Moss. You were rather emphatic in making the statement that the letter was a binding form of commitment.

Mr. LEVY. I have seen the letter, but I do not have it before me right now.

Mr. Moss. What evidence did you have before you that the usual equipment credit had been secured?

Mr. LEVY. The application itself. It contained a letter from the equipment manufacturer offering credit.

Mr. Moss. You do depend upon the application, then, for all of these items?

Mr. LEVY. Yes, sir.

Mr. Moss. We will come back to that later on, because that raises some interesting questions.

A concluding paragraph there and also since the loan would not be used by you for 6 to 8 months, we would expect Mr. Overmyer's financial condition has not changed materially in the interim.

Mr. LEVY. That is right.

Mr. Moss. It looks to me like the sort of letter that would not be too difficult to get from anyone.

Mr. LEVY. I think with any bank if it is not expressed, it is implied, an offer to make a loan, of course, would be conditioned on the man's financial condition being at least approximately the same at the time they had to give the money.

We find that very commonly we get it in all bank letters.

Mr. Moss. What do you call a binding commitment?

Mr. LEVY. I am not saying it was a binding commitment. It was more or less an offer to lend funds.

Mr. Moss. If they could be satisfied at the time that the person is a qualified borrower at the time of the application.

Mr. LEVY. Yes, sir; except the bank indicated it had reviewed Mr. Overmyer's position at the time it wrote the letter.

Mr. Moss. They subsequently did not make the loan?

Mr. LEVY. I don't think that is relevant.

It may be Mr. Overmyer did not call them on it. The Commission, at the time it was trying to review the bank letter, had to see if it was a bona fide offer being made.

Mr. Moss. I am going to examine you a lot more carefully on the total of over \$2.3 million of loans in bank credit which was planned to be utilized.

I will defer for the time being.

Mr. ROGERS. I would like to ask just a few questions.

As I understand it, this is Forrest of the staff who did the basic work; is that correct, Mr. Chairman, and the Commission felt that should be approved?

Mr. HYDE. That is correct.

Mr. ROGERS. Who on the staff was responsible for making the decision that no hearings should be held?

Mr. SHERIDAN. I am James Sheridan. My name is on all of these items that are being questioned here at the moment in terms of the initial acquisition of these stations.

Mr. ROGERS. You made this decision of no hearing? Your recommendation was no hearing?

Mr. SHERIDAN. Yes; on the recommendation of my subordinates in the Bureau. I was Chief of the Bureau.

Mr. ROGERS. Are any of your subordinates here?

Mr. SHERIDAN. Yes; they are all here.

Mr. ROGERS. I want to know the chain of events.

Mr. SHERIDAN. Are you referring to Pittsburgh now?

Mr. ROGERS. Pittsburgh, any of them.

Mr. SHERIDAN. That is the item under discussion.

Mr. ROGERS. I understood there was an acquisition of five.

Mr. SHERIDAN. You should have the staff item. If you had that, it would show a Mr. Reilly was initially responsible for preparing this.

Mr. ROGERS. Is he here?

Mr. SHERIDAN. No; he is not here.

Mr. JUNTILLA. He is retired.

Mr. SHERIDAN. He then reported his findings and investigation of the matter to Mr. Juntilla who is here. He was Deputy Chief under me.

Mr. Juntilla's signature on this item indicates he made the final review for the Bureau.

As in all other cases, I was aware of the item, I approved the item, I agreed with the recommendation made by the staff members of the Bureau.

The CHAIRMAN. We are going to have to make a move here in a minute.

I have been requested by two members of the staff that we have a change of witnesses.

Mr. ROGERS. I will withhold my questioning for now.

Mr. BROWN. I want to make an observation on the testimony just immediately preceding Mr. Rogers' questions, and that was the influence in the financial ability of a potential licensee in getting a license.

Whether or not he can get bank credit bothers me a little bit about whether banks in the large communities can withhold this kind of financial capacity to a licensee and thereby influence who gets the license.

But more particularly, the influence of the extension of credit by equipment dealers particularly in view of the fact that one of the equipment dealers is an affiliate of a network broadcaster.

The CHAIRMAN. If you gentlemen would step aside for a minute, we will have you back.

I have been requested to ask Mr. Gaguine to come up and take the witness stand.

Do you solemnly swear the testimony you are about to give the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GAGUINE. I do.

The CHAIRMAN. Would you identify yourself for the record, please.

TESTIMONY OF BENITO GAGUINE, COMMUNICATIONS COUNSEL FOR D. H. OVERMYER

Mr. GAGUINE. My name is Benito Gaguine. I am a partner in the law firm of Fly, Shuebruk, Blume & Gaguine, with offices in Washington and New York. My firm is communications counsel to D. H. Overmyer.

Mr. DINGELL. Mr. Gaguine, would you first submit to the committee, if you please, a schedule of amortization of payments on the long-term debt of Mr. Overmyer as of August 1964.

Mr. GAGUINE. We will attempt to secure that for the committee, sir.

Mr. DINGELL. Mr. Gaguine, on the first day of this hearing, you were in the room; were you not?

Mr. GAGUINE. I was.

Mr. DINGELL. Will you indicate where in this room you were sitting?

Mr. GAGUINE. At the time of the testimony—

Mr. DINGELL. When the Commission was first before this committee, where were you seated?

Mr. GAGUINE. On the first day, sir, when Mr. Adams—

Mr. DINGELL. No, when the Commission was here.

Mr. GAGUINE. I think I sat somewhere over here to my left, and I think probably in the second row.

Mr. DINGELL. Did you come forward during that day. When I observed you the other day, I tried to recall where I observed you sitting in the room. I recall I observed you before. Did you on that first day, when the Commission was here, have occasion to come forward and consult with Commissioner Lee or any member of the Commission?

Mr. GAGUINE. By consulting, I don't know what you mean.

Mr. DINGELL. Did you speak to them at any time?

Mr. GAGUINE. I certainly believe I spoke to quite a number of people. I know every member of the Commission. I know virtually every, if not every, member of the staff who is here today.

Mr. DINGELL. Did you speak to them while they were at the witness table?

Mr. GAGUINE. No, sir; I did not.

Mr. DINGELL. Not at all?

Mr. GAGUINE. No, sir.

Mr. DINGELL. I would like to direct your attention to yesterday. Did you visit the Commission at any time yesterday?

Mr. GAGUINE. I certainly did.

Mr. DINGELL. Who, yesterday, did you visit?

Mr. GAGUINE. Mr. Geller, the General Counsel.

Mr. DINGELL. Whom else did you visit?

Mr. GAGUINE. I spoke with Mr. Levy on another matter. I spoke to a Mr. Hanson on another matter. When I spoke with Mr. Levy, I advised Mr. Levy that I had a transcript of the first day's hearing in case the Commission wished to make use of it and in case the Commission did not have a copy of the transcript.

At the present time, I don't have any independent recollection of speaking to anyone else—Yes, I spoke with the Deputy General Counsel, Mr. Ohlbaum.

Mr. DINGELL. What was his name?

Mr. GAGUINE. O-h-l-b-a-u-m.

Mr. DINGELL. About what did you speak to Mr. Geller, the General Counsel?

Mr. GAGUINE. I advised Mr. Geller that I had a copy of the transcript. I also advised Mr. Geller to the extent the Commission desired any information concerning the material which Mr. Overmyer had submitted, or if there were any questions which we could answer with respect to any questions which the Commission might have, we would, as we had in the past, attempt to make it available.

I may say I have made the same offer to this committee time and time again.

Mr. DINGELL. Did you discuss any other matters with Mr. Geller?

Mr. GAGUINE. Just a general comment on our phase of the hearing.

Mr. DINGELL. On your phase of the hearing?

Mr. GAGUINE. Right.

Mr. DINGELL. What was your general comment?

Mr. GAGUINE. I don't think you would be interested in it.

Mr. DINGELL. Why?

Mr. GAGUINE. I gave my comments as to the manner in which it had been conducted, and I gave my comments that I did not think that the committee had been able to discover any evidence or disclose any material which in my opinion warranted the proceedings which we are having.

Mr. DINGELL. What else?

Mr. GAGUINE. I made the statement that I had a copy of the transcript and that if the Commission wished, I would be glad to make it available.

Mr. DINGELL. Did you discuss any of the testimony that had been given by any member of the Commission at an earlier time, any member of the Commission staff?

Mr. GAGUINE. Not in that context, no.

Mr. DINGELL. Did you discuss it in any context?

Mr. GAGUINE. Yes, I did make the comment that I did not think members of the committee had been particularly gentlemanly in their treatment of the Commission.

Mr. DINGELL. What else?

Mr. GAGUINE. I think that is generally it.

Mr. DINGELL. You visited the General Counsel of the FCC to make these representations to him, and you offered him a copy of the transcript?

Mr. GAGUINE. Sir, I have known the General Counsel of the Commission for, I think, about 20 years. I went in to make available to him a copy of the transcript in the event the Commission did not have a copy of the transcript.

Mr. DINGELL. Is that your usual practice?

Mr. GAGUINE. Sir, very fortunately I don't think that I have been involved in a proceeding of this kind. It is a practice which, should it ever happen again, I would certainly be willing to do it again. I see absolutely nothing improper and, therefore, I assume I would do it again.

Mr. DINGELL. You visited Mr. Levy, you indicated?

Mr. GAGUINE. That is correct.

Mr. DINGELL. Did you discuss this matter at all?

Mr. GAGUINE. I told Mr. Levy, in connection with this matter, if there were any questions we could answer, we would be glad to. I advised him we had a copy of the transcript, and then we discussed another matter.

Mr. DINGELL. What was the other matter?

Mr. GAGUINE. The other question was a matter of a pending request for program test authority for a 50-kilowatt station in Eugene, Oreg.

Mr. DINGELL. Did you make any representation to Mr. Levy about this hearing as you had to Mr. Geller?

Mr. GAGUINE. I do not believe so, sir, because I don't believe I spoke to him for a long enough period to have made such representation. However, had the time permitted, I believe I probably would.

Mr. DINGELL. Did you make any comment with regard to the gentlemanlyness of this committee or with respect to the finding of the committee as they might relate to the Federal Communications Commission or Mr. Levy?

Mr. GAGUINE. You say did I do so to Mr. Levy?

Mr. DINGELL. Yes.

Mr. GAGUINE. Not to my recollection.

Mr. DINGELL. But you did with regard to Mr. Geller?

Mr. GAGUINE. Yes, sir.

Mr. DINGELL. With regard to Mr. Geller and Mr. Levy, approximately how long had you spoken with them?

Mr. GAGUINE. With Mr. Geller, probably 5 or 10 minutes.

Mr. DINGELL. Approximately what time of the day?

Mr. GAGUINE. I think it was about quarter of ten or nine-thirty.

Mr. DINGELL. What time did you visit Mr. Levy?

Mr. GAGUINE. Either immediately prior to or after I had seen Mr. Geller.

Mr. DINGELL. For how long?

Mr. GAGUINE. I would say about a minute and a half.

Mr. DINGELL. You visited Mr. Hanson when?

Mr. GAGUINE. After I had seen Mr. Levy.

Mr. DINGELL. What was the subject matter of your discussion with Mr. Hanson?

Mr. GAGUINE. The pending application for program test authority of KPNW. Mr. Hanson is an engineer.

Mr. DINGELL. Did you have any discussion of the transcript with him?

Mr. GAGUINE. No; he had absolutely nothing to do with it.

Mr. DINGELL. You indicated you offered the transcript to Mr. Hanson, too?

Mr. GAGUINE. No; I did not.

Mr. DINGELL. You offered the transcript to Mr. Levy and Mr. Geller?

Mr. GAGUINE. Yes.

Mr. DINGELL. Did you offer the transcript to the Deputy General Counsel?

Mr. GAGUINE. I know I did not offer it to Mr. Ohlbaum.

Mr. DINGELL. Did you discuss the Overmyer matter with Mr. Hanson at all?

Mr. GAGUINE. No.

Mr. DINGELL. The Deputy General Counsel you said was—

Mr. GAGUINE. Mr. Ohlbaum.

Mr. DINGELL. Who?

Mr. GAGUINE. O-h-l-b-a-u-m.
Mr. DINGELL. Did you discuss this matter with Mr. Ohlbaum?
Mr. GAGUINE. Just in very general terms.
Mr. DINGELL. What was the nature of the discussion?
Mr. GAGUINE. I indicated the manner I felt the committee was handling this matter and how I felt about it.
Mr. DINGELL. Did you offer him a copy of the transcript?
Mr. GAGUINE. No.
Mr. DINGELL. When did you visit him?
Mr. GAGUINE. After I had seen Mr. Geller. They have offices in the same complex. I happened to have seen him. I have known the gentleman for some 20 years.

Mr. DINGELL. Did you pass him in the hall, or did you step into his office?

Mr. GAGUINE. I stepped into his office, and if you are interested in the time I spoke to him, for about 2 or 3 minutes.

Mr. DINGELL. You visited him to offer him a copy of the transcript?

Mr. GAGUINE. I have on three different occasions said I did not visit him to offer him a copy of the transcript. If you will please reread the record after you get the record, you will note that I specifically said: on no occasion did I offer him a copy of the transcript. It is a little minor point but I would like to have my testimony correct.

Mr. DINGELL. I want to have the record correct, too, so that is why I was inquiring.

You talked to him about a minute or two?

Mr. GAGUINE. Two or three minutes.

Mr. DINGELL. The subject of your testimony was entirely—

Mr. GAGUINE. The subject matter was just merely my personal comments on what had transpired in the last couple of days.

Mr. DINGELL. Did you in any way comment on any of the testimony that had been given to any of the three gentlemen that you discussed this with—Mr. Geller, Mr. Levy, or Mr. Ohlbaum?

Mr. GAGUINE. I have no independent recollection of commenting on specific testimony.

Mr. Moss (presiding). You went over to the Commission for the primary purpose of supplying General Counsel of the Commission and Mr. Levy with copies of the transcript; is that correct?

Mr. GAGUINE. No sir; that is your statement. My primary purpose in going to the Commission—and I go to the Commission several times a week—my primary purpose in going to the Commission on this occasion was to obtain the status of an application. I also had in mind the courtesy of offering to the Commission a copy of the transcript of the first day's hearing in the event that the Commission had not received it.

Mr. Moss. Where did you get the transcript?

Mr. GAGUINE. Where?

Mr. Moss. Yes.

Mr. GAGUINE. From whatever the name of the service is. We ordered the transcript of the first day. We ordered the transcript of the second day, and we are ordering the third day.

Mr. Moss. I would like to know by what authority the reporting company is selling the transcript. I will ask counsel to make appropriate inquiry. We do have some rules around here.

Mr. GAGUINE. You should point them out to your staff and to the reporting company. I would assume that your rules, whatever your rules were, were made clear to the reporter and to the staff.

Mr. Moss. I will be interested in your assumptions later.

You felt called upon, however, to observe to Mr. Geller, Mr. Levy and Mr. Ohlbaum the low opinion you had of the committee and its conduct of the inquiry?

Mr. GAGUINE. Not my low opinion of the committee—my opinion of the manner in which some of the questioning was handled. I have the highest respect for the Congress, the committee and the officers of Congress.

Mr. Moss. You have indicated that in your physical gyrations throughout this hearing, signs of the utmost respect. I have observed them with great interest. In fact, some of the contortions would have been interesting had they been put on film. They might have been a better substitutes than some of the fare we get on television.

You felt called upon, however, to observe to these officials of the Commission your opinion of the committee and its conduct of the hearing?

Mr. GAGUINE. You made the statement. I don't know whether I felt called upon.

Mr. Moss. Did you feel it appropriate?

Mr. GAGUINE. Did I feel it appropriate? Yes.

Mr. Moss. You know these gentlemen are all supposed to be removed from the political arena and any role in becoming the critics of the Congress, do you not?

Mr. GAGUINE. Sir, I did not inquire as to their views. I merely made mine known.

Mr. Moss. You wanted to make it known that you did not approve of it and that you were home safe. I hope at subsequent hearings you can give a little more pause for thought than you apparently have given now.

You worked for the Commission for how many years?

Mr. GAGUINE. From 1941 to 1953 with a hiatus of 4 years which time I spent in the service.

Mr. Moss. You have continued since leaving the Commission to maintain your contacts with the Commission?

Mr. GAGUINE. Since leaving the Commission, my primary practice has been representing clients before the Federal Communications Commission.

Mr. Moss. I asked you if you continued to maintain your contacts at the Commission.

Mr. GAGUINE. In representing clients before the Commission, I naturally come into contact—

Mr. Moss. That is not what I asked you. I asked you an easy question that can be answered yes or no, and you have the intelligence to give one or the other.

Mr. GAGUINE. I have answered yes because I have to be in contact with the Commission.

Mr. Moss. I merely asked you if you had.

What were your duties at the Commission?

Mr. GAGUINE. I started out, I think, as an attorney with the staff that was investigating the newspaper ownership. I later became an attorney

on the staff of the Broadcast Bureau working on, it is my recollection now, various Broadcast Bureau matters. When I returned from the service, I was with the Broadcast Bureau for a period of time. I then was transferred to Safety and Special Services where I served for approximately 2 years. I then came back and was legal assistant to Commissioner Hyde for a period of time—I believe it was about 2 or 3 years—and my last position before I left the Commission was as a hearing examiner.

Mr. Moss. Do you have fairly free access to the members of the Commission and of the staff of the Commission as a result of these associations in the past?

Mr. GAGUINE. I don't know what you mean by fairly free access. Yes, I do see them.

Mr. Moss. Do you find it quite easy to arrange appointments to see them?

Mr. GAGUINE. I find it easy but it is no different than anyone else, I am sure.

Mr. Moss. I did not ask you that because you are not competent to give me that testimony. You don't really know what the experience of other practitioners has been unless you have broad knowledge which you acquired—

Mr. GAGUINE. I do have a broad knowledge since I was the assistant—

Mr. Moss. Can you say—

Mr. GAGUINE (continuing). Ever since I have been associated with the Commission either as an employee of the Commission or as a practitioner before the Commission, I have found that uniformly the members of the staff and the members of the Commission have always agreed to meet with, talk with and discuss matters which are proper to discuss; that is, those matters that are not in an adversary status.

Mr. Moss. Was the Overmyer matter in an adversary status?

Mr. GAGUINE. No, except during two periods when the application was pending for Toledo and there were other applicants and, second, there was an application pending for Dallas, and there was another application pending.

Mr. Moss. In the other instances, you felt free to discuss with the staff and with the members of the Commission the other Overmyer matters?

Mr. GAGUINE. Absolutely, sir, and it is completely proper.

Mr. Moss. And you did so?

Mr. GAGUINE. I certainly did, sir.

Mr. Moss. Did you have other questions, Mr. Dingell?

Mr. DINGELL. I have just one question.

Have you ever discussed any portion of this Overmyer matter with any member of the Commission itself?

Mr. GAGUINE. Oh, sure.

Mr. DINGELL. Who?

Mr. GAGUINE. I think—you say any portion of the Overmyer matter. I think I have discussed various portions of the Overmyer matter with all seven Commissioners and virtually every member of the staff who may have worked on it.

Mr. DINGELL. This is a matter which is currently of interest.

Mr. GAGUINE. Are you talking about the current matters? I can't completely hear you.

Mr. DINGELL. These are matters which are current. Did you discuss the assignment of channels?

Mr. GAGUINE. At the time we filed the application, I discussed the applications with the staff working on them, with the offer that if the staff needed any additional information I would be pleased to supply it regardless of what the information was that they needed.

Mr. DINGELL. Did you discuss this also with any members of the Commission?

Mr. GAGUINE. Yes, sir, I think at the time we filed with the Commission I advised some of the members of the Commission that we had filed the application and generally what the substance of the application was.

Mr. DINGELL. Were there competing applicants?

Mr. GAGUINE. No, sir, none.

Mr. DINGELL. Did you make any further representations to the members of the Commission?

Mr. GAGUINE. Yes. I told the members of the Commission exactly what Mr. Overmyer told you and exactly what is in the application.

Mr. DINGELL. That is all?

Mr. GAGUINE. I can't think of anything that has been told to you and which is not in the application which could conceivably have been told in addition.

Mr. DINGELL. In connection with the applications to sell construction permits, did you discuss these with anyone?

Mr. GAGUINE. The application for the assignment, sir, is the question you just asked me about.

Mr. DINGELL. I am referring now to the application to sell.

Mr. GAGUINE. That is the assignment.

Mr. DINGELL. We may have been misunderstanding each other. Did you discuss these applications for the licenses on any of the UHF channels?

Mr. GAGUINE. Do you mean at the time that the applications were pending? I do not believe so.

Mr. DINGELL. You do not believe so?

Mr. GAGUINE. I do not believe so.

Mr. DINGELL. That is not a positive no.

Mr. GAGUINE. Let me say this: I would have had no hesitancy in discussing any of the applications, with the exception of Toledo during the time that it was in hearing.

Mr. DINGELL. Why did you have an exception on Toledo?

Mr. GAGUINE. Any matter that is in an adversary posture is not a matter that it is proper to discuss with members of the Commission although it is proper to discuss it with appropriate members of the staff. Under the Administrative Procedure Act, there are certain differences.

Mr. DINGELL. But you could discuss an application for a channel which was not in an adversary proceeding?

Mr. GAGUINE. Yes, sir.

Mr. DINGELL. And you would regard that as entirely proper?

Mr. GAGUINE. Pardon?

Mr. DINGELL. You would regard that as entirely proper?

Mr. GAGUINE. Absolutely.

Mr. Moss. Could you discuss the matter with the staff if they did not recommend a hearing on a channel? Would that be proper?

Mr. GAGUINE. Sir, you are making an assumption which I do not believe—

Mr. MOSS. Let me make something very clear. I am not making any assumption. I asked you a question. I assumed nothing. If I want to make assumptions, I will make them quite vocally for the record. Will you answer the question.

Mr. GAGUINE. The question, sir, assumes that the staff is always about to designate something for a hearing. I did not discuss—

Mr. MOSS. I did not ask you that. I will have the reporter read back the question.

(The pending question was read by the reporter.)

Mr. GAGUINE. Yes, sir.

Mr. MOSS. In other words, you could discuss with the staff a matter they had under consideration where they would finally have to make a recommendation as to whether or not a hearing would be held on the matter?

Mr. GAGUINE. Yes, sir.

Mr. MOSS. And that you regard as proper?

Mr. GAGUINE. Sir, that is the filing of an application and that means the filing of such additional material as the staff may desire. It is not only proper, it is the procedure which is in use at the Commission.

Mr. MOSS. Do you have any questions, Mr. Keith?

Mr. KEITH. I have no questions.

Mr. MOSS. Mr. Brown?

Mr. BROWN. I have no questions.

Mr. MOSS. Does the staff have any other questions?

Mr. ARNOLD SMITH. No, sir.

Mr. MOSS. You are excused.

Mr. GAGUINE. When do you want the material on the schedule? May we submit that along with the other material we are to submit on the Overmyer matter?

Mr. MOSS. You can discuss that with counsel for the committee.

The House now being in session to consider a bill of considerable importance, all members are designated for action on the floor, the committee will adjourn. The staff will be in touch with the witnesses giving them the date and the hour of the resumption of the hearings next week.

The committee is now adjourned.

(Whereupon at 12:10 p.m., the committee was adjourned.)

TRAFFICKING IN BROADCAST STATION LICENSES AND CONSTRUCTION PERMITS

WEDNESDAY, JULY 31, 1968

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10:25 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John E. Moss presiding (Hon. Harley O. Staggers, chairman).

Mr. MOSS. The subcommittee will be in order.

First, I want to express an apology to the witnesses called for this morning. I have been since 9:30 in another committee where I have had a report under consideration from the subcommittee which I Chair; and my delay, therefore, was unavoidable.

At the hearing on July 16, 1968, the subcommittee, in fairness to the Overmyer interests, and to make certain that we have a completely objective record, granted an opportunity by sworn statements or audited statements to correct or rebut any of the written foundational material theretofore admitted into the hearing record.

Such sworn statements or audited statements were required to be submitted to the subcommittee within 4 weeks from the close of the hearings.

The hearings will be closed August 1. This means that the sworn or audited statements must be submitted on or before August 29, 1968.

I wish to instruct counsel on behalf of the subcommittee to inform the Overmyer interests of this deadline for the filing date and that no unsworn or unaudited statements will be accepted for the record after August 29.

The record will be kept open to permit the introduction of subcommittee review and analysis of statements submitted by Overmyer and to receive the material requested from the Federal Communications Commission.

Our witnesses this morning are Robert H. Alford, Robert J. Rawson, James O. Juntilla, James B. Sheridan, Samuel L. Saady, Martin I. Levy, George S. Smith, Roy J. Stewart, Lloyd R. Smith, and K. Gordon Oppenheimer.

All of you gentlemen have been previously sworn and you will continue your testimony under oath before the committee.

The Chair recognizes Mr. Lishman.

Mr. LISHMAN. Mr. Chairman and members, I understand that the hearing this morning will last only until 11 o'clock. Within that limited time it will be impossible to develop the detailed questions concerning the financial statements submitted by Overmyer to the Commission.

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So, with the permission of the Chair, I would like to cover a few more general topics in this half hour.

Mr. Moss. I think that would be an appropriate procedure if there is no objection to it. The Chair will grant the request. You may proceed.

Mr. LISHMAN. There are certain questions that should be clarified for the record. One of them is, did Overmyer conceal or misrepresent his financial condition to the Commission?

Did the Commission, in disregard of its own rules and policies, permit Overmyer to keep at least three of the construction permits in salable condition?

Briefly, on March 28, 1967, Overmyer sold the five construction permits to AVC. He got a downpayment of \$1 million and pledged 100 percent of the communications company's stock to the Girard Trust Co. to effectuate the sale and completion of arrangements whereby Overmyer would receive an additional \$3 million.

Overmyer filed no copy of the March 28, 1967, stock purchase agreement, loan agreement, and stock pledge agreement with the Commission, and did not notify the Commission of this sale until June 30, 1967, when he applied for its approval to make a transfer of the five construction permits.

Under Commission rules, Overmyer was required to notify the FCC immediately, but in no event later than 30 days after such substantial changes had been effected.

But on three separate occasions between March 28, 1967, and the date of sale, June 30, 1967, Overmyer filed applications with the Commission for approvals of extensions of time on the construction permit.

In these applications, Overmyer concealed the fact that the construction permits had been sold. His extension applications to the Commission represented that he was in the process of securing the additional financing needed, apparently for his own operation.

I think a few questions will bring this situation in sharp focus and I would now like to ask whoever it is at this table—and I assume it will be Mr. Alford—if it is correct that on March 29, 1967, the D. H. Overmyer Broadcasting Co., Inc., filed two applications with the Commission to extend the time of its construction permit for Cincinnati and Houston?

FURTHER TESTIMONY OF ROBERT H. ALFORD, CHIEF, TRANSFER BRANCH; ROBERT J. RAWSON, CHIEF, RENEWAL AND TRANSFER DIVISION; GEORGE S. SMITH, CHIEF, BROADCAST BUREAU; JAMES O. JUNTILLA, DEPUTY CHIEF, BROADCAST BUREAU; JAMES B. SHERIDAN, FORMER CHIEF, BROADCAST BUREAU; SAMUEL L. SAADY, CHIEF, TELEVISION BRANCH; MARTIN I. LEVY, CHIEF, BROADCAST FACILITIES; ROY J. STEWART, ATTORNEY ADVISER, BROADCAST BUREAU; LLOYD R. SMITH, ENGINEER, BROADCAST BUREAU; AND K. GORDON OPPENHEIMER, ATTORNEY, BROADCAST BUREAU, FEDERAL COMMUNICATIONS COMMISSION

Mr. SAADY. My name is Samuel L. Saady, Chief of the TV Branch. It is true that the extension applications were filed on that date.

Mr. LISHMAN. Is it a fact that the applications did not disclose that on March 28, 1967, Overmyer entered into a stock purchase agreement with AVC covering stock in the Overmyer Communications Co.?

Mr. SAADY. That is true.

Mr. LISHMAN. Is it a fact that the applications did not disclose that he had received a downpayment of \$1 million and had entered into a loan agreement for \$3 million?

Mr. SAADY. That is true.

Mr. LISHMAN. Is it a fact it did not disclose that he had entered into a stock pledge agreement with Girard Trust Co. covering 100 percent of Overmyer stockholdings in the communications company?

Mr. SAADY. That is true.

Mr. LISHMAN. Under the rules of Commission, was he not required to supply this information?

Mr. SAADY. That is correct; under section 1.65, he should have notified within 30 days.

Mr. LISHMAN. Did the Commission take any action on this failure to disclose?

Mr. SAADY. Not to my knowledge.

Mr. LISHMAN. When did the Commission first learn of these agreements and the \$1 million payment?

Mr. SAADY. I must assume that the Commission found out about it as of the June 30 filing.

Mr. KEITH. Would you repeat that, please?

Mr. SAADY. I assume the Commission first knew of the transaction when they filed application for transfer of control.

Mr. LISHMAN. Is it correct that Overmyer in his March 29, 1967, application for extension stated: "Applicant has found the need for outside funds and has just concluded arrangements which will result in additional financial resources being made available and appropriate application will be filed"?

Mr. SAADY. That is true.

Mr. LISHMAN. What did you understand that language to mean?

Mr. SAADY. We understood this to mean, or I understood it to mean, he was arranging for additional financing, there was possibility that some additional parties might be—

Mr. LISHMAN. Additional financing for his own operation?

Mr. SAADY. Yes.

Mr. LISHMAN. Was an appropriate application filed as stated?

Mr. SAADY. Well, the application subsequently filed was application for transfer of control.

Mr. LISHMAN. That was filed June 30?

Mr. SAADY. That is right.

Mr. LISHMAN. Is it correct that on April 19, 1967, D. H. Overmyer Communications Co., Inc., filed an application with the Commission to extend the time of its construction permit for San Francisco?

Mr. SAADY. April 20; yes, sir, that is true.

Mr. LISHMAN. Did this application disclose the fact—

Mr. Moss. We have now two dates. Let us have it tied down tightly. I want to make a good record.

Mr. Lishman, you used the date April 19 and Mr. Saady used the date April 20.

Which is the correct date?

Mr. SAADY. My record indicates that the application was filed April 20. There is a tender date and there is a filing date. There could be some difference there.

Mr. LISHMAN. Did this April 19, 1967, extension application for San Francisco disclose that Overmyer, on March 28, 1967, had already sold these construction permits?

Mr. SAADY. No, it did not.

Mr. LISHMAN. As the same questions I have already asked you concerning Houston and Cincinnati would apply here, I assume your answers would be the same?

Mr. SAADY. Yes; they would.

Mr. LISHMAN. Did he also state in connection with the San Francisco application that he had found a need for outside funds and had concluded arrangements which would result in additional financial resources being made available to him and that an appropriate application would be filed?

Did he use that same language?

Mr. SAADY. Yes, he did.

Mr. LISHMAN. Did he ever file an appropriate application concerning these additional funds?

Mr. SAADY. The only application which was filed subsequently was the application for transfer of control.

Mr. LISHMAN. Wasn't the concealment of the substantial facts affecting his financial position in violation of Commission rules and policies?

Mr. SAADY. They violated section 1.65 of the Commission's rules.

Mr. LISHMAN. Was the date when Overmyer applied to the Commission for his transfer of these five permits June 30?

Mr. SAADY. I believe so.

Mr. LISHMAN. When did the Commission staff submit its memorandum to the Commission approving the transfer of these five permits? Was that October 27, 1967?

Mr. SAADY. Yes, it was.

Mr. LISHMAN. Now from June 30 to October 28, the Commission staff knew that Overmyer had violated the rules of the Commission, had made representations and concealments of the fact that he had already sold the construction permits, when he was going to the Commission to try to keep them in a salable condition. Why did the staff recommend approval of these transfers in the face of these violations of the Commission's own rules?

Mr. SAADY. I am afraid I am not in a position to answer that question.

Mr. LISHMAN. Is there anyone at the table who could?

Mr. Moss. Just ask who has the authority to sign off on the recommendations for the Commission.

Mr. GEORGE SMITH. My name is George Smith, presently Chief of Broadcast Bureau. I am unable to tell you whether or not the contract file as such was checked or not.

Mr. Moss. Just direct the question to the individual who signed off.

Mr. LISHMAN. Would the reporter repeat the question, please, and I will direct this question to Mr. Smith and to Mr. Rawson.

(Question referred to read by the reporter.)

Mr. GEORGE SMITH. My answer to the question is that when the applications were filed on June 30 and the contracts with it we proceeded to make an analysis of the application on that basis.

I am unable to answer your question, sir, as to whether or not the staff checked what we call our contract file, which is a file where contracts should be filed in accordance with the rule within 30 days after the contract is entered into.

Do you know, Mr. Rawson?

Mr. LISHMAN. Mr. Smith, may I tell you that we have checked and that rules 1.65, 1.613, and 1.615 were not complied with. This information was not in the files of the Commission according to the file certified by the Secretary as complete.

Mr. GEORGE SMITH. Yes, those are the rules governing the filing of the contracts within 30 days.

Mr. LISHMAN. Those were the rules that were violated?

Mr. GEORGE SMITH. Yes, sir.

Mr. LISHMAN. Now, were these violations ever brought to the attention of the Commission?

Mr. GEORGE SMITH. It was never brought to my attention.

Mr. LISHMAN. Why not?

Mr. GEORGE SMITH. I don't know.

Mr. LISHMAN. I am going to ask you a question, Mr. Smith. Is it a fact that several members of the staff recommended that in view of the novel situation existing here that the approval of these transfers should not be given without a hearing?

Mr. GEORGE SMITH. I don't believe so. I don't have any recollection of that.

Mr. LISHMAN. I would like to have something better than "I don't believe so." Is it a fact or not that members of the staff recommended to you that there should be a hearing?

Mr. GEORGE SMITH. I don't believe so.

Mr. LISHMAN. I will go down the line and ask all the members of the staff present here if they made any such recommendation.

Mr. GEORGE SMITH. May I tell you how we handle this?

Mr. LISHMAN. I would like an answer to this question.

Mr. GEORGE SMITH. Well, I have given it.

Mr. Moss. Just a moment, Mr. Smith. You have given no answer.

Mr. GEORGE SMITH. I am sorry, but I don't recall any member of the staff coming to me suggesting that this application be designated for hearing.

Mr. Moss. Is your answer there was no recommendation made to you by any member of the staff that a public hearing be held?

Mr. GEORGE SMITH. Not unless somebody can refresh my recollection. I am not trying to dodge the question. I just don't remember any such conversation.

Mr. Moss. Would that be made in the normal course of events by a written memorandum of any kind?

Mr. GEORGE SMITH. It could well be, yes.

Mr. Moss. I want you to check your files and to certify to this committee whether or not there is in your files a memorandum bearing upon this matter directly or indirectly suggesting—

Mr. GEORGE SMITH. That, sir, I have already done and I have the papers in my files with me and Mr. Lishman has them, too.

Mr. Moss. Mr. Lishman, are you satisfied you have all the file?

Mr. LISHMAN. We believe so, sir.

Mr. Moss. Let us go around the table as you suggested, with each member of the staff and ascertain whether or not the recommendation was made by them. Starting at this end, answer that question.

Mr. RAWSON. I am Mr. Rawson, Chief of the Renewal and Transfer Division. I discussed this case with Mr. Smith in very general terms and in particular we discussed the arrangements for the loans to Overmyer.

We pointed out to Mr. Smith that this was somewhat similar to what the Commission had already approved in several other cases.

Mr. LISHMAN. Could you name those other cases?

Mr. RAWSON. WLFD, Chicago, is one that comes to mind. There was another one in Chicago where the new individual or new group coming into the construction permit, the permittee corporation, received an option, for example, to buy the stock of the other group at a price of \$2,500,000, based upon some kind of formula.

Mr. Moss. Was it a sufficiently similar one, that there was a concealment of fact from the Commission as required under 1.63 and 1.65 of the Commission's rules?

Mr. RAWSON. I was, of course, not aware of what representation was contained in the application for modification to extend the time to complete construction.

We frequently in these assignment cases, since the applicants or the parties are going to have to file the contract with the assignment of transfer application, find that the parties do not submit contracts within the 30 days specified by the rules.

We have had discussions on this, and this has been a matter which apparently has been going on for 20 years. We have talked about doing something in this area of requiring—

Mr. LISHMAN. How about the ruling in the *Gross* case that such information must be filed immediately and not later than 30 days?

Mr. RAWSON. The rule requires that they be filed in 30 days; yes, sir.

Mr. LISHMAN. And not later than 30 days. Isn't that correct?

Mr. RAWSON. The rule requires they be filed no later than 30 days.

Mr. LISHMAN. Why didn't you do something about the violation of these rules?

Mr. RAWSON. As I say, there were many, many cases—in most transfer cases the parties do not file within the 30-day period for the simple reason that they are going to follow up with an application for assignment for transfer which is included with the assignment transfer application.

I don't know that anyone was aware of the fact that the parties in this particular case had failed to file the contract in accordance with the rules of the Commission.

Mr. Moss. Let us have an answer to the question put to you.

Did you or did you not make a direct recommendation that a hearing would be appropriate?

Mr. RAWSON. No, sir; I made no direct statement requiring or asking that the application be designated for hearing.

There were certain facets of the application that I, as a personal opinion, felt should receive further answers from the licensee.

Mr. Moss. Did you direct further questions to the licensee?

Mr. RAWSON. Well, no.

Mr. Moss. Why not?

Mr. RAWSON. Because it was a judgment question. I am talking now about the—

Mr. Moss. Aren't most of your matters judgment matters?

Mr. RAWSON. Yes, sir; this is a judgment matter in terms of whether or not you should allow a specific out-of-pocket expense.

Mr. Moss. Was the additional information supplied?

Mr. RAWSON. I am talking now only about the out-of-pocket expense.

Mr. Moss. Did you raise these questions with Mr. Smith?

Mr. RAWSON. We discussed them, yes, sir. We discussed the pros and cons.

Mr. Moss. Did he suggest that you go back and get the additional information or did he tell you to leave it alone, not to follow up?

Mr. RAWSON. We just had a discussion. I pointed out that the Commission, through its review board, has allowed applicants such as Overmyer to recover out-of-pocket expenses where salaries have been paid to employees for work done in connection with the prosecution of the application pending.

Mr. Moss. I know that. I also know you had five applications for construction permits.

Mr. RAWSON. The five applications had nothing to do with the question. The question was whether or not since they had to go back through affidavits and recapture these expenses—

Mr. Moss. We will explore these matters more fully at a later date.

Mr. ADAMS. Will the chairman yield for a question?

Mr. Moss. Yes, I yield to the gentleman from Washington.

Mr. ADAMS. With whom are the contracts filed, which division?

Mr. RAWSON. They are filed with our Ownership Section.

Mr. ADAMS. Who is in charge of the Ownership Section?

Mr. RAWSON. Mrs. Roberts is in charge.

Mr. ADAMS. I understand you are with the Transfer and Renewal Division.

Mr. RAWSON. Right, sir.

Mr. ADAMS. And Mr. Smith is in charge of the Broadcast Bureau. Now you have all indicated that the contract file wasn't looked at.

My question is, if one of you gentlemen will explain to me, do you ever look or must it come to your attention to go back to these other divisions to look at the file as opposed to looking through the file for renewal and transfer?

Mr. RAWSON. As I explained earlier, the contract in such instances must be filed with the assignment or the transfer application so that the staff first generally has no occasion to go back and take a look to see whether or not they have filed a prior contract because they work right from the application which contains the contract, itself.

Mr. ADAMS. Does the contract have a date on it?

Mr. RAWSON. Yes, sir; it has a signature date.

Mr. ADAMS. Could you tell the contract date by looking in your application form? Could you determine from the file you are looking at whether or not it had been filed within the time of the Commission's rules?

Mr. RAWSON. Yes; you could take a look at the date of the signing of the contract by the parties and from that you could determine—then you would have to go back really to determine whether or not the contract was actually filed.

If the application wasn't filed until 3 or 4 months after the signature you would then have to go back to check to see whether or not they had filed it within 30 days required by the rule.

Mr. ADAMS. In other words, the contract you have in your file or that Mr. Smith has in his files, is not a copy with a date stamp on it from your own files but is a copy filed by the applicant, himself; is that it?

Mr. RAWSON. With the application; yes, sir.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. MOSS. Let us move on to the next one. I would like to have a little more succinct response from each of you gentlemen than this last one.

Mr. LLOYD SMITH. My name is Lloyd Smith. Up until November of 1967, I was a TV engineer with the Television Applications Branch. My responsibility is limited to the technical requirement only.

Mr. MOSS. You would have no occasion to make any kind of recommendation other than as to the technical adequacy of the proposed transmitters?

Mr. LLOYD SMITH. That is right.

Mr. ROGERS. It is my understanding that the applicants said they would have to make changes in their towers. Was this brought to your attention?

Mr. LLOYD SMITH. I don't recall exactly now but if there were changes proposed for an outstanding construction permit, then a modification or a request for modification of construction permit would have to be filed.

Mr. ROGERS. Was this done in the case?

Mr. SAADY. There was an application for modification in the San Francisco case.

Mr. ROGERS. Only one?

Mr. SAADY. There were a number of proposed modifications.

Mr. ROGERS. I mean only one station?

Mr. SAADY. Oh, no. Maybe I misunderstand the question.

Mr. LLOYD SMITH. May I say this? Any changes that were authorized would have been—there would have been a modification of construction permit filed.

Mr. ROGERS. Would that have gone to your office?

Mr. LLOYD SMITH. Right.

Mr. ROGERS. But you don't recall any?

Mr. LLOYD SMITH. I do remember that there were modifications associated with some of the Overmyer applications.

Mr. ROGERS. Thank you very much.

Mr. MOSS. The next gentleman.

Mr. ALFORD. My name is Robert Alford, Chief of the Transfer Branch.

The application would come to me initially. I then assign it to the senior attorney in my office who handles the most complicated affairs. He then as a matter of practice, works with the people in the front office and I don't get involved.

So I made no recommendation as to whether the application should be designated for hearing.

Mr. MOSS. All you do is assign the work for review by others; is that correct?

Mr. ALFORD. No; I handle the many, many routine and nonroutine. We have 75 applications a month, most of which don't involve any serious problems. These I handle and make recommendations, send them up in their final form to the front office for disposition.

In the case of the most serious applications, it is more expeditious for the senior attorneys working with them not to work through me but to work directly with the front office.

Mr. MOSS. Identify the front office.

Mr. ALFORD. Mr. Rawson, Mr. Juntilla, and Mr. Smith.

Mr. MOSS. The next gentleman.

Mr. LEVY. My name is Martin Levy. I am Chief of the Broadcast Facilities Division. My division has nothing to do with the transfer of applications. We handle applications for new stations, applications for modification of existing stations, applications for extension of time to construct.

Mr. MOSS. You would not be in the chain at all for any kind of recommendation on the transfer of construction permit?

Mr. LEVY. No, sir; no recommendation whatsoever.

Mr. MOSS. The next gentleman.

Mr. JUNTILLA. James Juntilla, Deputy Chief of the Bureau. I did not work on supervising the review of this particular application. It was handled from the Transfer and Renewal Division with Mr. Smith. Since I did not become involved in the details I did not make a recommendation that it be set for hearing.

Mr. MOSS. Was that a normal way of handling a case of this type?

Mr. JUNTILLA. Well, there are divisions of responsibilities because of the number of cases that come through the office.

Mr. MOSS. That is not the question I asked. I asked was this case handled in the normal manner?

Mr. JUNTILLA. Yes, because there is a division, yes.

Mr. MOSS. The next gentleman.

Mr. SHERIDAN. My name is James B. Sheridan. I was Chief of the Broadcast Bureau from March 1963 until September 1966. On that latter date my duties were changed and I left the Broadcast Bureau and therefore I had no responsibilities in connection with the transfer application that you are questioning us about.

Mr. MOSS. You would have, therefore, no reason to make any recommendation?

Mr. SHERIDAN. No. My duties were changed completely and I left the Broadcast Bureau.

Mr. MOSS. The next gentleman.

Mr. OPPENHEIMER. I am Gordon Oppenheimer, senior attorney in the Television Branch. The transfer applications don't come through us at all.

Mr. MOSS. Mr. Smith, you have testified.

Mr. GEORGE SMITH. I have given my answer.

Mr. MOSS. Now perhaps you can give us a little fuller explanation of the conversations as you recall them with Mr. Rawson.

Mr. GEORGE SMITH. Mr. Chairman, it might save a little time if you will permit me to tell you how we came to the recommendation that we went before the Commission with.

Mr. MOSS. Mr. Lishman, what do you think of that course of action?

Mr. LISHMAN. I assume that the reasons the staff made its recommendation are contained in the staff memo.

I would like to ask a few questions about that staff memo.

Mr. MOSS. Then you want to hold Mr. Smith—

Mr. LISHMAN. I would like to find out from Mr. Smith what was the nature of his conversation with Mr. Rawson concerning whether or not there should be a hearing. That is the only point.

Mr. MOSS. Was the question discussed?

Mr. GEORGE SMITH. I am sure somewhere along the line we probably discussed it, because we do in most all of these big cases discuss whether or not a hearing should be recommended to the Commission or what the recommendation should be.

I don't have any specific recollection of having discussed it with Mr. Rawson. That was my answer before and that is my best recollection.

I can't say I did or didn't because I went into this case, first off, if I may be permitted to say it, I had an analysis made of the whole proposal by the senior attorney that Mr. Alford mentioned a moment ago.

Mr. LISHMAN. May I interrupt? Where is that analysis? We don't have it in the record. Supposedly, we have a complete record here.

Mr. GEORGE SMITH. This was a worksheet analysis. I asked for it, whether or not it had been kept, and it was not kept. That is not just due to the Overmyer case but we just don't keep those worksheets.

I assume the item of October 27, 1967, which went before the Commission was drafted and redrafted and corrected in numerous instances. That is procedure.

We just don't keep all those copies that have been redrafted, language changed.

Mr. MOSS. Of course, advice of your counsel, analysis by counsel, is in a different category than working drafts of a proposal to submit to the Commission.

Mr. GEORGE SMITH. Mr. Chairman, I may have used the word "analysis" too broadly or not correctly, but procedurally what I had done in this case is that I had a complete, I don't know whether you would call it a complete draft, it was not really a draft of an item, it was a draft of what this case was about, what was involved, what the questions were.

Mr. MOSS. Is that attorney present here?

Mr. GEORGE SMITH. No; he is not.

Mr. MOSS. Mr. Keith.

Mr. KEITH. I think counsel has made great progress here in establishing where the responsibility lay.

My question is to what extent, if any, did the Commission interest itself in this decision-making process?

Did any members of the Commission consult with any of you gentlemen about the progress being made in this case?

Mr. GEORGE SMITH. You mean prior to the time that the item was submitted to the Commission?

Mr. KEITH. Prior to that time and during the time it was under consideration.

Mr. GEORGE SMITH. In the Bureau?

Mr. KEITH. Yes.

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Mr. GEORGE SMITH. I don't believe so. Not to me, *anyhow*.

Mr. KEITH. Does any other member have anything to say to the contrary?

Mr. RAWSON. I had no connection, no conversations with any Commissioner until this item was on the agenda.

Mr. KEITH. At any time during the decision-making process was there any interest expressed by the Overmyer interests about the progress of the case?

Did you, sir, or did any of your staff receive phone calls from the Overmyer interests asking how the case was coming along and whether there were any problems to which they could address themselves?

Mr. GEORGE SMITH. I did not, but I believe at the last session we had here there was some testimony given that there had been requests made to Mr. Gaguine, counsel for Overmyer, for additional information.

Mr. KEITH. Requests made of the Commission by Mr. Gaguine.

Mr. GEORGE SMITH. For certain additional information. I have no independent recollection of what it was but I think I read that in the transcript of the Friday hearing last.

Mr. KEITH. Can anybody confirm this and specify the nature of the questions?

Mr. RAWSON. I believe it might have been in connection with the questions concerning security for the loans that they were to receive. I believe that was the area.

Of course, it is normal for us to receive inquiries occasionally to find out when they could anticipate some action will be taken on an application.

Mr. KEITH. I understand those inquiries. I always preface any inquiry of mine stating, "I am a Congressman, not an attorney, and should I begin to violate the rules or the customs of the FOC or the law please advise me immediately."

I do everything I can to keep my questions in proper form. There was an inquiry made of you people for the Overmyer interests. Did you at any time inquire, or was any information ever brought to your attention, about the violations of the sections which have been referred to in earlier discussions?

Mr. RAWSON. No, sir.

Mr. KEITH. Did you people rely on the expertise of the attorney representing the Overmyer interests to reveal, because of his knowledge of the area and his work with the Commission, the kind of information that apparently was not contained in these applications and was therefore not in strict compliance?

Mr. RAWSON. Congressman Keith, it was not lack of information contained in the application because the information we are talking about was and must be filed with the Commission, itself. It was the failure of the parties to submit this particular contract with our ownership section in accordance with the rules within 30 days after they had signed it.

But they did submit it 2 months later with the application. We have considered these in the past as just mere technical failure to conform to the rules, rightly or wrongly.

Mr. LISHMAN. May I interject on this?

Do you consider the *Gross* case decision just a mere technicality? I object to the witness characterizing this as a trivial matter. You have

five construction permits sold for \$4 million. We are inquiring into whether there was any trafficking in licenses.

Mr. RAWSON. I did not say this was a trivial matter. What I said was, and I thought I made it clear, I said that we in the past have considered these technical violations because in every instance the licensee must file the contracts with us and there is no question of his hiding anything.

There is no question of concealing information. They must file these with the application ultimately.

Mr. LISHMAN. But he did not file the contracts until June 30. And in the interim between March 28 and June 30, he was filing applications for extensions to the Commission which concealed the fact that he had entered into these arrangements for the sale of the permits.

Isn't that correct?

Mr. GEORGE SMITH. I will answer that. I think that is correct. Of course you understand none of those applications were granted by the Commission until after the transfer, about the time the transfer was granted in December?

Mr. LISHMAN. That raises another very interesting question.

Why did you grant them, once you knew he had been in violation of your rules?

Mr. GEORGE SMITH. You are talking about the——

Mr. LISHMAN. The applications for extensions.

Mr. GEORGE SMITH. The rule 1.63?

Mr. LISHMAN. Yes.

Mr. GEORGE SMITH. And 1.65?

Mr. LISHMAN. 1.65, 1.613, and 1.615.

Mr. GEORGE SMITH. Well, that has been answered.

Mr. SAADY. After the Commission grants a transfer——

Mr. MOSS. Just a moment. We have a question pending.

Mr. GEORGE SMITH. I have answered that question several times for Mr. Lishman. I have no knowledge, I did not research this file to determine whether or not the contracts had been filed. The contracts were filed with the transfer application. I don't know anything about them. That is why I didn't answer it.

Mr. ADAMS. Will the chairman yield for a question?

Mr. MOSS. The gentleman from Massachusetts has the floor. He yielded to counsel for a question. I must recognize the gentleman from Massachusetts.

Mr. KEITH. I will be glad to yield to the gentleman from Washington.

Mr. ADAMS. Is the renewal filed with you?

Mr. GEORGE SMITH. A renewal of license application?

Mr. ADAMS. Yes.

Mr. GEORGE SMITH. It comes in the Broadcast Bureau.

Mr. ADAMS. Is an application for extension grant filed with you?

Mr. GEORGE SMITH. It is filed in the Bureau.

Mr. ADAMS. With you?

Mr. GEORGE SMITH. Not with me personally; no. It is filed in the Office of the Secretary.

Mr. ADAMS. The question that I have, since you are head of the Bureau, do you grant extensions? Two were granted March 29 and one April 19—Cincinnati, Houston, and San Francisco. Who grants

those and what files did they use as their backup for making the extension?

Mr. GEORGE SMITH. I will have to ask Martin Levy to answer that question, or Mr. Saady, I guess.

Mr. SAADY. I handle the extension applications as Chief of the Television Branch.

In the particular case in question, when we got the extension application we withheld action which is normal policy within the Division and the Bureau, if we expect an additional application to be filed. We withhold judgment on the extension until the subsequent additional information is filed.

In this particular case, these applications for extension were not granted until after the Commission had made its determination of transfer of control. At that stage our action is really to some extent administrative. Having granted the transfer of control to these new parties——

Mr. LISHMAN. Mr. Chairman, I fail to see the relevancy of this answer to the question of concealment.

Mr. MOSS. Mr. Adams, will you yield for a moment?

Mr. ADAMS. You might explore what the process was that alerted them to the fact that additional——

Mr. ADAMS. This is what I was going to do, Mr. Chairman, if the gentleman will yield for a moment.

As I understand, the extensions expired on Cincinnati, Houston, and San Francisco, April 1, 1967, and May 20, 1967. That is the information I have in a memorandum. Applications were made to extend them, Cincinnati on March 29, 1967; Houston, March 29, 1967; and San Francisco, April 19, 1967.

Now, all of these are after the date when he had entered into a contract on March 28 which changed his entire financial situation.

The question that I am asking—and I simply do not know—is who approves or disapproves the extension and what type of backup file or information do you require from the applicant at that time? Because if he was applying for extension in the normal course of administrative procedure, I would assume you would require from him an indication of whether he had any contracts or if his situation had changed before you granted extension.

That is my question. I don't know which one of you can answer that.

Mr. SAADY. I get the extension applications and I handle them. I handle them and I sign them. When the application for extension is filed it is on a form which indicates the extent of construction and indicates thereon if there have been any substantial changes and indicates thereon the reasons why they feel a further extension is justified.

In this case here when he filed these particular applications, he indicated some additional information was to be filed with the Commission.

Under normal circumstances, we withhold action until the information is filed. In these particular cases, what subsequently was filed were applications for transfer of control. Once that is done, thereafter I await the Commission's decision on transfer of control because that will determine what we do with the extension applications.

Mr. ADAMS. Then you did not act, as the memorandum indicates, until December 8, 1967.

What was the status of the construction permits, which I understand were to expire April 1, 1967, what was the status of them between April 1, 1967, and December 8, 1967? Had they expired?

Mr. SAADY. No. Under the Commission's rules, the filing of a timely filed application for additional time to construct tolls the expiration date.

Mr. ADAMS. In other words, it simply tolled and no action at all took place on these construction permits extension for a period of about 8 months, is that correct?

Mr. SAADY. That is right, until after the Commission's action on the transfer applications.

Mr. ADAMS. Thank you.

Mr. KEITH. I have further questions but I am going to yield for the moment and allow Mr. Lishman to continue.

It would appear, Mr. Chairman, that it may be advisable for you to ask the Commission to have present the man who prepared the memorandum on this whole question, which no longer exists.

Mr. Moss. We will request that he be present.

I find it interesting that in the letter of March 14, 1968, the Chairman of the Commission assured the chairman of the Committee on Interstate and Foreign Commerce that he has supplied the memorandum listing and identifying those members of the Commission staff who were involved in the processing of the original Overmyer application.

Mr. GEORGE SMITH. His name was listed. I understood he was excused by counsel because he was on vacation. He is back.

Mr. LISHMAN. To whom are you referring?

Mr. GEORGE SMITH. Mr. Hautanen.

Mr. LISHMAN. We would like to have him here.

Mr. Moss. Is it Edward W. Hautanen?

Mr. GEORGE SMITH. Yes, sir.

Mr. Moss. We will want to have him here.

Mr. LISHMAN. I would like to ask Mr. Rawson, did you make any recommendation to anyone in the Commission or at the Commission staff level that there should be a hearing on the Overmyer application?

Mr. RAWSON. Not that I know of. I would not have any reason to make any recommendation to a member of my staff.

Mr. LISHMAN. It is a fact, is it not, that the staff memorandum approving the transfers, and upon which the Commission placed practically a hundred percent of its reliance in determining approval, contains a number of statements which indicate that this was the type of case that was a problem case, novel and unusual situation which might well have required a hearing?

For example, on page 8 of the staff memo in paragraph 15, the statement is made:

The claim for expenses falling in the second category presents a novel question, i.e., the right to reimbursement for "out-of-pocket" which are substantiated by opinion evidence.

Now, the novel question involved there, of course, relates to the \$660,000 claim for unreimbursed staff expenses of other Overmyer companies. Is that correct?

Mr. RAWSON. That is correct.

Mr. LISHMAN. Have you ever had a case before the Commission where a request for approval of such out-of-pocket expenses has been handled in the manner it was here?

Mr. RAWSON. No, I can't say that we have.

Mr. LISHMAN. Isn't it correct that Commissioner Cox in his dissent refers to this as an extremely unusual and novel situation?

Mr. RAWSON. I believe he does.

Mr. LISHMAN. Does he not say that indicates there at least should have been a hearing on this matter?

Mr. RAWSON. I think several other Commissioners disagreed with him, though.

Mr. LISHMAN. I am not asking about the several.

Mr. RAWSON. He did.

Mr. LISHMAN. Is it not also correct that the staff memo approving this application for transfer states that, "The extension of loan by a transferee to a transferor presents an unusual situation which should be approached with some skepticism"?

Now, under these conditions of a staff memo which indicates that it is a novel situation involving tremendous sums of money and an unusual situation which should be approached with skepticism, why wasn't there a hearing?

Mr. RAWSON. You will have to ask the Commission that. I can't answer that question, obviously.

Mr. LISHMAN. Why didn't the staff recommend a hearing?

Mr. RAWSON. Because of the facts surrounding the entire matter as set out in the memorandum.

Mr. LISHMAN. Now I will just ask some more about the memorandum.

Does the Commission have any policy regarding enthusiasm?

Mr. RAWSON. I really don't know.

Mr. LISHMAN. Do you know that the staff memo in its very careful analysis of the situation stated, "Considering the enthusiasm of Overmyer's commitment to entering UHF, there is no question that substantial expenses were incurred in attempting to get this station on the air."

Mr. RAWSON. That is in the memorandum, yes, sir.

Mr. LISHMAN. How do you equate enthusiasm with money? Can you show it on a balance sheet?

Mr. RAWSON. No, sir.

Mr. LISHMAN. Who made the decision that Mr. Overmyer's enthusiasm proved that he had made substantial expenditures?

Mr. RAWSON. I don't think the enthusiasm is what supports the expenses. Mr. Smith, I am sure, could probably help you.

Mr. GEORGE SMITH. I approved the language in the memorandum, itself, Mr. Lishman.

Mr. LISHMAN. What does enthusiasm have to do with out-of-pocket expenses?

Mr. GEORGE SMITH. I don't think it has anything to do with it.

Mr. LISHMAN. Can you equate enthusiasm with \$660,000?

Mr. GEORGE SMITH. Not necessarily, no.

Mr. LISHMAN. Does the FCC have any policy on enthusiasm?

Mr. GEORGE SMITH. Not that I know of.

Mr. LISHMAN. Do they have any policy respecting whether or not an applicant is dedicated?

Mr. GEORGE SMITH. Not that I know of.

Mr. LISHMAN. Your memorandum relies on enthusiasm and dedication as being essential elements in the financial capacity of this gentleman and also as an essential element for proof of Overmyer's out-of-pocket expenses?

Mr. GEORGE SMITH. This, sir, is a recommendation and the Commission does not always accept our recommendations. In numerous instances it rejects them.

Mr. ROGERS. If the gentleman will yield at that point——

Mr. MOSS. The gentleman from Florida is recognized.

Mr. ROGERS. I believe they did accept your recommendations though, in this case, did they not?

Mr. GEORGE SMITH. The Commission did approve it, yes, sir.

Mr. ROGERS. These were your recommendations, were they not?

Mr. GEORGE SMITH. It was my recommendation and the Commission came out with a very short order on it.

Mr. ROGERS. I am not saying that. I am saying this was your recommendation.

Mr. GEORGE SMITH. It certainly was; yes, sir.

Mr. ROGERS. Was it your recommendation that they waive the top 50 markets policy and grant their application?

Mr. GEORGE SMITH. I believe that is in the memorandum, is it not, Mr. Rawson?

Mr. RAWSON. Yes.

Mr. GEORGE SMITH. It is.

Mr. ROGERS. Was it your recommendation?

Mr. GEORGE SMITH. Yes, sir.

Mr. ROGERS. It was your recommendation that no hearing be held?

Mr. GEORGE SMITH. The memorandum that went to the Commission did not even mention a hearing.

Mr. ROGERS. That is exactly the point I am making.

Mr. GEORGE SMITH. That is correct. I did not recommend a hearing.

Mr. ROGERS. That is what I want to know. Was that a staff decision, the work of other people, or was that your decision?

Mr. GEORGE SMITH. That was entirely my judgment.

Mr. ROGERS. Your judgment alone?

Mr. GEORGE SMITH. When I submitted the memorandum I accepted the responsibility for that; yes, sir.

Mr. ROGERS. That is what I want to know, because I think we will get to the heart of this now.

You say in your memorandum, as I see it, that "in the Bureau's view the financial arrangements here are compatible with the public interest and out-of-pocket expenses which are subject to a question of proof have been proven adequately."

Was that also your recommendation, your finding?

Mr. GEORGE SMITH. What page are you reading from?

Mr. ROGERS. Page 2.

Mr. GEORGE SMITH. If you have read from the memorandum, that is my responsibility.

Mr. ROGERS. Where did you decide that the proof of financial ability was sufficient and had been proved?

Mr. GEORGE SMITH. The only question of financial responsibility here went to the buyer of these permits, not to the seller.

Mr. ROGERS. Which are subject to a question of proof and have been proven adequately?

Mr. GEORGE SMITH. If I understand your question correctly, you are correct in what you have just read.

Mr. ROGERS. So this was your recommendation, too?

Mr. GEORGE SMITH. Yes, sir.

Mr. ROGERS. Was there a time when Overmyer was supposed to get into operation?

Mr. GEORGE SMITH. You are talking now about the previous construction permit?

Mr. ROGERS. Yes.

Mr. GEORGE SMITH. Yes. Every construction permit that is issued carries a time within which construction should be completed; yes, sir.

Mr. ROGERS. But this was not done by Overmyer. You let them run for 8 months, I believe.

Mr. GEORGE SMITH. I believe the record shows that; yes, sir, at least on San Francisco, and probably on all of them.

Mr. ROGERS. What was your feeling about the 20-percent stock that backed up the mortgage?

Mr. GEORGE SMITH. I don't know what my feeling may be but what I had to say about it or what I approved is in the October 2 memorandum.

Mr. ROGERS. Which is what?

Mr. GEORGE SMITH. I don't know. I will have to look through it.

Mr. ROGERS. You don't recall your findings on that?

Mr. GEORGE SMITH. Would you like to ask me the question again, please?

Mr. ROGERS. Well, read it, Mr. Reporter.

(The question was read by the reporter.)

Mr. GEORGE SMITH. You asked me what my feeling was. I just don't know what my feeling was.

Mr. ROGERS. Or your finding.

Mr. GEORGE SMITH. I did not find that the retention of the 20 percent of the stock by Overmyer was a "roadblock," if I may use that term, to my recommendation that the transfer be granted.

Mr. ROGERS. Your \$3 million figure involved in the loan which would be paid at a certain time at which the 20-percent stock would then——

Mr. GEORGE SMITH. I considered the \$3-million loan separate and apart, a question separate and apart from the retention of 20 percent and the option arrangement that had been entered into whereby AVC, the purchaser here, could or could not acquire that 20 percent.

Mr. ROGERS. Whom did you question on that?

Mr. GEORGE SMITH. I don't suppose I questioned anyone. I remember going over the matter. I did not treat this case lightly, Mr. Congressman.

Mr. ROGERS. What I can't understand is why you did not think a hearing was necessary to find out what the terms were and whether this was more than out-of-pocket payment for that 20 percent of the stock.

Mr. KEITH. Will the gentleman yield at this point?

Mr. ROGERS. Yes.

Mr. KEITH. In view of these hearings and of what has been revealed, do you still feel that the arrangement which was entered into was in the public interest, with particular reference to the point that Mr. Rogers is making?

Mr. GEORGE SMITH. I have thought about that since these hearings started. Hindsight, I think quite often, is better than foresight.

When I went through this contract and all the terms of it, I came up with my best judgment, my honest representations. I don't know, I think it is a matter for the Commission to decide whether or not it would—I think I would have made the same recommendation, lacking any direction from the Commission.

Mr. KEITH. In view of the great number of cases which you handle, to what extent in your decisionmaking process did you rely on the information that had been furnished you by the Overmyer interests and on the personality and character of those who represented those interests to you, including their past affiliations with the FCC?

Mr. GEORGE SMITH. Well, that is a broad mouthful, Congressman Keith. I don't think I considered the Overmyer interests here as much as I considered the qualifications of the buyer and the potential of getting these five stations on the air in these important markets for competitive purposes.

I made the determination that the assignee in these cases had made a good case toward getting these stations on the air which was I believe at that time, and still is, consistent with the Commission's policy of fostering UHF competition wherever we could get it.

Mr. MOSS. I believe we will have to adjourn at this point and meet again at 1:30 this afternoon.

Mr. ADAMS. If you had not approved the transfer, was there anything to prevent AVC from simply applying for these stations in these areas?

Mr. GEORGE SMITH. I believe it is established law by a court of appeals decision that an applicant cannot apply as against a construction permit holder.

I have to distinguish that because you can file for a station facility against a renewal of license application.

Mr. ADAMS. There was nothing to prevent AVC, if you closed out Overmyer, from buying these five stations?

Mr. GEORGE SMITH. That is certainly true if the Overmyer construction permits had been canceled; yes.

Mr. ADAMS. Thank you.

Mr. MOSS. It would also have been true if the Overmyer construction permits had not been extended, they would have just lapsed, would they not?

Mr. GEORGE SMITH. Had they been permitted to lapse, that is correct.

Mr. MOSS. So AVC could have then filed for them?

Mr. GEORGE SMITH. That is correct.

Mr. MOSS. The committee will recess until 1:30 at which time we will expect you gentlemen back, together with the additional witnesses.

(Whereupon, at 11:30 a.m. the subcommittee recessed, to reconvene at 1:30 p.m. the same day.)

(The committee reconvened at 1:45 p.m., Hon. John E. Moss presiding.)

Mr. MOSS. The committee will be in order.

TESTIMONY OF ROBERT H. ALFORD, CHIEF, TRANSFER BRANCH; ROBERT J. RAWSON, CHIEF, RENEWAL AND TRANSFER DIVISION; GEORGE S. SMITH, CHIEF, BROADCAST BUREAU; JAMES O. JUNTILLA, DEPUTY CHIEF, BROADCAST BUREAU; JAMES B. SHERIDAN, FORMER CHIEF, BROADCAST BUREAU; SAMUEL L. SAADY, CHIEF, TELEVISION BRANCH; MARTIN I. LEVY, CHIEF, BROADCAST FACILITIES; ROY J. STEWART, ATTORNEY ADVISER, BROADCAST BUREAU; LLOYD R. SMITH, ENGINEER, BROADCAST BUREAU; AND K. GORDON OPPENHEIMER, ATTORNEY, BROADCAST BUREAU, FEDERAL COMMUNICATIONS COMMISSION—
Resumed

Mr. LISHMAN. I would like to ask what are out-of-pocket operating expenses?

Mr. GEORGE SMITH. Do you want to answer that, Mr. Rawson?

Mr. RAWSON. Out-of-pocket expenses are those expenses which are incurred in connection with the prosecution of an application before the Commission, an application for a construction permit and any other applications in connection with the construction permit which may be authorized or filed necessarily to modify the construction permit as originally authorized.

Mr. LISHMAN. Does the Commission have any rule defining out-of-pocket expenses?

Mr. RAWSON. No, sir.

Mr. LISHMAN. How long has the Commission been applying the rule that it will not approve more than out-of-pocket expenses in connection with a construction permit transfer?

Mr. RAWSON. I am not too sure if I understood that last question.

Mr. LISHMAN. I will rephrase the question.

How long has the Commission had a policy that it would not approve more than out-of-pocket expenses in connection with the transfer of a construction permit?

Mr. RAWSON. To my knowledge, it has been at least 15 or 16 years that I know of. We did have one more specifically added by section 311 relating to out-of-pocket expenses in cases that I was very familiar with before I came into the assignment and transfer and renewal field.

Mr. MOSS. Mr. Lishman, before we proceed on that line of questions, there are two things that I would like to have done. I would like to conclude with the additional members of the staff the answers to the question as to whether or not they made a recommendation for a hearing on this matter. I don't think we had completed it. I would like to swear the attorney who prepared the memorandum for Mr. Smith on analysis, which I believe is the word Mr. Smith used, on this case. I would ask the attorney now to stand and be sworn.

Do you solemnly swear that the testimony you are about to give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HAUTANEN. I do.

Mr. Moss. Will you identify yourself for the record.

TESTIMONY OF EDWARD HAUTANEN, ATTORNEY, ASSIGNMENT AND TRANSFER DIVISION, BROADCAST BUREAU, FEDERAL COMMUNICATIONS COMMISSION

Mr. HAUTANEN. My name is Edward Hautanen. I am in the Assignment and Transfer Division of the Broadcast Bureau.

Mr. Moss. All right, Mr. Lishman, you may proceed and conclude the original question you had pending as to whether or not the staff had advised that a hearing be held.

Mr. LISHMAN. Mr. Hautanen, did you make any recommendation that there be a hearing in connection with the application for the transfer of these five construction permits?

Mr. HAUTANEN. No; there was no such recommendation given.

Mr. LISHMAN. Was it discussed?

Mr. HAUTANEN. There was no possibility—it was not discussed. The way this went up, in various draft stages I would rework the draft and it would be discussed with Mr. Rawson and with Mr. Smith. At one point when we got fairly close to a finished product Mr. Smith felt that the thing could go up to the Commission for a recommendation for a grant without hearing. But there was no recommendation on my part.

Mr. LISHMAN. You prepared an analysis which you submitted to Mr. Smith?

Mr. HAUTANEN. The analysis consisted of a draft opinion which was reworked several times, several copies of a yellow page draft. I would work that, take it back and rework it. So that was basically the analysis. In final stage it came out as this document here.

Mr. LISHMAN. Could you give us the substance of that analysis?

Mr. HAUTANEN. It is the analysis which appears in the Commission's memorandum recommending a grant without hearing. It is memo 6738. It is the basic memorandum in this case.

Mr. LISHMAN. Yes; I have it before me.

Now, in connection with this analysis, and you may answer this or any other gentlemen at the table may do so, didn't it strike you as odd that Overmyer felt entitled to \$2 million out-of-pocket expenses, yet he was only putting in for \$1.3 million?

Mr. HAUTANEN. The point was noted in the memorandum. How odd I might have considered that I don't know—I realized when the memorandum was being written that Overmyer hadn't got everything down, but the point he made in his request for these out-of-pockets was that he felt that his expenses were in excess of \$1.3 million, that they were in actually the neighborhood, as I recall, of \$1.5 million but he was only claiming \$1,331,000, I believe.

Mr. LISHMAN. Why didn't you ask Mr. Overmyer for this justification?

Mr. HAUTANEN. Because the out-of-pockets were supported by affidavits and affidavits by—I think it was T. J. Byrnes of the Overmyer

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companies, and I believe the various, I am not sure on this point, but I think the various department heads individually swore to the out-of-pocket expenses they were claiming. I know there was an overall affidavit by Mr. Byrnes.

Mr. LISHMAN. Couldn't the Commission have made some kind of investigation as to whether or not these out-of-pocket expenses had actually been incurred?

Mr. HAUTANEN. I suppose such an investigation might have been made.

Mr. LISHMAN. Has the Commission made it in other cases?

Mr. HAUTANEN. Not that I am aware of, any case that I have worked on.

Mr. LISHMAN. Now, the staff memorandum states, "The transfer is dictated by reverses in Overmyer's warehouse operations which make it impossible to construct the stations through warehouse profits."

Now what financial statements of Overmyer or of his warehouse companies were submitted to the Commission to prove that his financial condition forcibly suggested that he was not in a position to get the stations on the air in the foreseeable future?

Mr. HAUTANEN. There is a long document filed in this proceeding. I think it was entitled "Reasons for Proposed Transfer," something like that.

Mr. LISHMAN. I am asking you what financial statements Mr. Overmyer or his warehouse companies submitted to substantiate that point.

Mr. HAUTANEN. By financial statements you mean balance sheets?

Mr. LISHMAN. To justify the statement that it was dictated by reverses in his warehouse operations. What financial statement did he submit in connection with proving that point?

Mr. HAUTANEN. I don't recall if there were any. I went mainly on the fact that this was an affidavit under oath and that the reasons here were truthful reasons. There was no reason to suppose the contrary.

Mr. LISHMAN. Well, Commissioner Cox in his dissent points out that it is a very unusual situation to have approval of an amount of indirect expenses which was more than twice that spent directly by the five permittees. What justification is there in the files for that?

Mr. HAUTANEN. I realize it was unusual. I think the language I used in writing the decision was that this was a novel question. Accordingly, we left it to the Commission to determine whether they wished to inquire further, but the feeling of the staff was that this statement under oath was a sufficient—

Mr. LISHMAN. I would like to have you refer specifically to this statement under oath that you are talking about. Will you give me the name and date of verification?

Mr. HAUTANEN. It is in a document called "Reasons for Proposed Transfer."

Mr. LISHMAN. Whose sworn statement is it?

Mr. HAUTANEN. It would be in the application which was certified. I think it was personally sworn to by Mr. Byrnes.

Mr. LISHMAN. Is it not a fact that this affidavit is a mere justification for the formula used by Overmyer in allocating the unreimbursed staff expenses? That is not an affidavit, is it, that says these amounts were actually spent? Is that correct?

Mr. HAUTANEN. Without seeing it—I don't recall, it has been some time since I worked on that document.

Mr. LISHMAN. I wish to call to your attention that you are giving the committee the impression that this is a sworn statement, that these claimed out-of-pocket expenses were actually expended when that is not true. That affidavit says that they made an allocation on the basis of opinion evidence and that they think the formula they used is a pretty good formula, and from their point of view it is. But that is not an affidavit that money involving \$666,000 was actually out-of-pocket expenses.

Mr. HAUTANEN. It was opinion evidence that it had been expended, that is what we went on. We said in the memorandum to the Commission that this was a novel question because it represented the recovery—whether out-of-pockets should be allowed when they were based on opinion evidence.

Mr. LISHMAN. What base period did Overmyer use in order to come up with this \$666,000 figure?

Mr. HAUTANEN. I have gone over the decision. It is a rather complicated thing.

Mr. LISHMAN. I just want to ask you one question: What base period did Overmyer use in making this complicated allocation?

Mr. HAUTANEN. It would have been a base period prior to the time that Overmyer's administrative functions were centered in the central Overmyer company, apparently July 1964 to—

Mr. LISHMAN. I will give you the base period. It is from September 1966 to December 1966.

Mr. HAUTANEN. That is right, sir.

Mr. LISHMAN. Had there been any great activity in the communications activities of the Overmyer company during these periods?

Mr. HAUTANEN. On the basis of the affidavit which had been filed, the document which had been filed, I assumed there had. I had no reason to assume to the contrary.

Mr. Moss. Will you yield there?

Why have you no reason to assume to the contrary? The Federal Communications Commission is created by law to carry out certain responsibilities, by the Congress of the United States, because the Congress found that in past years it was unrealistic for it to undertake those. And it imposed upon you the responsibility to act in the public interest. Therefore, you have every reason to seek quietly and carefully for the facts. So that this industry will not become just a golden egg for the private few who might receive the construction permits or the licenses. You had every reason, in fact I think the exact opposite of the implication in your answer, you had every reason to question every fact submitted to you, to examine with care and prudence those claimed costs because for one thing this company or this holder of permits had not fully disclosed the fact that it had undertaken refinancing before it filed application for extension of some of its permits. It did not disclose the fact that it had entered into a sales agreement before it made application for extension of some of these permits.

The cavalier attitude of the members of this staff, I find shocking. I don't see anything here on this record that reflects the sense of commitment to the public interest that I expect from a commission

and its staff which is vested with the responsibility of carrying out the duties given this Congress by the Constitution.

Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Hautanen, are you aware of the fact that in the documents filed with the Internal Revenue Service on August 31, 1966, the Overmyer company stated that it had expenses from January 1 of that year?

Mr. HAUTANEN. No, sir, there was no information in the application involving Internal Revenue.

Mr. LISHMAN. If this statement filed by the Overmyer company with Internal Revenue is correct, then they would have had a record of actual out-of-pocket expenses from January through December; and I submit to you what would be the necessity for constructing an allocation of expenses on a base period when their actual expenditures were already recorded if, as I noted, what they said to the Internal Revenue Service is true.

Did any information along this line come to the Commission?

Mr. HAUTANEN. Not to me, sir, and certainly not to anybody that would have got the application that would have eventually come to me.

Mr. LISHMAN. Did you question them as to whether they had any record of out-of-pocket expense?

Mr. HAUTANEN. The matter of out-of-pocket was discussed at various times between Mr. Rawson, Mr. Smith, and myself. It was gone over. I am not sure, Mr. Juntilla may have been in on the discussions. But the problem was batted around for a while. Eventually I think the consensus which emerged was that the expense listed in the application that had been documented should be allowed.

Mr. KEITH. Mr. Chairman.

Mr. Moss. Mr. Keith.

Mr. KEITH. I represent a district that is quite provincial in some respects. Constituents come to Washington occasionally to see if they can get channels for radio stations. They hire counsel either from Boston or perhaps they hire counsel in Washington. They believe with me that we have a government of laws and not of men. This investigation has caused me to doubt the validity of this belief. When this whole question came up, did you go back to the principals and ask them for a more detailed breakdown, or did you pick up the phone and call his local counsel? How did you satisfy yourself that these were bona fide out-of-pocket expenses? What procedures did you use?

Mr. HAUTANEN. In this particular case, it was a rather lengthy document, let us say seven or eight pages, on which Mr. Overmyer substantiated his various out-of-pocket expenses. It was on the basis of this document which, as I say, was part of the certified application, that we concluded—

Mr. KEITH. What kind of certification was on that application?

Mr. HAUTANEN. The certification I refer to is the warning on the cover of the application which states that any false statements subject you to criminal punishment under section 1001 of title 18.

Mr. KEITH. Does that include also omissions as well as errors of commission?

Mr. HAUTANEN. Yes, sir.

Mr. KEITH. You have to take that at its face value because you have to have something to go on and these men do this under a certain penalty.

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Mr. HAUTANEN. That is the assumption. When they file an application, and so certify it as a responsible application, they will be held to it.

Mr. KEITH. You never seek to go back of that to check into the validity of that document?

Mr. HAUTANEN. Generally speaking, no.

Mr. KEITH. Well, may I ask you this: How did the minority of the Commission get the detailed data they had to support their dissenting view?

Mr. HAUTANEN. From the decision itself, from this memo 6738. I think at one point, Commissioner Cox may have called for the application. I don't recall whether it was sent.

Mr. KEITH. But was the dissenting view discussed with you gentlemen? In the process of reaching that dissenting view, does he have that document to go on, generally speaking?

Mr. HAUTANEN. You mean the memorandum?

Mr. KEITH. Yes.

Mr. HAUTANEN. He would have that, plus the application itself; or he might have basically this document plus the application in writing his dissent.

Mr. KEITH. In that decision-making process, if he gradually comes to one conclusion and if the majority gradually comes to another conclusion, don't they get together and discuss it with this gentleman over here, the Chief of the branch? Or do they sort of reach their decision in a cellular type of operation where there is no communication while the decision is being made?

Mr. HAUTANEN. I think at the time this was adopted the dissenting Commissioners indicated they would later file dissenting statements. It was a matter of weeks before those dissenting statements were out. They were not as a rule, that I am aware of, returned to us and rehashed.

Mr. KEITH. This is the same memorandum on which the majority based its decision?

Mr. HAUTANEN. Their votes were taken basically on that, plus whatever else might be said at the Commission meeting in response to questions by the various Commissioners. This matter was, I am sure—I wasn't at the meeting, but I am told it was—discussed at some length back and forth between the various members of the Commission and the staff and there was an awareness of the policy question.

Mr. KEITH. Just as there was no exchange of views or facts of any substantive nature between the Commission and its staff, the staff did not go back to Overmyer in search of more substantive information.

Mr. HAUTANEN. There was some question which we put to—while I was working on this I remember calling Mr. Overmyer's counsel and saying I wished to be satisfied on certain points.

Mr. KEITH. The interest of the committee was aroused when it was revealed in testimony here that, following one hearing a week or two ago, the counsel for the Overmyer interests wandered over to the Commission to give them transcripts of testimony which were not available to members of the Commission. Is it customary for a petitioner to more or less walk in to the agency to see how things are coming along?

Mr. HAUTANEN. Certainly not, if it is a contested case. That would not be done. What happened several weeks ago—I was not in Washington at the time this happened.

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Mr. KEITH. How many contacts would you say were made between your office and the Overmyer interests during the deliberative process here?

Mr. HAUTANEN. I don't know exactly how many times I called Mr. Gaguine. I am certain it must have been a half-dozen times at least. Questions would arise, we wanted additional copies of things. I know I finally got additional copies of something. A half-dozen times.

Mr. KEITH. You would not say to him, because you didn't have knowledge at the time, "What about the loan, how does that relate to this whole picture? Are you by chance getting more than out-of-pocket expenses? You have five stations and if you take a 20-percent interest in each of those five stations so that you have strings on them, it becomes a very important factor. The same end objective could have been accomplished in a way by selling four stations and maintaining ownership of the fifth and it would have been a clean deal." The nature of the actual sale of 80 percent of each station, however, is rather extraordinary. Did you discuss this with the Overmyer representatives?

Mr. HAUTANEN. The options here were approved mainly on the basis that there were prior Commission decisions sanctioning such arrangements. I think a list of those was given to the subcommittee staff. The WFLD proceeding, the WAFT transfer—

Mr. KEITH. You are talking about individual cases. This is a group of five stations.

Mr. HAUTANEN. Will you repeat the question?

Mr. KEITH. The point I was making was that there was a retained interest of 20 percent in each of five stations. I can imagine some cases where there was one station sold that the buying party could not perhaps raise all the money and would want to take a note for the balance.

Mr. HAUTANEN. The Overmyer case was the first. The others involved single stations.

Mr. KEITH. Thank you.

Mr. BROWN. You mentioned the certification on the application. In point of fact how does the FCC invoke the penalty or take a case up where there is indication of erroneous information filed, purposely or accidentally?

Mr. JUNTILLA. The Commission has set down a number of times for hearings, Congressman Brown, on cases where the Commission felt there were misrepresentations of fact by applicants or by licensees, and a number of licenses have been denied on that basis over the years.

Mr. BROWN. But there is no indication of penalty? There is a penalty, I understood.

Mr. JUNTILLA. Penalty would be revocation of the license or denial of the application.

Mr. BROWN. I understood the gentleman to say that there was a thousand-dollar fine.

Mr. JUNTILLA. I am sorry. Criminal penalty?

Mr. BROWN. Yes.

Mr. JUNTILLA. There would be references by the General Counsel's office to the Justice Department in cases where they felt action by the Justice Department would be appropriate.

Mr. BROWN. How many times have such references been made?

Mr. JUNTILLA. I don't know, sir, but I can check with the General Counsel's office.

Mr. KEITH. Generally speaking, is it a tool which you have had occasion to use? A man in the audience is nodding his head. Is he the General Counsel?

Mr. MOSS. Will the gentleman identify himself?

Mr. SLOSBERG. My name is Hilburt Slosberg, Associate General Counsel for the FCC.

Mr. MOSS. Are you going to give testimony?

Mr. SLOSBERG. The response to the question—

Mr. MOSS. Are you going to give testimony?

Mr. SLOSBERG. Yes.

Mr. MOSS. Then raise your right hand.

Do you solemnly swear the testimony you are about to give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SLOSBERG. I do.

Mr. MOSS. Identify yourself for the record.

TESTIMONY OF HILBURT SLOSBERG, ASSOCIATE GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

Mr. SLOSBERG. I am Hilburt Slosberg, Associate General Counsel of the Federal Communications Commission.

Mr. MOSS. You may now give the testimony.

Mr. SLOSBERG. The response to the question is that over the recent years the Commission has referred somewhat in the neighborhood of five to 15 cases a year to the Department of Justice for alleged violation of section 1001 of title 18 of the United States Code.

Mr. BROWN. And pursued by the Department of Justice? Do you know how many times the Department of Justice has brought action in such cases?

Mr. SLOSBERG. I would have to check the record.

(The information referred to appears in the appendix, p. 778.)

Mr. SLOSBERG. Numerous cases involving counts other than the Federal Communications. The local U.S. attorneys directly proceed to dispose of the case frequently on the basis not of misrepresentation but relying on the other count. There have been a number of convictions of cases initially involving a 1001 count, but maybe not winding up on that basis. There may have been findings of guilty or plea of guilty to other counts of indictment which the Court accepted.

Mr. BROWN. Then is it fair to say that there are really three levels here wherein the FCC takes into consideration whether or not the statements of the applicant are accurate.

First, if they are inaccurate it would prejudice consideration of his application and perhaps cause his application to be set down or thrown out, whatever term you use.

Secondly, it would be referred, if it were felt that the application were sufficiently inaccurate it would be referred to the Justice Department and, thirdly, the question of whether or not the Justice Department itself chooses to pursue any errors in the application to the extent of bringing the case to trial.

Are those the three levels of reaction of inaccurate or incomplete or perjured information in the normal application?

Mr. SLOSBERG. Generally, yes.

Mr. BROWN. Are there any other levels?

Mr. LEVY. May I answer that? I think there is one additional level. Information that indicates that misrepresentation occurred at some other time. If that application is dismissed or final decision isn't reached by the Commission on that particular application it may be raised by the Commission at a later date on another application. This is quite often done.

Mr. BROWN. What you are saying is that inaccuracy or purposeful misleading by an applicant prejudices future applications?

Mr. LEVY. That is right.

Mr. BROWN. Is that right?

Mr. LEVY. That is right. He may have to have a hearing on the question of whether there has been misrepresentation or not.

Mr. KEITH. Are you an attorney, Mr. Hautanen?

Mr. HAUTANEN. Yes, sir.

Mr. KEITH. On questions where there is some flicker of suspicion or concern in your mind, do you call up Mr. Slosberg and ask his advice and counsel to help you in a hairline case?

Mr. HAUTANEN. Generally no; we don't. These matters are handled within the Broadcast Bureau. We do not confer with the General Counsel unless perhaps there was something unusual.

Mr. KEITH. Thank you.

Mr. MOSS. Mr. Lishman.

Mr. LISHMAN. Any one of the panel may answer this: It is correct, is it not, that under section 310(b) of the Communications Act no construction permit or license or any rights thereunder shall be transferred, assigned, or disposed of in any manner unless there is a finding by the Commission that the public interest, convenience, and necessity will be served thereby? Is that correct?

Mr. GEORGE SMITH. That is correct; yes.

Mr. LISHMAN. Where in the staff memorandum approving this transfer is there any determination that the public interest for each of the five CP's would be served by the transfer?

Mr. GEORGE SMITH. Paragraph 26 on page 12 contains the recommendation that the above-captioned applications be granted and the Commission of course is aware that it can only grant if it makes a finding that it is in the public interest. We try to save a little work where we can and that is the law.

Mr. LISHMAN. Is it a fact that there is no determination with respect to any individual location here as to whether the public interest would be served or not?

Mr. GEORGE SMITH. That is inherent in the memorandum.

Mr. LISHMAN. I don't understand that. Aren't conditions different in each market?

Mr. GEORGE SMITH. We recommended that the Commission grant these transfers for all five.

Mr. LISHMAN. Did you make a study of the market conditions in Cincinnati?

Mr. GEORGE SMITH. No, sir.

Mr. LISHMAN. Was any submitted to you by the applicant?

Mr. GEORGE SMITH. I don't believe so.

I would like to say, I don't want to give you a hedge answer but I did not personally examine these applications or the exhibits. You

have. I just haven't looked at them. If there is any market survey in connection with the application I would have to say that there is. But I haven't seen it.

Mr. MOSS. Don't you in your recommendation to the Commission make that statement?

Mr. GEORGE SMITH. There is no statement made about a market survey in my recommendation, I do not believe.

Mr. LISHMAN. Did the Commission have anything before it indicating that the five communities involved in the Overmyer transfer had an unusual and urgent need for this additional television service?

Mr. GEORGE SMITH. My memorandum was the only thing before the Commission submitted by the Broadcast Bureau. Now the Commissioners keep themselves informed. You must understand that this was before the Commission four times. It started out November 8, November 15, November 22, and finally December 8, and there was much discussion about this item at every meeting.

At one time we were asked to get certain additional information from Overmyer, and did. That is that letter of November 21, 1967.

Mr. MOSS. Let me pursue this for just one moment.

On item No. 2 of the memorandum here, November 8, 1967, October 27, 1967, No. 6738, your office memo, "for AL and TC agenda" to the Commission from the Chief, Broadcast Bureau, page 3:

The applicant has conducted a survey to appraise needs of the communities it proposes to serve. The survey consisted of interviews with civic, religious, business, education, and other community leaders. From these interviews the applicant has isolated significant local problems to which its programming efforts will be directed. The proposed commercial practices of the applicant present no problems.

Mr. GEORGE SMITH. The applicant referred to is the buyer, not Overmyer.

Mr. MOSS. I assumed it was the buyer.

Mr. GEORGE SMITH. I am trying to find that, Mr. Chairman.

Mr. MOSS. Page 3. Middle of the paragraph.

Mr. GEORGE SMITH. What paragraph is that?

Mr. MOSS. Middle of the first.

Mr. GEORGE SMITH. Apparently the photostat copies do not run the same as my copy.

Mr. LISHMAN. Paragraph No. 2 on page 3.

Mr. GEORGE SMITH. I am with you, I have found it, sir.

Mr. MOSS. Did you see those?

Mr. GEORGE SMITH. I am sure I did not. That goes to the survey and appraisal of program needs as the buyer of these permits intended to serve the public interest, the service he intended to render.

Mr. MOSS. You don't check those things out?

Mr. GEORGE SMITH. I pretty much rely on my staff on that. As far as I can recall, there has never been any question raised by the Commission on that point.

Mr. MOSS. The Commission seems to rely on the staff and the staff seems to rely on the lower echelons of the staff. I guess the lower echelons of the staff rely upon the submitted documents and the submitted documents are at the mercy of the applicant and the public be damned. That is the way it impresses me.

Mr. Van Deerlin.

Mr. VAN DEERLIN. Does this document refer to representations by the chemical firm that was buying the construction permits from Overmyer?

Mr. MOSS. I think it was a diversified investment company, was it not, rather than a chemical company?

Mr. VAN DEERLIN. Because the evidence here is somewhat in contrast to anything that the Overmyer interests said they were going to offer the viewing public in these five communities. The evidence adduced from Mr. Adams, who was the general manager for Overmyer, was that the thrust of their programming was going to consist of—if I may read his testimony.

He said: "We are going to give them another choice on their dial." Asked what the fourth choice was going to consist of, he said the same type of programming put on any other station, entertainment fare, sports, news, weather, entertainment, movies, reruns, and outworn syndicated features, ad infinitum.

This morning, when each of the staff members covered briefly his own area of responsibility, I was wondering who especially might direct his attention to programming in new applications.

Mr. GEORGE SMITH. The application, of course, contains several questions with regard to programming and puts the burden on the applicant and the applicant that I am now speaking of would be the proposed assignee because he is the one that is proposing to take over these permits and render the service.

The Commissioners themselves, I assure you, sir, are as interested in this type of question as you are. If we in submitting an item to the Commission ever undertake through inadvertence or to otherwise shortcut the answers we are asked to supply them—you asked us a question earlier about the nature of the assignee. After my item of October 27 was before the Commission at one of the meetings, I don't know which one it was, a Commissioner raised the question, "Who is the AVC Corp.? You haven't told us very much about who owns it, who the people are."

On November 13 we submitted a supplemental item to the Commission which is really on the AVC Corp. apprising the Commission who these people were. This is mimeograph 8082.

Mr. VAN DEERLIN. The thing that has haunted me as much as anything else throughout the hearings has been the apparent assumption by the Commission that Mr. Overmyer was the sort of person whom we should be seeking to draw into broadcasting in five major population centers in the country. I found in the earlier testimony from Mr. Overmyer's representatives that no one on either the staff or among the Commissioners had asked a single question regarding their program plans. I found this simply beyond understanding.

Mr. GEORGE SMITH. You are referring now to the Overmyer plans in the original instance?

Mr. VAN DEERLIN. Yes.

Mr. GEORGE SMITH. It is no answer to say that that goes back before my time, but I do note that Commissioner Cox, who goes into these things very thoroughly, in the third paragraph of his dissenting opinion did say he didn't question Mr. Overmyer's sincerity in acquiring the permits, nor did he suggest that he sought them for the purpose of speculating, and he thought he intended to build and operate the

stations. That is about as far as I can go because I have not gone into the old representations in the original instance by Mr. Overmyer.

Mr. BROWN. Will you yield?

Mr. VAN DEERLIN. I wish to point out first that the general manager, Robert Adams, in response to the question, stated flatly that he had never once been questioned in regard to what they were going to put in the living rooms of the residents of these five major markets.

I yield to Mr. Brown.

Mr. LEVY. Mr. Congressman, may I respond to that? In each of the applications originally filed, whether it was an application for a new station or an application for an assignment of an existing CP, there had to be a complete section 4 which is that part of the application form which requires the applicant to give a complete rundown of what his proposed programing will be.

Now more recently the Commission amended that form to require also that he show how he went about arriving at his proposed programing. In other words, whom he surveyed, what kind of survey he made, what judgments he arrived at and how he then put those into a proposed programing schedule so that in each case the Commission did ask for the complete programing.

We may not have gone back and asked Mr. Adams personally any questions but there was a complete programing proposal in each of the applications.

Mr. VAN DEERLIN. I am aware of that. If you and the staff members are not encouraged from above to go into these things I don't hold you philosophically responsible, but Mr. Adams was constrained to agree that what their programing plan boiled down to, as presented to the FCC, amounted to, and I quote, "The same old stuff."

Mr. BROWN. If the gentleman will yield. I was also under the impression the gentleman at the table made the point that some programing plans are required. As I understood it, it is the schedule of what your programing will be that is required. I really asked you to yield only for an observation.

I think there are two or three points involved here related to FCC policy, not what it should be but whether or not it is being observed; that is, whether it is merely sufficient or merely the policy of the FCC that we get more stations on the air or whether in trying to get more stations on the air we are in addition trying to upgrade or maintain or see that at least it doesn't deteriorate too far the quality of the broadcasting that is done by the additional stations.

It seems to me that there is also one other point unrelated to the cultural aspect of such policies and that is whether or not a market can tolerate additional stations either from the standpoint of that station itself, or from the standpoint of what it may do to the existing stations in the market, so that the station operator can accomplish the cultural effort to which Mr. Van Deerlin alludes.

It seems to me in this case this is merely a matter of observation, not necessarily a conclusion at this point, that there is some question as to whether Mr. Overmyer had the backing that he needed financially to go ahead and pursue putting these stations on the air. But there is also some question as to whether the stations can survive once on the air.

It seems to me it is just as appropriate to AVC as it was in the *Overmyer* case except that perhaps AVC may have some more money to throw into a losing proposition if that is in fact what we have here.

I am not sure that on the question of whether Mr. Overmyer's operations had the wherewithal to get this station on the air or in the facts developed by the FCC as to whether the market could sustain the station as a profitable operation sufficient background work was done.

Mr. GEORGE SMITH. Congressman Brown, for a long time the Commission's policy on that point was to require an applicant to have enough financial resources to get his station on the air and operate it for an initial period of at least 3 months without depending upon income. This was sort of a hangover policy from the AM field. I think once the Commission made up its mind that television, particularly UHF television, was not going to be as profitable as AM had been in the early stages, it changed its policy. The present policy is that an applicant now must demonstrate financial ability to get his station on the air and operate it for a minimum period of 1 year without reliance in particular upon estimated income.

In other words, if an applicant has to rely on any part of estimated income he has to demonstrate the basis for that estimate. That is pretty carefully gone into because generally speaking an applicant has to show prima facie evidence of his ability to operate the station for the first year.

Mr. BROWN. If I may make another observation, it seems to me that perhaps one can justify a policy which says get more programs on the air regardless of what quality is produced. In other words, if they don't make any money they may have to maintain a minimum cultural offering by offering re-runs. But then the other part of the problem comes up, if we are going to be concerned about the transfer of licenses after a station does get on the air. And that is, has a reasonable judgment been made about the prospect of the original applicant being able to put this station on the air and maintaining it, even if that maintaining means subsidizing, if the applicant is willing to lose the money in it and have a losing proposition that is his business but if he is not willing or able to do that, then he in a way is trafficking with this license that he has gotten.

It seems to me that if AVC doesn't have the resource or doesn't have the willingness to continue to maintain the station or stations they are now buying from Overmyer that we could come back in another case not dissimilar to this where AVC is the principal that raises this whole question because a basic judgment has been made as to whether that market can sustain an additional station.

Mr. GEORGE SMITH. Of course we have had dozens and dozens of UHF stations that have gone off the air through bankruptcy and just couldn't make it.

Mr. BROWN. What happened to the license?

Mr. GEORGE SMITH. That was canceled.

Mr. BROWN. How long does it take before that license in effect is turned back by the licensee?

Mr. GEORGE SMITH. In the instance where they have gone through bankruptcy proceedings of course that procedure takes over. But in a lot of instances—

Mr. BROWN. You say that procedure takes over. Does the FCC make a substantive judgment? If a man has filed for bankruptcy he is in no position to maintain the stations and therefore his license is returned.

Mr. GEORGE SMITH. The receiver is appointed and the receiver makes a determination whether or not he wants to ask the Commission to continue that operation or get authority to remain silent, as we call it, in the Commission.

Mr. BROWN. How long can a man remain silent?

Mr. LEVY. The Commission policy varies a great deal on that. In 1954, when a large number of UHF stations went on the air and then found they could not make it, they lost substantial sums of money, they were allowed to keep their construction permits or their licenses for a substantial period of time. It wasn't, I don't believe, until about 1958 or 1960 that the Commission initially undertook to delete the first group of licenses that had actually been authorized stations that originally went on the air in 1954, although some of those people—the corporations had actually gone out of business by that time.

But this has evolved to the point where now the Commission is taking a good, close look at the time the permittee comes in with his first application for extension of time. Now if he indicates at that point that he has not made progress in proceeding with construction, the staff is now under instructions to bring that application up to the Commission for action, and we are proceeding to act in that manner.

Mr. BROWN. What is the time frame on the construction permit which you just discussed and the time frame of the license after the station has perhaps gone dark, or gotten into sufficient financial difficulty that it no longer is able to do what it said it would initially do in its application?

Mr. LEVY. It is difficult to say because the Commission has been more lenient with people who put a station on the air and proceeded to lose a good deal of money and it has gone dark, and then generally the Commission has allowed them a period of time to try to arrange refinancing or something like that; the Commission has been more lenient with people who proceeded with construction and actually operating the station. It is difficult to put it in a time frame. It has varied from a great many years to just a few years.

Mr. BROWN. With the patience of the chairman, I have this one other thought. In this case we have two separate distinct problems. One is whether or not the Commission made a good judgment in reference to the deal that allowed Mr. Overmyer to get it, whether he really got only his initial investment back or his original investment plus some override. But beyond that it seems to me that there is a judgment question here as to whether it is desirable for Mr. Overmyer, having failed to put his stations on the air, to be permitted to sell those stations, for the FCC to take the license back with the thought that by permitting him to sell the station there is somebody who will put the stations on the air and hopefully if the judgment was bad initially and the FCC wants to proliferate the number of stations, somebody will be able to put enough money in it to keep the station on the air even though it is losing money.

Is this what FCC is faced with on this particular problem of construction permits granted to someone who then runs out of money and can't put it on the air?

Mr. LEVY. I think it is fair to say that the present Commission policy is that once it has granted a construction permit and then before any really substantial construction has been undertaken or money spent in great amount, if that permittee decides to assign that permit to a third party the Commission's policy has been to go ahead and permit the assignment of the permit so long as the reimbursement does not exceed the out-of-pocket expenses. That has been the general policy.

Mr. BROWN. What is the Commission's rationale?

Mr. LEVY. I think the Commission's rationale is that it is more likely to get a station on the air sooner that way.

Mr. BROWN. And this is desirable, getting the stations on the air is desirable?

Mr. LEVY. Yes, sir, particularly the UHF, the Commission has thought this was desirable.

Mr. ADAMS. Will the gentleman yield?

Mr. MOSS. Before we go back to counsel, I have looked in the certification form. It says, "Willful false statements made on this form are punishable by a fine or imprisonment under United States Code XVIII, section 1001."

That section is referred to in the form. Now I have before me what I believe is the statement of reasons for the proposed transfer of the application on the part of Overmyer to AVC. Dated June 1, 1967, D. H. Overmyer, AVC Corp. This is the application filed under that penalty provision in title XVIII.

Mr. HAUTANEN. Those were contained on the application.

Mr. MOSS. Those boys get way out on the limb in their affidavits. Mr. Overmyer says:

It is my considered judgment that my investment directly and through companies owned by me, or whose debts have been assumed by my company in the five companies involved in the present transfer and through such companies' operation through which the five companies benefits approximately a million and a half dollars consisting of over \$800,000 in services and facilities contributed to the five companies, and approximately \$665,000 in cash expenditures by us for their betterment. In addition his assets transferred to the five companies by the Overmyer Leasing Co. have a market value of many thousands of dollars in excess of this cost upon which my investment is based.

That is a good safe statement, "many thousands." It may be one, 10, or 20.

And the contracts for acquisition of equipment to be made available to the five companies have terms particularly on the rates of interest which a purchaser of equipment today cannot duplicate.

Certainly rates of interest are not out of pocket at this point.

These assets representing values for which it would be entirely proper, I believe, for the leasing company to be paid.

He states that before a notary and that is sworn to.

I think you would have a lot of fun taking him in and tying him down on that. I think it is just shot through with escape hatches.

Mr. KEITH. Mr. Chairman, I would like to ask what they consider to be the significance of the notary public on that statement? Does it have any standing whatsoever?

Mr. MOSS. It might be an interesting question.

Mr. HAUTANEN. The significance I attach to it was that this was a double assurance on Overmyer's part that his statements in that document were truthful.

Mr. Moss. What is the penalty if he falsely swears before a notary on an affidavit that is required by law?

Mr. HAUTANEN. In terms of the Commission, Mr. Overmyer remains as a licensee of WDHO in Toledo and consequently if he did submit false statements then he would be jeopardizing his Toledo license.

Mr. Moss. Do you have any precedents you can cite where you moved against a licensee in connection with statements made in connection with another matter other than the license he held?

Mr. HAUTANEN. Possibly WOKO—

Mr. Moss. I think you had better be precise on that. It will be a matter of interest to the committee.

(For information requested, see appendix, p. 782.)

Mr. Moss. Let us look at each of these cases described before a notary. I don't find one of them that certifies that the figures contained herein are correct or accurate. In every instance he expresses a judgment, that "I think this is a proper allocation" or "under the formula contained herein this appears to be consistent with the allocation formula."

I don't find these affidavits setting forth what I would call reliable backup material to support out-of-pocket costs.

Have we accepted this for the record?

Mr. LISHMAN. Yes, sir.

Mr. Moss. Is it for the record or is it for the files?

Mr. LISHMAN. It is in the files.

Mr. Moss. All right. We will not insert it in the record at this point, but I want the record to very carefully call attention to the nature of the affidavits by each of the corporate official making it a part of this request.

Now, Mr. Adams, I had agreed to recognize you.

Mr. ADAMS. Yes.

Mr. Chairman, I have a question that goes to the head of the Broadcast Bureau. Let me put it this way: I will ask the gentleman which one makes the recommendation to the Commission for the approval of the transfer.

Mr. GEORGE SMITH. Mr. Congressman, I do that, or it is done in my name.

Mr. ADAMS. This particular situation is rather clearly drawn but it is my understanding that what Mr. Overmyer was to receive for this transfer was \$4 million; broken down—\$1 million for stock and items he was supposed to have contributed to these stations and the \$3 million loan agreement based upon his giving the 20 percent retained ownership of stock as security.

In other words, a bootstrap operation is involved in his retaining \$4 million.

Now did you have this before you and consider this at the time you made the recommendation that the transfer be approved?

Mr. GEORGE SMITH. I am sure, technically, I did. I remember going over the document but not with any great detail because I had already been informed what it was all about through one of the drafts of the final document which went before the Commission.

Mr. ADAMS. What did the draft explain to you about what Mr. Overmyer was going to receive for these five CP's, the blue draft you referred to?

Mr. GEORGE SMITH. I believe that my understanding of that was

that he was to receive \$1 million for his stock and out-of-pocket expenses, and there was an option that ran for a period of time, I just don't recall right now, where the assignee would have the right to acquire Overmyer's additional 20 percent for a price around \$3 million based upon a formula.

Mr. Moss. Will you yield at this point, Mr. Adams; that might be helpful to you as you pursue the question?

Mr. ADAMS. Yes.

Mr. Moss. What did the 20 percent represent in the eyes of the Commission that Mr. Overmyer retained? Was it a 20-percent stock unit in AVC? What was it?

Mr. GEORGE SMITH. No, this was retaining 20 percent interest in these different stations.

Mr. ADAMS. Correct me if I am wrong. We call this a bootstrap sale. You sell 80 percent, you retain 20 percent.

Mr. Moss. Of what?

Mr. ADAMS. Of the CP's, the license and the construction that you have.

Mr. GEORGE SMITH. This was a stock sale of each of the permittee corporations.

Mr. ADAMS. Right. In other words, he has five corporations set up and he splits his stock in those corporations, 80-20; sells 80 percent, retains 20 percent. Now for that he receives a million dollars for the 80 percent interest. Now on the 20 percent he retains, he obtained a \$3 million loan, pledges the 20 percent stock as security for the \$3 million loan, and there is coupled with it a stock option that if during the period of time the station is running they have achieved certain goals, the \$3 million debt is canceled and he moves out of the bootstrap operation with \$3 million, having at that point, finally having sold 100 percent of the operation.

That is what he had before him, was it not, or was that proposition before you? That is what I am trying to find out.

Mr. GEORGE SMITH. It was a little bit more than the way you described it. Had the 20 percent stock been the only security or collateral being put up by Mr. Overmyer for this \$3 million it would have a changed picture entirely.

Mr. ADAMS. He gave you then an assurance of other commitments from other assets that he personally held as being security for that \$3 million loan; is that correct?

Mr. GEORGE SMITH. That is correct.

Mr. ADAMS. That drives you back to his financial statement that he had given to you. In my question this morning you indicated that that information which was in the contract file wasn't before you at the time. Is that right?

Mr. GEORGE SMITH. No, his contract was with the application. The application was before us.

Mr. ADAMS. I see. In other words, though he had not filed it with the original request for extension he had filed it in the June 30 application for transfer and so his financial statement and that other information as part of that package was before you. Is that correct?

Mr. GEORGE SMITH. Yes.

Mr. ADAMS. Now did you check, in making your recommendation, into whether or not those representations he had made regarding his other financial interests were correct?

In other words, were you aware of the fact that mechanic liens had been filed and in reality his financial empire—I won't classify it as an empire—his financial background was tottering and that none of these commitments might be of any validity unless the whole package turn over?

Mr. GEORGE SMITH. No, I don't think I heard of any liens, Mr. Adams. But what he had done, of course, was to make his agreement with the AVC Corp. as to what he would pledge as security for this \$3 million loan which is, I believe, in two parts, a million and a half and a million and a half.

The way I looked at it, if the assignee never exercised that option, the way I would look at this contract, Overmyer has to figure up \$3 million to repay those loans and he can still remain a 20-percent stockholder, of course. I don't believe that this AVC company, I don't think it is in business for charity.

Mr. ADAMS. Now, this I want to make very clear: During the period of time that these CP's were kept in existence by a tolling period when he filed for extension and then it was not acted on because the application went in for transfer, so for a period of 8 months these things were staying alive by a practice of the Commission.

Did you in your recommendation to the FCC take into account or make a recommendation as to the fact that this whole ball of wax was hanging on these CP's, the availability of a license, staying alive in effect, or else Overmyer would be completely out of business? Did that enter into your recommendation?

Mr. GEORGE SMITH. I don't think so, as I understand it, because actually everything I had to tell the Commission except in response to any specific question that might have been directed to me during a Commission meeting, is wrapped up in this document of October 27 plus the November 13 supplement. I just don't believe so.

Mr. ADAMS. In other words, you did not make an analysis and a recommendation to the Commission as to the effect of the licenses and the CP's having to stay alive during a period of time so that Overmyer could bail the whole thing out? That did not come into your province or recommendation at all?

Mr. GEORGE SMITH. That is correct.

Mr. ADAMS. Your recommendation then was in the area you wanted to keep the UHF stations alive and that you were satisfied from what you could see that Overmyer was all right and he was going to transfer them and you looked then really to the transferee's abilities and sort of hoped the transferor would be off the hook in this operation. Is that it?

Mr. GEORGE SMITH. Let me see if I understand you correctly. On these applications for extension of time which had been filed within which to complete some of these stations, I believe Mr. Saady testified this morning that Overmyer had indicated in those applications that he was pursuing some plan of refinancing. Nothing was done on those applications because of the impending transfer application which was later filed.

Mr. ADAMS. In other words, between April 29 and June 30 they hung up and did not do anything. After June 30 they went to you and so they didn't do anything in the Extension Division of the FCC.

Mr. GEORGE SMITH. I don't know what our timetable is, but I would have to give, with Martin Levy's approval—maybe you can answer the question better.

Mr. LEVY. That is right, Congressman. The extension applications indicated on their face that they weren't going to be able to proceed with the construction, that they were undertaking further financing. I might say they also indicated some construction had already been completed. But essentially our policy is to withhold action on an extension application when the application indicates that further information is going to be filed or that additional application is going to be filed.

Mr. ADAMS. That is when he begins to get his grace period as they hold up on the extension.

Now you have the transfer in front of you. As the transfer starts you are making a recommendation, not based on what the extension people have said other than the fact that you know that those are pending and that there may be something wrong with them, but you start a whole new proceeding. Is that right?

Mr. GEORGE SMITH. Substantially correct, I believe, as I understand it.

Mr. ADAMS. The extension runs on.

Mr. GEORGE SMITH. The lady who heads that branch is one of my employees, of course, I try to keep myself informed of everything that goes on in the Bureau.

Mr. ADAMS. The extension is running on and you start on the transfer.

Mr. GEORGE SMITH. My Transfer Division does.

Mr. ADAMS. Who is the Transfer Division?

Mr. GEORGE SMITH. Mr. Rawson.

Mr. ADAMS. The Transfer Division is now operating on this thing?

Mr. GEORGE SMITH. That is correct.

Mr. ADAMS. Now you talk to him about the troubles in the extensions?

Mr. LEVY. May I answer that?

Mr. ADAMS. Yes.

Mr. LEVY. Once we know in my Division that the transfer application has been filed, we await Commission action on the transfer applications.

Mr. ADAMS. Will you tell him in the Transfer Division that there is trouble?

Mr. LEVY. Yes, sir. He is aware that applications for extension have been filed; yes, sir.

Mr. ADAMS. But you indicate in these applications there is some indication of trouble. He is refinancing, he has trouble. Are you telling your brother over here—

Mr. LEVY. He learns this from the transfer application itself.

Mr. ADAMS. You know that those expenses are going to keep running while you operate on it.

Mr. RAWSON. That is correct.

Mr. ADAMS. You are operating on this on June 30, he has an application in. Now you bring this up and I assume that blue forms are partially your work.

Mr. RAWSON. That is correct.

Mr. ADAMS. You are bringing that up to the head of the Broadcast Bureau or the one in charge of the transfers. Are you telling him or analyzing or making a recommendation to him that there is trouble in this operation, that you have looked at the extension permits, and that this man may be in a position of having to try to float these licenses to keep his financial deal alive? Or do you look only at the transferee?

Mr. RAWSON. The whole purpose for the transfer application is to make it possible to obtain financing to build the station and in this way they were transferring it to a brandnew party. That was the purpose of it. We knew they were in trouble. We knew they could not complete the construction under the permit that was authorized. That is why in Mr. Levy's shop they have the policy of holding off on any action on the extension application until we have decided whether or not the new buyer, the transfer assignee is qualified to take over the permits and complete the construction authorized by the Commission.

Mr. ADAMS. You pass on the deal that the transferee makes with the transferor.

Mr. RAWSON. Yes, sir.

Mr. ADAMS. Did you pass on this deal of what I have termed the bootstrap operation where you withhold 20 percent in one deal, you sell 80 percent—did you pass on that as being all right when you made your recommendation up the line to your chief?

Mr. RAWSON. Yes; I did. This morning I mentioned the fact that in our discussions with Mr. Smith I had pointed out that there were other indications where permits had been transferred under somewhat similar circumstances.

Mr. ADAMS. This is the heart of the inquiry that we are involved with here. On these, did you feel in this operation that there was a payment being made to Overmyer?

I will not ask you why you felt you put as part of your recommendation up the line that eventually gets to the Commission any statement regarding whether or not compensation was being paid as part of this \$4 million package for the fact that he had licenses, whereas the Commission policy that we both are in agreement on is that you are not supposed to traffic in licenses, you are just supposed to get out-of-pocket expenses.

Mr. RAWSON. The item itself discusses in detail precisely the things you are talking about. The Commission was aware that what was involved was five construction permits, that in two of the construction permits the licensee or the permittee—at this point they are all permits—the permittee had actually almost completed construction of two of them, I believe it was San Francisco and Gulfport. There were no construction on the others.

We discussed the problems of Pittsburgh and apparently the efforts that Overmyer had made in attempting to find a transmitter site in the Pittsburgh area, and the loan agreement was discussed, I thought, insufficient detail on page 4 of our memo that we have been referring to, beginning at paragraph 7.

In other words, the outline of the arrangement was given to the Commission.

Mr. ADAMS. Now in that, in order to get to the figure that you are dealing with here, it would involve that each station would have had to have an investment in them separate from the license of over \$7 million.

Now, I don't believe that is in your recommendation here. Did you consider that?

Mr. RAWSON. I did not understand that to be the premise.

Mr. ADAMS. If he is going to retain the 20 percent that means he is going to get a million dollars for it and keep \$300,000, the remaining 80 percent has got to be worth about \$7.5 million.

Mr. RAWSON. To be honest with you, the way I looked at 20 percent, my feeling was that ultimately Mr. Overmyer was going to have to kick back the \$3 million plus his 6 percent interest.

Mr. ADAMS. In other words, you felt it was going to collapse and he was going to have to make it through other sources?

Mr. RAWSON. Not collapse. I felt in my own mind there was reasonable likelihood that the AVC operation, unless these were extremely successful operations, would under the circumstances exercise the option.

Mr. ADAMS. Were you aware of the problems in his financial empire from your brother over here on the CP's from the investigation you made that he had to put this deal together to save anything?

Mr. RAWSON. We knew, and the item of course discloses, that he was in financial difficulty according to his representations; and he does not have the finances to complete the construction and to go on the air in San Francisco and Newport and to actually go ahead with construction in the other cities. That was evident from both the assignment application—that was the purpose of filing the assignment application.

We were aware of that, the Commission was aware of it. The basis for granting the assignments was so that these UHF stations, which the Commission has been encouraging over the years, could actually be constructed and go on the air with some financially healthy organization.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. BROWN. May I pursue a couple of points, Mr. Chairman?

Mr. MOSS. If you do not mind letting me pursue this same line of questioning.

I am still unclear and a careful reading of the recommendations does not prove of value in making me understand.

What is the nature of the 20-percent holding of Overmyer at this time? Are there five surviving corporate entities operating or holding five separate construction permits, or were they all merged into U.S. Communications and 20 percent or a stock certificate equal to 20 percent issued to Overmyer?

Is Overmyer on the permit in any manner at the present time, or is it held by the AVC subsidiary? What is the nature of the ownership of these five construction permits?

Mr. RAWSON. Chairman Moss, the corporation or corporations that had these permits where Mr. Overmyer was owner still has these permits. The AVC Corp. acquired 80 percent of Mr. Overmyer's stock. He retained 20 percent. That is my understanding.

Mr. MOSS. Is that the understanding of all you gentlemen?

Mr. HAUTANEN. He retains 20 percent. I think in the case of the San Francisco permit, he has an option to acquire the 20-percent interest which I think is held by Sherwin Corwin and he has an option to acquire that later on, as I understand it. But he does retain a 20-percent interest in the permittees since the transfer applications involved only a transfer of 80 percent of the stock of the permittee corporations.

Mr. Moss. I am looking at item 2, October 27, 1967:

Subject (1) Voluntary transfer of control of permittees of the stations from D. H. Overmyer to U.S. Communications Corporation; (2) voluntary assignment of licenses of station WPHL-TV, Philadelphia, from Philadelphia Television Broadcasting Company to U.S. Communications Corporation; (3) voluntary assignment of license of Station WPHL-TV, Philadelphia, Pennsylvania, from U.S. Communications Corporation to its wholly owned subsidiary PTBC, Inc.

Now D. H. Overmyer proposed to transfer 80 percent of his stock-ownership in the permittees listed above for the surviving entity. Who holds the permit?

Mr. GEORGE SMITH. The same companies. I am sorry; but our item, instead of giving the names, in case they are separate companies—I don't recall—instead of giving the names of the permittees, we just referred to those companies as permittees. It is the same corporation. There has been no assignment of construction permits.

Mr. MOSS. Mr. Lishman, do you concur?

Mr. LISHMAN. I am sorry, I did not hear the question.

Mr. MOSS. What did the 20 percent represent, whether there had been an actual assignment of the construction permits or whether the permits are held by the same entities which held them previously and the interest in those entities is all that has been transferred.

Mr. LISHMAN. I don't understand, myself, Mr. Chairman, what that 20 percent interest represents. It may well represent 20 percent interest in the Philadelphia Broadcasting Co., which would in turn make it a very valuable asset.

Mr. HAUTANEN. The various corporations in which interests were transferred are listed in the order which accompanied the transfer and that is Mimeo No. 9408, FCC 67-1312, the order number. The caption lists the various permittees, control of which would be transferred.

Overmyer does not acquire an interest in AVC. The 20 percent interest is retained in the various corporate permittees listed here.

Mr. BROWN. Of the UHF stations?

Mr. LISHMAN. Yes, sir. Not Philadelphia.

Mr. GEORGE SMITH. Mr. Chairman, may I say that it appears that there are two corporations involved, the D. H. Overmyer Communications Co., Inc., is the permittee of the permits at San Francisco, Pittsburgh, Newport, Ky., and Atlanta, Ga. And the Rosenberg, Tex., permit is held by the D. H. Overmyer Broadcasting Co., Inc. The AVC Corp. has acquired 80 percent of the stock in those two corporations. Mr. Overmyer retaining 20 percent.

Mr. MOSS. Is this the order released December 11, 1967?

Mr. GEORGE SMITH. Yes, sir.

Mr. MOSS. FCC 67-1312.

Mr. GEORGE SMITH. That is correct.

Mr. MOSS. It contains language:

The Commission also has before it the above-captioned assignment application, which proposes to assign the license for Station WPEL-TV, Philadelphia, Pennsylvania, to U.S. Communications Corporation. Since all the above-listed applications involve stations in the Top Fifty television markets, the applications come within the purview of the *Interim Policy Concerning Acquisition of Television Stations* (5 RR 2d 271), enunciated June 21, 1965.

2. The Commission is of the view that a grant of the applications would foster the development of UHF television stations. This would be consistent with the Commission's efforts to provide a more competitive nationwide tele-

vision service to the public. It is therefore believed the public interest would be served by a waiver of the Interim Policy.

Accordingly, it is ordered that the applications for the transfer of control of D. H. Overmyer Communications Co., Inc., permittee of Stations KEMO-TV, San Francisco, California; WECO-TV, Pittsburgh, Pennsylvania; WSCO-TV, Newport, Kentucky; and DBMC, Atlanta, Georgia, from D. T. Overmyer to U.S. Communications Corporation are granted.

Who is the permittee? Is it U.S. Communications, or is it Overmyer?

Mr. GEORGE SMITH. These are all corporately held; U.S. Communications.

Mr. MOSS. Mr. Lishman, will you give us an appropriate memorandum of law that attempts to clarify this point and place it in the record at this point?

Mr. LISHMAN. Yes, sir.

(The document requested appears in the appendix, see item 31, p. 777.)

Mr. MOSS. Mr. Brown.

Mr. BROWN. At the time the transfer was made, what was the status of the stations involved, or the permits involved, or the licenses involved?

Mr. LEVY. I believe substantial construction had been undertaken in San Francisco and Cincinnati.

Mr. GEORGE SMITH. Mr. Levy, I think you ought to explain that the Cincinnati site is Newport, Ky.

Mr. LEVY. Cincinnati is Newport, Ky. I don't believe there was any substantial construction with respect to the other permits.

Mr. BROWN. Would you just say what they are?

Mr. LEVY. Pittsburgh, Atlanta, and Rosenberg, which is Houston, Tex.

Now, Philadelphia, which was included in this package, was never an Overmyer permit, in the first place. The permit was assigned to U.S. Communications, but it had never been held by Overmyer.

Mr. BROWN. So what we have, this purchase and loan arrangement is for a million dollars, 80 percent of five stations in which construction, as you suggest, substantial construction, was underway in two of those stations.

Was there any actual construction underway in the other two stations?

Mr. LEVY. I don't believe so, sir.

I think Mr. Saady can better answer that question than I can.

Mr. SAADY. There was no actual construction on the other three stations, though they had made downpayments on equipment for all such stations.

Mr. BROWN. And sites?

Mr. SAADY. And sites.

Mr. MOSS. Let us clarify that, because that is contrary to the testimony of the other day.

You said downpayments on sites. I dealt rather carefully with the question of sites, and I don't think that your statement, downpayment on the surviving or remaining three sites is a correct statement.

Mr. SAADY. He had made a downpayment on equipment.

Mr. MOSS. You said equipment, and then Congressman Brown said, "And sites," and you said, "Yes, and sites."

I want the record to be correct.

Mr. LISHMAN. Mr. Chairman, may I ask one question, to clarify it?
Mr. MOSS. If Mr. Brown has the time.

Mr. LISHMAN. Just to clarify this one question.

Mr. BROWN. Yes, whoever can answer the question as to whether or not any move had been made with reference to the sites that would involve cost of the potential development of a station.

I am trying to lead into a thought here.

Yes, go ahead.

Mr. LISHMAN. Isn't it a fact that with respect to San Francisco, Overmyer had equipment purchases of \$19,700, as of March 31, 1967?

Mr. SAADY. Which one is this?

Mr. LISHMAN. San Francisco.

Mr. SAADY. Would you please repeat the question?

Mr. LISHMAN. As of March 31, 1967, according to a balance sheet submitted to the Commission by Overmyer, he had equipment purchases of \$19,700 for San Francisco. Is that correct?

Mr. SAADY. I don't know. I don't have that information before me.

Mr. LISHMAN. Is it correct that he also had equipment purchases of \$79,400 for Atlanta? Isn't that on that balance sheet?

Mr. SAADY. I don't have the balance sheet before me.

Mr. MOSS. Does somebody in the Commission have a copy of the balance sheet? You were supposed to be here prepared to give testimony.

It is contained in exhibit 1 submitted to this committee, if that will be of any assistance in guiding you.

Mr. GEORGE SMITH. What was your figure on San Francisco?

Mr. LISHMAN. \$19,700.

Mr. GEORGE SMITH. That figure appears on page 18 of the staff report which I am looking at, of your staff report, so I will accept that.

Mr. MOSS. I don't want you to accept that. I want you to take the submission from Overmyer, so that we have this clear.

Mr. GEORGE SMITH. I certainly do not challenge the figure.

Mr. MOSS. We have handed the material to your staff, down here. They are looking it over.

Mr. GEORGE SMITH. I am sorry. I didn't know they had it.

Mr. MOSS. Will the members of the staff join the gentlemen and point out the area of interest and concern of the figure?

Mr. HAUTANEN. Is the figure \$19,696.16?

Mr. MOSS. Then the answer to Mr. Lishman's statement is "Yes." Is that correct?

Mr. RAWSON. That says the amount paid as of March 15, of that amount. That means out of a total of \$789,124.75, for equipment and construction, they paid down \$19,696.16. That is right.

Mr. MOSS. Isn't that what Mr. Lishman asked you?

Mr. RAWSON. He asked whether they had only expended that, yes. That is correct.

Mr. MOSS. All right, then. The answer is, "Yes."

Mr. LISHMAN. Is it in fact the same balance sheet which shows no land or buildings for any of the stations except Cincinnati?

Mr. MOSS. Off on the side there is a list of subjects, or items.

Mr. HAUTANEN. Yes, that is correct.

Mr. LISHMAN. I just wanted to have the record clear about the immediacy of the completion of this station.

It does not seem that an expenditure of \$19,700 in San Francisco, and with no land or buildings shown for any stations except Cincinnati, would indicate that any stations were anywhere nearly ready to go on the air.

Mr. MOSS. Mr. Brown.

Mr. BROWN. If I may pursue the point that I was undertaking, in the deal that was made on March 28, 1967, when the loan agreement was consummated, if I understand the situation then, according to your comments, construction was underway.

I don't see how that could be the case, if there was no land purchased, and only \$19,700 had been paid.

But at Cincinnati, the figures indicated here that the land had been purchased and \$229.6 thousand had been spent; at Pittsburgh, \$89.6 thousand; in Atlanta, \$79.5 thousand, and at Houston, \$5.9 thousand.

Mr. HAUTANEN. What we relied on mainly, sir, was that in exhibit 2 filed with the application, entitled "Activity of D. H. Overmyer companies in connection with TV stations at Atlanta, San Francisco, Newport, Pittsburgh, and Rosenberg," the statement was made respecting present status that, "It is stated as a result of the efforts and expenditures to date, two stations, San Francisco and Newport, have been brought almost to the point of readiness for going on the air, and very substantial progress has been made in constructing and equipping the other three stations, especially Pittsburgh and Atlanta."

Now, reliance was placed on that statement.

Mr. BROWN. What is the date of that statement?

Mr. HAUTANEN. June 1967, exhibit 2.

Mr. BROWN. That is somewhat later. That is somewhat later than the time frame to which I have reference. That time frame is the end of March.

This statement here on page 2, exhibit 3, schedule D, March 15, as I understand it, March 28, 1967, was the date of the consummation of the loan arrangement. Is that correct?

Mr. HAUTANEN. That is the date when the first loan had been made. The first loan was made on May 3, 1967, the first loan of \$1½ million. Now, when the loan agreement was signed, I don't have the exact date of that, but the first loan was made on May 3, 1967.

Mr. BROWN. At any rate, as of that date, May 3—you said May 3?

Mr. HAUTANEN. May 3, yes, sir, the first loan was made by AVC to the Overmyer company.

Mr. BROWN. The memorandum I have here indicates that the loan was consummated on March 28. Is that correct?

Mr. LISHMAN. There was a \$1 million down payment on that date.

Mr. BROWN. I refer to this sheet, page 4 of the staff memorandum.

Mr. HAUTANEN. That probably was the date of the down payment.

Mr. GEORGE SMITH. I haven't had a chance to look at it. The label says "Loan Agreement, March 28, 1967," as you indicated.

Mr. HAUTANEN. The down payment was made on March 28. That is right.

Mr. BROWN. What I am trying to get at is not to balance the figures, necessarily, although I add up to \$424,000 worth of money put in as of the 15th of March. It was 2 weeks after that that the loan was consummated.

But I am still trying to work on one though, difficult as it is to get anybody to know what we are talking about on these figures, and

that is, that one, and perhaps two, by the 28th of March, construction permits were actually underway.

In three of the five stations, there is apparently no construction work being done.

The gentleman here indicated that he had some question in his mind as to the value of the 20 percent of the remaining stock, as it relates to the \$3 million which was loaned on that stock.

Now, I would presume that relates to one or two possibilities. First, that AVC might not pursue the construction, and thereby in effect not have any assets to be of any value, and second, that they might pursue the construction, get the stations on the air, and the value of 20 percent of the stock in that station not come up, or those stations not come up to the \$3 million figure.

Mr. RAWSON. What I am giving you is my personal feeling at the time I looked at this transaction.

I felt very confident that AVC entered in this arrangement in good faith, and fully intended to go forward and complete construction and commence the operation of these permits, but my skepticism was from just maybe my limited, probably limited experience that this is a long, long haul in the UHF field, and I was of the view that AVC is not a charitable organization, and they weren't about to make any gifts to Mr. Overmyer.

Mr. ADAMS. Will the gentleman yield at that point?

Mr. RAWSON. That was my personal feeling. It had nothing, really, to do with my recommendation.

Mr. BROWN. Let me pursue this further, and then I will be happy to yield.

Presumably, if Mr. Overmyer paid his interest on the loan, continued to service the loan, and the AVC Corp. was satisfied with that arrangement, at some future date, if this was a good investment at all, in these five stations, there would be some value in five operating UHF permits, or, better said, 20 percent of the five operating UHF permits.

Was your judgment based on the fact that it was not likely to be worth \$3 million at any future date, or it was not likely to be worth \$3 million by the time the terms of the loan ran out?

Mr. RAWSON. My feeling was that by the time they would exercise the option on these stations the 20 percent would not have that kind of value.

That was my personal feeling. There were people that obviously did disagree with my analysis.

Mr. ADAMS. The reason I wanted to interject at that point was that it would not be possible, under the top 50, actually I guess this is top 25 markets, for AVC to get five stations in the top market any other way than through Overmyer.

Mr. RAWSON. I don't know whether we have—I doubt whether there would be any vacant UHF.

Mr. ADAMS. I have an opinion that indicates there are one to three applications pending for the last channel in all of the markets, and there is no channel available in the Pittsburgh market.

Mr. RAWSON. I am informed by Mr. Levy that is absolutely correct.

Mr. ADAMS. So that AVC goes into this to get licenses—I go beyond the word permit—licenses in markets, and do something that it could not do any other way than through Overmyer. Is that right?

Mr. RAWSON. Yes, sir.

Mr. GEORGE SMITH. Unless it acquired a station or permit from another person.

Mr. ADAMS. If they go out in the market to buy from another person who is already established, they have to pay the going rate, whatever it might be, to that person.

Mr. GEORGE SMITH. Yes.

Mr. ADAMS. This would be the least expensive way, then, of getting into any of those markets, if they could buy construction permits, rather than having to buy an operating station.

Mr. GEORGE SMITH. That is quite probable.

Mr. ADAMS. Now, you gentlemen made a recommendation to the FCC on this. I have not read all of it.

What was your position in telling the Commission about this, as to what AVC was going to get and do, and I go back to my question before, wasn't this a trafficking in licenses that they could not do any other way?

Mr. GEORGE SMITH. No. We considered, as we do in all transfer cases, whether or not there is any element at all that we could latch on to that might be said to constitute trafficking.

Mr. ADAMS. What we are dealing with here is that you have a five-station package. You have a man trying to create a network. So you have a top 50 market system of no more than two, or no more than three. Here you have a five-station package going to a company at a price of—well, at an exchange of money of \$4 million, a very elaborate scheme.

I asked you before whether you were just looking at the transferee's financial ability.

What was your position on the top 50 market principle being set aside for AVC, and the fact that you would ordinarily not allow a non-local corporation, with no previous broadcasting experience, to stand first in line for an application in the market?

Mr. GEORGE SMITH. Mr. Chairman, ever since the Congress passed the so-called all-channel receiver law, the Commission has continued to follow a policy of doing everything it could to foster the development of UHF television.

Mr. ADAMS. In other words, you felt that there was an overriding policy to get UHF stations on the air, regardless of—I won't say regardless, but despite what Overmyer was doing, and what AVC was doing, or what you were aware they were all put together.

Mr. GEORGE SMITH. No, I think we were aware of this whole transaction. While this represents construction permits, this is not unusual for the Commission to approve a permittee that got in trouble financially to find an angel, so to speak, somebody that wanted to put the money in and build the station.

Now, where the Commission could make a determination that the programming proposals were sound, and that the new party coming in had the funds to go ahead and promise the Commission that he could build the station and put it in operation, I think it is fair to say that in most all those instances, the Commission has approved.

Mr. BROWN. Let me just pursue this. I think we are getting close to putting some of these questions in focus.

The question that Mr. Adams is asking about the top 50 markets, when Mr. Overmyer made applications for these five stations, it was not the policy of the Commission to prohibit that.

Now, when the transfer was made, or when the loan was consummated, in late March, 1967, had the policy provision taken effect as yet?

Mr. GEORGE SMITH. No, it had not.

Mr. BROWN. When did that policy take effect?

Mr. GEORGE SMITH. I lost you, Congressman Brown, on the policy.

Mr. BROWN. The multiple ownership in the top 50 market.

Mr. GEORGE SMITH. Does anybody remember when that was promulgated?

Mr. HAUTANEN. June 1965.

There was a request in this proceeding for a waiver of the top 50 policy here, and the staff felt that the waiver, under the circumstances, was justified, and the members of the Commission discussed this point.

Mr. BROWN. My point goes to the value of the station, and the justification, if any, for the peculiar financial arrangement.

The value is, of course, the individual station permit, and the FCC's interpretation that that has a value which is no more or no less than what the original permit holder has put into it up to that point.

I would think that when those become multiple, and the possibilities of networking and so forth get into this, and the savings that might inure from networking, once you get the stations on the air and so forth, that the real market value, the real potential value of this changes, and then, when you compound this with the top 50 market prohibition, and the fact that the Overmyer holdings get around that top 50 market provision, that there is an additional marketable value here that really goes beyond what the FCC policy professes.

Now, having tried to lay that base, let me go back and say that in point of actual fact, once you got into the stations in terms of payment for site, equipment, and all, that until those stations are on the air and producing, that they really haven't got a value, but once they are on the air and producing, presumably the networking possibility, the top 50 market possibility, all that does begin to have a value, of some more value than the 80 percent of the rights to go on the air.

Is that the nature of the thinking that went into the evaluation of this loan arrangement?

Mr. HAUTANEN. There was no discussion of what enhanced values these permits might have once the stations were constructed.

I suppose implicitly we recognized that once the stations were on the air, they would have greater value, and the retention of the 20-percent option interest was justified by the staff on the grounds that there were at least related decisions where a permittee had retained an option interest, an interest coupled with an option in his station.

There is no discussion in the memorandum of the point that these might have an enhanced value once the stations actually went on the air, although I think that was recognized by the Commission.

Mr. BROWN. Let me interject another thought, the decision of the FCC to overlook or ignore the transfer of these stations in opposition to an existing policy; that is, the top 50 market multiple-ownership policy.

It seems to me that they follow the possibility or the desirability of putting UHF stations on the air, of a financially responsible owner, but it also flies in the face of what is real marketable value, when you have an opportunity to buy something which is otherwise prohibited, and that is the five stations in the top market.

Mr. HAUTANEN. The top 50 market policy on the books did not flatly prohibit the acquisition of a certain number of stations, or stations beyond a certain limit in the top 50 market. The rule recognized these was an exception.

It provided in such instances, where the top 50 applies, you have to make a compelling affirmative showing that a grant of the application was justified.

The staff felt here that compelling affirmative showing had been made, in line with prior waivers. The staff felt that they had justified the acquisition.

Mr. ADAMS. Let me pursue this, again, Mr. Brown.

Any of you gentlemen can explain it. There are three things in this transaction that I want to know, what the present FCC staff directive indicate.

One, I want to know whether or not there is now a policy of examining financial background of transferors, as well as transferees, when applications are up for transfer, to see if there is a trafficking in licenses.

That is the first question.

The second thing is, whether or not you are going to continue to allow concentration above five or six stations in the major 50 markets by buying individuals, such as Mr. Overmyer, who are in this.

And third, whether or not you are going to continue to allow prices to be paid above out-of-pocket expenses when the first two conditions are in effect—the man has something that nobody else can get. Are you going to allow this to go above the out-of-pocket expenses?

Mr. GEORGE SMITH. I will undertake to answer that, Congressman.

In the instance of a proposed transfer of a construction permit, the staff is under instructions to examine into the claimed out-of-pocket expenses in order to make sure that the permittee is not trafficking, in other words, making a profit out of getting a permit and then not building, or not spending very much, and then selling that permit for a substantial sum of money. We go into that. That is policy, past policy, present policy.

Now, there is a limit to the number of television stations any one party may own. That limit is seven. I believe you mentioned something about five or six—five VHF and two UHF.

Mr. ADAMS. You are going to observe that policy, even in transfers and so on where they use this sort of method to accumulate?

Mr. GEORGE SMITH. Oh, yes, that policy has even been tested in court.

Mr. ADAMS. Now, third?

Mr. GEORGE SMITH. What was your third question?

Mr. ADAMS. My third question was, when a man has something that can't be obtained otherwise, are you examining whether or not the price will be paid, even if it involves a complicated scheme such as this, for out-of-pocket expenses?

Mr. GEORGE SMITH. Again, if it is a construction permit, and not a licensed station, he may sell that permit, with Commission approval, if it gives it, only for his out-of-pocket expenses.

Now, once a station has been licensed, the Commission will not entertain or approve an assignment of license, or a transfer of control, under a period of 3 years, unless some sort of extraordinary showing is made to justify such a transfer, such as the death of a principal or financial hardship, or matters of that kind.

Now, once you get past that 3-year jump as a licensee, in theory you are entitled to do business with a buyer, in case you want to sell out, as the case may be.

Mr. DINGELL. Will you yield at that point?

Mr. ADAMS. Yes.

Mr. DINGELL. Were there any extraordinary circumstances found by the Commission in connection with this matter, to justify the transfer?

Mr. GEORGE SMITH. Well, there are circumstances set out in our memorandum.

Mr. DINGELL. Can you tell me very briefly what they are?

Mr. GEORGE SMITH. We found that Overmyer had bit off more than he could chew. He didn't have money enough to go ahead.

Mr. DINGELL. Is that why you authorized him to transfer, because he bit off more than he could chew?

Mr. GEORGE SMITH. Congressman, I can't approve these things. All I can do is make an analysis of the proposal and make recommendations to the Commission.

Mr. DINGELL. I'll ask you again. Is that why you recommended transfer approval, because he bit off more than he could chew?

Mr. GEORGE SMITH. No, I wouldn't say that.

I have said a lot of things in this memorandum. To cull out something out of context—I hesitate to do it.

Mr. DINGELL. You haven't culled this out of context. All I am doing is taking your own words. You said that you found he had bitten off more than he could chew.

I asked why did you recommend the transfer. You said he bit off more than he could chew.

Mr. GEORGE SMITH. I don't recall that I said he bit off more than he could chew.

Mr. DINGELL. We can ask the reporter to read that back.

Mr. GEORGE SMITH. If I said that, I did say it inadvertently.

Mr. DINGELL. Read that back, Mr. Reporter, please.

(The portion of the transcript referred to was read by the reporter.)

Mr. GEORGE SMITH. I thought that was a pretty good short answer. I am prepared to sit here and read my memorandum to you.

Mr. MOSS. I would prefer not to have you read your memorandum. We would much prefer that you respond to the questions put to you by the members.

Mr. GEORGE SMITH. I will certainly try.

Mr. DINGELL. Perhaps you can tell me where in the rules of the FCC there is a requirement for authorization for transferring a license or construction permit from one person to another on the ground that they had bit off more than they could chew. I would be interested to know.

Mr. GEORGE SMITH. I begin to feel sorry I made that remark, but I will answer that question.

Mr. DINGELL. I did not trap you. You said it, not me. I am curious to know where in the rules it is.

Mr. GEORGE SMITH. I will answer your question in this way: What I meant by bit off more than he could chew, I think Overmyer, when he filed his transfer application, certainly indicated that he did not have the financial qualifications to go ahead and build these stations.

Mr. DINGELL. That is the reason you authorized the transfer?

Mr. GEORGE SMITH. That is one of the reasons.

Mr. DINGELL. Where in the rules is your justification for that?

Mr. GEORGE SMITH. There is no rule.

The Bureau—I think before you came in it was ascertained that the Bureau operates on certain fixed policies.

Mr. DINGELL. Where is the policy that says that somebody can bite off more than they can chew, and transfer?

Mr. GEORGE SMITH. I don't think the Commission ever heard me say bite off more than he could chew, so there is no policy on that.

Mr. DINGELL. As a matter of fact, these were expired permits. There was an application pending to extend them that had not yet been acted upon.

Am I correct?

Mr. GEORGE SMITH. Well, they were expired permits when this transfer application was filed, but the pendency of applications to extend those permits, to hold those permits—

Mr. DINGELL. Were verified copies of loan stock purchase and escrow agreements filed in conformance with the rules of the Commission?

Mr. GEORGE SMITH. I believe so.

Mr. DINGELL. Were any filed with regard to the extension?

Mr. GEORGE SMITH. I have to plead that I wasn't there when they were filed.

Mr. MOSS. The testimony this morning was, and you can correct me if I am wrong, that they were not filed.

Mr. GEORGE SMITH. I might say to Congressman Dingell, I am responsible for the recommendation that went to the Commission for transfer to the AVC Corp.

Mr. DINGELL. With regard to the extension—

Mr. SAADY. With regard to the extension application, there were no such statements filed.

Mr. DINGELL. Do the rules require that financial statements be filed?

Mr. SAADY. No, sir; they do not.

Mr. DINGELL. Do they require that they be filed previous to the issuance of the original construction permit?

Mr. MOSS. You testified this morning that section 1.65 of the Commission rules require that they be filed at the time that an application for extension is made. Now you just said that they are not.

Mr. SAADY. No, sir. I believe my answer this morning referred to the fact that when you do enter into a contract involving your stations, the rules of the Commission require you file a copy of that contract with the Commission within 30 days.

Mr. MOSS. Let us get this straight.

The question this morning was not talking about a matter of the station. It was talking about the application, and Mr. Lishman was specific in interrogating you on the extension for the construction permits, and in response to that, you indicated that the usual documents were not filed.

Mr. DINGELL. Doesn't rule 1.65 require also that the licensee disclose any substantial changes in his financial position?

Mr. SAADY. That is correct.

Mr. DINGELL. Was this rule complied with? Did Mr. Overmyer disclose any substantial changes in his financial position?

Mr. SAADY. At the time he filed his application, I was not aware of any substantial changes.

Mr. DINGELL. Did he make any disclosure of any substantial changes?

Mr. SAADY. He did not.

Mr. DINGELL. If he had done so, and you had found that his position had changed substantially for the worse, what would your recommendations have been?

Mr. SAADY. We would have taken the application for extension up to the Commission.

Mr. DINGELL. You would have?

Mr. SAADY. Yes.

Mr. DINGELL. I yield now to Mr. Lishman, who has some questions to ask you on this particular point.

Mr. LISHMAN. The questions I asked this morning were in regard to the compliance with rule 1.65. Among the questions I asked was: When did you first receive notice of the loan agreements and the stock purchase agreements, and so on.

You answered, as I recall it, when the application was filed, on June 30.

Mr. SAADY. That is correct. I became aware of the transfer control application only after it was filed. It is not filed in my shop, but I was aware after it was filed.

Mr. LISHMAN. I would like to call your attention to rule 1.65. Isn't it a fact that that rule requires that if there is any substantial change, there must be an amendment of the extension application?

Mr. SAADY. Not necessarily.

Mr. LISHMAN. I will read it to you. I will read the section.

Each applicant is responsible for the continuing accuracy and completeness of information furnished in the pending application, or in Commission proceedings involving a pending application.

Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible, and in any event within 30 days, unless good cause is shown, amend or request amendment of his application so as to furnish such additional or corrected information as may be appropriate.

Now, that is part of 1.65. Now, is it not also true that the Commission has many times ruled that filing under rule 1.613, or rule 1.615, will not satisfy the mandate of 1.65, that the mere filing in some obscure part of the Commission will not satisfy this rule 1.65?

I will refer you to some of these cases: The *Cleveland Broadcasting* case, the *Central Broadcasting Corp.* case, the *Gordon Sherman* case, and others, where the Commission ruled that filing under rules 1.613 and 1.615 will not satisfy the mandate of rule 1.65.

I believe one of the reasons for it is that the Commission wants to be certain that it will have knowledge of these substantial changes, and if documents are filed hither, there, or yon, they are not likely to be brought to the attention of the Commission. Therefore, they would not be acting with an informed judgment when they are passing on applications for transfer approval.

Is that correct?

Mr. SAADY. That is right, but in point of fact, the transfer application was filed. We were aware of the transfer application, because we do operate in the same bureau.

Mr. LISHMAN. How long after March 28 did you learn that?

Mr. SAADY. When the application was filed.

Mr. LISHMAN. When was that filed?

Mr. SAADY. The application was tendered, I think, June 30. That is the file date. We became aware at that time.

Mr. Moss. Before we move on, I have one other point we want to clear up. We have had cited here today by several of the members of the staff, at least two of the legal staff, the statement that this case was based upon precedents which had occurred in other cases.

I am going to want specific citations of those other cases. I want to know whether in any of them there was involved a loan and option agreement combined in the petition for transfer of the construction permit.

Mr. DINGELL. If you will yield, Mr. Chairman, I would like to also have that indicate precisely the fashion in which the precedent is relied upon as a basis for the determinations and actions which were taken by the FCC in the *Overmyer* case.

Mr. Moss. I think that is most appropriate.

Mr. DINGELL. I would like to stress, again, Mr. Chairman, that we would like to have this request complied with precisely.

Mr. Moss. Yes.

It would be the Chair's opinion that it should exist already somewhere in the Commission's files, or at least be in the working papers of the staff, and be able to be pulled together promptly.

(The information requested appears in the appendix, p. 783.)

Mr. DINGELL. If I could, Mr. Chairman, I would like to ask one of the FCC staff here if he could tell us upon which circumstances the FCC in its staff memorandum, granted the application for transfer of the construction permits in the *Overmyer* case.

It had been indicated previously that Mr. Overmyer had bitten off more than he could chew.

I would like to ask, if I could, what other moving circumstances there were, if any, that brought this transfer about.

Were there any?

Mr. GEORGE SMITH. My memorandum is in this document.

Actually, we examined into the trafficking question. We examined into the 20-percent option matter.

Mr. DINGELL. Now, the FCC has a very clear policy on trafficking in licenses. Does the Overmyer transfer conform with this policy?

Mr. GEORGE SMITH. In the *Overmyer* case?

Mr. DINGELL. Yes.

Mr. GEORGE SMITH. I think it does. The Commission approved it.

Mr. DINGELL. Now, that is not a responsive answer. I am sure you are aware of that.

What you are actually saying is that because the Commission says it does, it does. But you have a well-defined policy in the FCC on trafficking.

Perhaps you would like to enunciate that and tell us whether this Overmyer transfer conforms to that policy.

Mr. GEORGE SMITH. The Overmyer transfer conforms to the policy, as I understand it.

Mr. DINGELL. The present policy, or the policy when it was changed?
Mr. GEORGE SMITH. I am going to give you another one.

We are in a little state of limbo right now on trafficking, because of some recent court decisions.

Mr. DINGELL. Because of the change in the top market rule that the Commission has adopted since this committee began inquiries into this matter?

Mr. GEORGE SMITH. The Commission granted an application for a new station, I believe it was in North Carolina. The matter of trafficking had been raised. We got all the facts we could get, short of a hearing. We came up with the opinion that trafficking had not been substantiated, and the Commission granted the application.

That was appealed to the court, and the court remanded the case and directed the Commission to hold a hearing on the issue of trafficking.

Now, the hearing was held. My Bureau participated in that hearing. We did prove trafficking, and the Commission revoked that license.

Since that time, we have had another case that went to the court of appeals involving the issue of trafficking, and just recently, maybe Mr. Slosberg might know how recently, the General Counsel asked the court to remand that case back to the Commission for further consideration.

That is why I made the remark I did about our policy being in limbo right now a little bit.

Mr. DINGELL. Was there any significant broadcast experience found in this matter?

Mr. GEORGE SMITH. Significant?

Mr. DINGELL. On the part of the purchaser.

Mr. GEORGE SMITH. In both instances, yes.

Mr. DINGELL. I mean in the *Overmyer* case. Did you find any significant broadcasting experience?

Mr. GEORGE SMITH. In *Overmyer*?

Mr. DINGELL. Yes.

Mr. GEORGE SMITH. No.

Mr. DINGELL. In any of these States?

Mr. GEORGE SMITH. No.

Mr. DINGELL. Would they have qualified; would AVC have qualified had they been the original applicant for a construction permit?

Mr. GEORGE SMITH. In my opinion, yes.

Mr. DINGELL. In each one of the transfers?

Mr. GEORGE SMITH. I believe so.

Mr. DINGELL. How did they meet the requirements of local service? Were they residents, or did they have any residential attachment, or did they have any identification with the area? Did they have any local management?

Mr. GEORGE SMITH. Residency is not a basic requirement, at all.

Mr. DINGELL. It is not?

Mr. GEORGE SMITH. No.

Mr. DINGELL. What about Mr. Overmyer's financial circumstances?

You indicated he had bitten off more than he could chew. What was it that caused the Commission to come to the conclusion that he had bitten off more than he could chew?

Mr. GEORGE SMITH. In his statement of reasons for the transfer, which I believe Mr. Hautanen went into earlier—I don't have a copy.

Mr. Moss. Mr. Lishman, will you resume the questioning at this time?

Mr. LISHMAN. Yes, sir.

I would call the attention of FCC staff members to a sentence in its memo of October 27, where it says:

The Bureau recognizes that the extension of loans by a transferee to a transferor presents an unusual situation which should be approached with some skepticism.

With this in mind, the Bureau has carefully scrutinized the underlying loan agreements, and is satisfied that they are consistent with the public interest. The loans are fully collateralized by mortgages and notes on various warehousing companies. They bear interest at the prevailing market (Philadelphia) rate plus a quarter of a percentage point premium. Interest is payable currently, and principal is repayable in 3 years.

Now, I would like to ask how did you determine that these loans were fully collateralized? What action did the staff take?

Mr. HAUTANEN. I don't recall exactly, but I am sure there must have been, or I would not have made this statement, if there were not something in the application. I don't have the exhibit before me indicating that these loans were collateralized.

The statement would have been made in some document filed in the application.

Mr. DINGELL. Isn't it a fact that the material you are referring to is a one-sheet summary of all the Overmyer properties?

It is not an elaborate document. You have it right there.

I will ask you a more specific question: Did anyone in the FCC look at appraisal reports concerning the Overmyer warehouse properties that underlie the mortgage loans? Did anybody look at these appraisals?

Mr. HAUTANEN. I don't recall whether I did, or not.

I might say in reference to my prior answer that at one point the attorney for Mr. Overmyer furnished the staff with a letter, a supplemental letter, indicating the manner in which these various loans were collateralized.

I think that letter was made available to the subcommittee staff. We had a draft of that letter. Mr. Smith, I believe, received it from the attorney.

Mr. DINGELL. Isn't this secondhand information? Isn't it the duty of the FCC when a statement is made that a loan is fully collateralized that they make certain that that statement is accurate?

The Commission is going to act on this recommendation. Would not a Commissioner looking at the statement that the loans were fully collateralized assume that inquiry or a check had been made to verify that fact?

Mr. HAUTANEN. I would be willing to vouch—I can't do it without having the application before me, but I would be willing to vouch that if I said it was fully collateralized, it must have been collateralized.

Mr. Moss. I am more curious than you are, so we will find out exactly what document you have to have, and we will get it before you so that you can again reaffirm.

This committee, unlike the Commission, is going to operate from documentation, so the staff has the document.

See that it is supplied to the gentleman. If not, let us find out who has it, and let us get it.

Mr. LISHMAN. I will continue with some questions.

The staff memo further states that Overmyer lost money in "unsuccessful network ventures."

Did Overmyer supply any written statement to the Commission showing that he had lost money in an unsuccessful network venture?

Mr. HAUTANEN. This statement I think would have been taken from one of the documents which was filed with the application, perhaps in connection with the out-of-pocket expenses.

Mr. LISHMAN. We have not been able to find that document in the set of papers which are supposed to represent everything that was used in approving this application.

Mr. DINGELL. In order to simplify the record, may I request that that be submitted?

Mr. Moss. We have the gentlemen before us, we have the documents; all of the documents have been alleged to be supplied the committee. The committee staff has the document. They will make it available to the staff of the Commission.

I want to observe I am most impatient with Commission staff of this size that appears for a hearing on a subject well defined and does not have preparation with sufficient documentation.

Show him the document, and I want the record to show what he relied on.

Mr. HAUTANEN. They would most likely be in that document, the reasons for proposed transfer.

This is the report of the subcommittee staff. It is in the narrative statement.

Mr. Moss. Which subcommittee staff? You mean the House subcommittee staff?

Mr. LISHMAN. That is a photostatic copy of a document.

Mr. Moss. I suggest you read the document with care, because it represents more than just a subcommittee staff document. It represents a photostat of a document from your files.

Mr. DINGELL. Mr. Chairman, I think the staff should be able to get this document without any difficulty. I wonder if it is the—

Mr. Moss. The committee is most anxious to develop the facts. It seems to have great difficulty.

Mr. LISHMAN. Mr. Chairman, could we save time if we asked the witness to supply for the record from the file the one page sheet which was relied upon as showing that the loans were fully collateralized?

Mr. HAUTANEN. I will be pleased to do that.

(The document referred to appears in the appendix, p. 802.)

Mr. Moss. I know you would be pleased. I would be pleased to shorten the hearings and permit you to do it, but if that is not the document, then I want to have the opportunity to examine you on what documentation you did rely upon.

Mr. HAUTANEN. I do not recall whether this is the document which was in the application at the time the application—

Mr. Moss. You have the application before you, down there on the table, haven't you?

I supplied that to you once today.

Mr. HAUTANEN. I don't have the application, sir.

Mr. Moss. Who does have it?

Mr. RAWSON. Nobody furnished us with an application. They gave us a copy of an exhibit to the application.

Mr. Moss. All I can say, gentlemen, is that I can assure you there is going to be some language in the report from this committee which takes very, very careful note of the rather unusual lack of preparation by this staff in order to respond to the proper and legitimate demands of a committee of the Congress.

We will now proceed to shorten it, and let the record show the incompetence of the witness to respond to the questions placed to him.

Mr. Dingell.

Mr. DINGELL. May I ask one question?

Are you prepared to tell us that there was a verified, certified, fully documented statement on this point filed with the FCC before this matter was attended to?

Mr. HAUTANEN. At one point, Mr. Gaguine made available to Mr. Smith a letter concerning the various collateral which backed these loans. That letter was with me. I had that letter before this application was acted on. I don't have a copy of that letter now, but the letter was supplied by counsel for Overmyer on this point.

Mr. DINGELL. Was it certified by a CPA? Was it attested to by a public accountant? Were the facts that the loans were collateralized in full in any fashion or way documented?

Mr. HAUTANEN. It was a letter, I believe, which was filed as an amendment to the application, or at least filed in connection with the application, so it would have been considered.

Mr. DINGELL. Now, we received the other day—perhaps you gentlemen were in the room—a statement from the FCC as to the great value of certain other financial information that was submitted to the Commission in connection with certain applications by Mr. Overmyer, supposedly assuring the Commission that loan agreements were made in that letter by a bank to Overmyer.

A careful reading of that document compelled the Commission to conclude that there was no such assurance.

Now, which kind of document are we talking about? One which says flat out these were fully collateralized, certified by the CPA?

Mr. HAUTANEN. It was a letter, I think, from Mr. Gaguine.

Mr. DINGELL. Is he a CPA?

Mr. HAUTANEN. No, not to my knowledge.

Mr. Moss. Mr. Lishman, you may continue.

Mr. LISHMAN. Did the Commission look at any appraisal reports of the Overmyer warehouse properties which were security for the mortgage loans?

Mr. HAUTANEN. I think the letter from Mr. Gaguine may have stated something as to the appraisal values.

Mr. LISHMAN. Did you look at the actual appraisals?

Mr. HAUTANEN. No, sir.

Mr. LISHMAN. Do you know on what basis they were made?

Mr. HAUTANEN. No, sir.

Mr. LISHMAN. Certainly they were not cost, less depreciation?

Mr. HAUTANEN. I beg your pardon?

Mr. LISHMAN. They were not on a cost, less depreciation basis, were they?

Mr. HAUTANEN. I wouldn't know.

Mr. LISHMAN. How would you be able to state that the loans were fully collateralized, if you don't know whether the appraisal was on current market value, or some other basis?

Mr. HAUTANEN. It may be that the statement in paragraph 17 isn't fully accurate, in terms of accounting principles, but until I see that letter, I wouldn't know.

Mr. LISHMAN. I am going to go back—

Mr. MOSS. Well, I have the letter. I am going to hand it to you. Dated November 21, 1967, to the Secretary of the Commission.

Identify it, if you will.

Mr. HAUTANEN. This is the letter sir; yes.

Mr. MOSS. That shows that all loans are fully collateralized. Is that correct?

Mr. GEORGE SMITH. Mr. MOSS, my item of October 27, in which this statement appears, would not have been based on that letter.

This letter was not received in the Commission until when?

Mr. MOSS. The 21st of November.

Mr. GEORGE SMITH. My item, in which this appears, is October 27. Therefore, I would like to take advantage of the offer made—

Mr. MOSS. I am not the one who said it was the basis.

Mr. GEORGE SMITH. I know you are not.

Mr. MOSS. Mr. Hautanen is the—

Mr. GEORGE SMITH. The letter from Mr. Gaguine gives the details which Mr. Lishman wanted.

Now, as I understand it, the original application, which with your approval we would like to supply you with—

Mr. MOSS. Return the letter to me, if it is not that on which the conclusion was based.

Now let us find out what letter we are talking about.

Mr. GEORGE SMITH. I thought what you were trying to get at is what Mr. Hautanen relied on in the application when he made this statement.

I thought we had been given leave to locate that document.

Mr. MOSS. Let us not again get the record fouled up.

Mr. HAUTANEN. Without having the application before me, I cannot accurately state on what this statement is based.

If I had an opportunity to see the application which I had before me, I think I could then locate whatever documents I based my conclusion on.

The applications were rather lengthy.

Mr. MOSS. Give him the full application.

I am sure you are familiar with it.

Mr. DINGELL. FCC policy, as I understand it, requires verified copies of the loan or credit agreements, showing the amount of loans, terms of repayment, collateral, and so forth, if any be submitted in connection with such matters of this kind.

Am I correct?

Mr. GEORGE SMITH. I believe you are, sir.

Mr. DINGELL. So that we can get this in very simple terms, does the letter from Mr. Gaguine comply with that requirement?

Mr. GEORGE SMITH. May I borrow that, Mr. Chairman?

Mr. MOSS. Will you supply Mr. Smith a copy of the letter from Mr. Gaguine?

Mr. DINGELL. Does this comply with that enunciated FCC policy?

Mr. GEORGE SMITH. I am not the staff member who worked on this. If I only knew what it was that brought this, what was relied on to make

the statement, I would be better able to answer the question about this.

Mr. MOSS. I will tell you what brought it up. It is really the basis of the entire hearing.

We tend to regard this case as rather unusual in many, many of its aspects.

Mr. GEORGE SMITH. I think it is the only one of its kind.

Mr. MOSS. I think it is the only one of its kind, too.

That brings up all sorts of little red flags. We want to know why it is the only one of its kind. We want to know how the public interest is served by this unique case that seems to be violative of almost all of the policies that the Commission, prior to the granting of this particular application for transfer of construction permits—

Mr. GEORGE SMITH. Let me see if I can answer your question now, Congressman Dingell.

The requirement you just read a moment ago from our application form requires certain things to be done where the applicant is to be found financially qualified.

Are we together up to there?

Mr. DINGELL. The question, you will agree, I am sure, is: The financial qualification of the individual either originally to go into the business or to go out of the business by transfer was very much an issue here, because you told me that originally the transfer was authorized because Mr. Overmyer had bitten off more than he could chew.

I assumed that originally the question of his financial ability to pursue this course of action was again an issue.

I am asking you whether verified copies of loans or credit agreements, showing amount of loans, terms of repayment, balance of collateral, such matters, were submitted to the Commission.

You have indicated to us that Mr. Gaguine submitted a letter to the Commission. I am wondering if that letter complies with FCC policy?

Mr. GEORGE SMITH. I think we are getting confused, and I understand you, sir, but this letter of November 21, 1967, had nothing to do with the question the other day on the bank letter with respect to the Cincinnati case.

Mr. DINGELL. I am aware of that fact. I simply wonder if it has the same reliability and the same probative value.

Mr. GEORGE SMITH. No, it couldn't possibly, because this relates to another matter.

Now, this letter is supposed to be evidence of the facts that went behind the loan that AVC was making to Overmyer. Whether or not the AVC Corp. used good business judgment might be argumentative. I don't know.

Mr. MOSS. Let me try to state again for the gentleman that Mr. Dingell is not asking about the substance of that letter.

He is asking you if it is in the same general classification as to reliability as the letters—there were numerous ones from bankers—attesting to the fact that they would consider under certain conditions and with appropriate certified statements, the possibilities of making lines of credit available.

Mr. GEORGE SMITH. I will try to answer that question this way, Mr. Chairman.

If Overmyer needed \$3 million to complete construction, and proposed to finance that construction by a loan, leaving out any sale of stock, proposed to finance that construction by a \$3 million loan, I think this would be adequate.

I think the Commission could accept this as evidence of the fact that Overmyer could borrow that money.

This would be as a new applicant.

Mr. DINGELL. First of all, let me ask you: Were verified copies of credit agreements shown? Were any of these things I have enunciated in compliance with the policy of the FCC?

Let me see that document, please.

Here you have a letter on the letterhead of Fly, Shuebruk, Blume and Gaguine, by Mr. Benito Gaguine, addressed to Ben F. Waple, with copy to Thomas N. Dowd, attorney for AVC, and says here:

Since certain questions appear to have been raised in respect to two facets of the agreement involving the proposed—

and so forth.

It says:

Loan. As the Commission was advised, AVC has agreed to lend \$3 million to various corporations controlled by Overmyer.

Are you telling us that this letter complies fully with the FCC rules and regulations?

(The letter referred to appears in the appendix, p. 898.)

Mr. GEORGE SMITH. I certainly am not.

Mr. DINGELL. Is this the only document that was relied on by the FCC?

Mr. GEORGE SMITH. I think that is what Mr. Hautanen is looking for now.

Mr. DINGELL. You just indicated to me that this was the document, that this was justified, that this would indicate that AVC could make a loan of \$3 million.

Mr. GEORGE SMITH. Of course I did not. What I said was I thought this would be acceptable, had it been filed as an exhibit with an application, which application is certified to.

Mr. DINGELL. Did you go behind this document in any fashion?

Mr. GEORGE SMITH. That one there?

Mr. DINGELL. Yes.

Mr. GEORGE SMITH. No, sir.

Mr. DINGELL. I think we had better wait and see the document on which you did rely.

Mr. Moss. I think, in view of the inability to produce the document on which the issue, of necessity, must be based, that the committee will—

Mr. DINGELL. I would like to ask a couple of questions, Mr. Chairman.

I observe there that at several points on this application Mr. Overmyer has submitted a number of documents involving appraisals of real property, and the property owned by him, by his corporation.

Was there any check by the FCC as to whether or not these appraisals were in fact correct, and conformed to the market values, or that they did not?

Mr. GEORGE SMITH. It is my information that they were never checked.

Mr. DINGELL. Was there any scrutiny of these papers by any FCC staff member, to ascertain whether they were made by certified appraisers, by licensed real estate men?

Mr. GEORGE SMITH. The only instance I can recall where we had an appraisal involved was an antenna site at Cincinnati.

I think that is the only one.

Mr. DINGELL. The only one?

Mr. GEORGE SMITH. I believe so.

Mr. DINGELL. Out of approximately how many parcels of real estate? Out of a significant number. Am I correct?

Mr. GEORGE SMITH. It would be one at each location. At each of five locations, at least one. It could be two, on account of studio location.

Mr. DINGELL. We are talking about 23 warehouses.

Mr. GEORGE SMITH. I was thinking of the permits, Mr. Congressman.

Mr. DINGELL. Was there any appraisal on any of the warehouses, any independent appraisal?

Mr. GEORGE SMITH. I don't know.

Mr. DINGELL. Does anyone know?

Mr. GEORGE SMITH. We didn't ask for it.

Mr. DINGELL. I didn't hear the answer.

Mr. HAUTANEN. Not that I am aware of, sir, no.

Mr. DINGELL. Do you regard this as a good business practice, to simply swallow a filing of this kind whole, and then shoot, without finding out whether it has been certified to by some person, some independent person other than the applicant?

Mr. GEORGE SMITH. I think I would have put better reliance on the business judgment of the requirements of the money lender, here, the AVC Corp. If it were satisfied that it had ample security, I don't know why we would have even gone into it.

Mr. DINGELL. You don't have the vaguest idea, though, whether these parcels of real estate were worth what they were purported to be, according to the documents filed?

Mr. GEORGE SMITH. We went over all the out-of-pocket expenses which were under oath, or under certification.

Mr. DINGELL. I did not ask that question.

Mr. GEORGE SMITH. That includes the parcels.

Mr. DINGELL. Did you ever have any certification by independent appraisers? Is there even a certification by independent appraisers to the worth of this property on file with the Commission?

Mr. GEORGE SMITH. I don't think so.

Mr. DINGELL. Then the Commission, in making its judgment, never had the vaguest judgment of what the real worth of these 23 warehouses actually happened to be. Am I correct?

Mr. GEORGE SMITH. I think that is fair to say so, yes.

Mr. DINGELL. So that they could have been fixed at a price that Mr. Overmyer indicated was quite appropriate. Am I correct? For his needs? It might have been entirely unrelated to the actual value of the tracts. Am I correct?

Mr. GEORGE SMITH. I just have no knowledge about it.

Mr. DINGELL. This is definitely within the realm of possibility.

We find ourselves here in a position of where we have the AVC Corp., which is going to be the purchaser of these construction permits—am I correct?

Mr. GEORGE SMITH. That is correct.
Mr. DINGELL. Making its reliance on its intended purchase of a \$3 million loan. Am I correct?
Mr. GEORGE SMITH. That is correct.
Mr. DINGELL. This is not really an arm's length deal between two persons who are actually engaged in a business transaction which is solely involved in the loaning and the borrowing of money.

It actually involves loaning and borrowing of money, and purchase or other circumstances that are entirely apart from what you find in regular commercial transactions.

Am I correct?
Mr. GEORGE SMITH. I am not as nearly well versed in commercial business transactions, apparently, as you are.

Mr. DINGELL. You say this was a straight commercial loan?

Mr. MOSS. Will the gentleman yield?

Mr. DINGELL. Yes.

Mr. MOSS. We had a representative of AVC before the committee, I believe at the last hearing.

In a rare moment of candor, he virtually conceded that what they were buying was construction permits.

Mr. DINGELL. We have here something which I don't think any—I would be most pleased if any of you gentlemen can tell me if this was a regular commercial transaction.

I would be glad to hear it.

Mr. GEORGE SMITH. I would hesitate to stamp it as a regular one, because I don't know any other like this.

Mr. DINGELL. This was a purchase, was it not?

Mr. GEORGE SMITH. A purchase?

Mr. DINGELL. The transaction which took place between AVC and Overmyer is a purchase?

Mr. GEORGE SMITH. Yes, I believe Mr. Overmyer originally purchased the same permits, and then there was a subsequent sale.

Mr. DINGELL. So in fact we have here a purchase of permits, which is very, very different than a standard commercial transaction? Am I correct? A standard commercial loan? This is not a standard loan?

Mr. GEORGE SMITH. If you want to tell me what is a standard commercial loan—

I am not trying to play games.

Mr. DINGELL. You give me a mortgage on a piece of real estate, and I sign a note.

This is not that kind of transaction, at all, is it?

Mr. GEORGE SMITH. I don't think so.

I know what a mortgage is. I have one.

Mr. DINGELL. Doesn't this put the Commission staff on notice they ought to look further than just what appears on the face of the document submitted by two persons who are interested in the transfer of a construction permit?

Mr. GEORGE SMITH. You remember, and again I have to say that—

Mr. DINGELL. Obviously this document could mean anything that the parties wanted it to mean.

Doesn't this alert the Commission that they ought to go behind it and take a look to see what are the real circumstances, whether Mr. Overmyer was in trouble, or whether he was not?

Mr. GEORGE SMITH. As I recall, the reason for the existence of the letter in the first place is the statement probably made in this October 27 memorandum to the effect that the loans had been secured by mortgages on warehouse properties.

I think I recall a Commissioner, I wouldn't know which one, at the time of some of the discussion wanted to know more particulars about that.

We asked counsel for Overmyer to supply those details, and that letter was his response.

Mr. DINGELL. That letter, then, was not submitted as certification of the facts contained therein. It was simply a response to an inquiry by the Commission?

Mr. GEORGE SMITH. I think that is true.

Whether it was filed as an amendment to the application, I don't know.

Mr. DINGELL. Did the staff raise the question that this was not a conventional mortgage, or a conventional loan, between AVC and Overmyer, in connection with any of its—

Mr. GEORGE SMITH. There are two or three different characterizations of this whole transaction in our item.

Mr. DINGELL. Perhaps you may help me by characterizing it. I am interested in knowing how this was characterized.

Mr. GEORGE SMITH. Paragraph 17, and this has been read before today:

The Bureau recognizes that the extension of loans by a transferee to a transferor presents an unusual situation which should be approached with some skepticism.

We try to be fair with the Commission. We tried to report the facts as we found them, in order to enable the Commission to pass on these applications.

Mr. DINGELL. Were there any other characterizations which say "extra circumstances"?

Mr. GEORGE SMITH. That was gone into. I think Mr. Lishman asked some questions about some other phrases.

Let me find them.

Mr. DINGELL. I don't want to go over the ground covered by Mr. Lishman.

Was it ever recommended to the Commission that they should look at these documents to see whether the facts were actually as they purported to be, or were the documents swallowed whole, without checking?

Mr. GEORGE SMITH. The only representations the Bureau ever made to the Commission are all wrapped up in this one memo.

Mr. DINGELL. Was there any recommendations that the Commission should look behind the circumstances in this rather extraordinary transaction?

Mr. GEORGE SMITH. None other than what appears in the memorandum.

Mr. DINGELL. Were the mortgages on these warehouses filed in the jurisdiction in which the real property purported to be? Were the mortgages filed with the county clerk in the counties in which the real property purported to be?

Mr. GEORGE SMITH. I have no knowledge of that. I haven't the slightest idea.

Mr. Moss. Do you know whether or not the mortgages, the 23 mortgages, are first or second mortgages?

Mr. GEORGE SMITH. I do not know, no.

Mr. DINGELL. Do you know whether there were other mortgages on the real property?

Mr. GEORGE SMITH. No.

Mr. DINGELL. Was any inquiry made on this point?

Mr. GEORGE SMITH. I do now know.

Mr. DINGELL. What was Mr. Overmyer's balance on August 31, 1964?

Mr. GEORGE SMITH. I think that question was asked on a Friday, and somebody gave us the answer.

What that the one that said \$9,000, or some?

Mr. DINGELL. As a matter of fact, as near as we can figure, his personal balance sheet indicated he had a difference between current assets and current liabilities of \$963.14.

Mr. GEORGE SMITH. Yes. That was asked and gone into, not by me. I was here, I think on a Friday, when that was gone into.

Mr. DINGELL. Thank you.

Mr. Moss. Do you have any additional questions, Mr. Lishman?

Mr. LISHMAN. Mr. Chairman, we have not finished the questions related to the acquisition of three stations.

We then intended to go into the question of the substantiating of data concerning the out-of-pocket expenditures.

It will take detailed questioning of some length.

Mr. Moss. It had been the program, certainly it was the hope, the prayer of the Chair, that we could dispense with the further appearance by you gentlemen before this hour today, that this phase of the hearing would be concluded.

It is evident now, from the record, that this is not possible.

The committee now adjourns subject to the call of the Chair for further appearance.

The Chair wants to admonish each of you that he expects in your next appearance that you be prepared to respond in the most finite detail on the Overmyer case.

I consider this an important matter, and I don't want the endless wasting of time while we search for documents and try to define what should be matters of common knowledge by the staff which worked on this case.

Mr. GEORGE SMITH. Mr. Chairman, may I have a word, please?

You will recall I spoke with you and Mr. Lishman about getting some vacation, and then the discussion centered around taking my deposition.

I met with Mr. Arnold Smith that afternoon, and my deposition was not taken, because Mr. Smith said he did not want to tip his hand.

Now, if we could only get some idea of what will be gone into—

Mr. Moss. The entire Overmyer case.

Mr. GEORGE SMITH. We know it very well, but I can't begin to guess at some of these questions.

Mr. Moss. Have you had your vacation?

Mr. GEORGE SMITH. I haven't had it.

Mr. Moss. Is that what you are planning?

Mr. GEORGE SMITH. If you tell me to stay in town, I will stay in town.

Mr. Moss. I am asking a question, I am not telling you.

Mr. GEORGE SMITH. I had been planning to take some time; yes.

Mr. Moss. How much time?

Mr. GEORGE SMITH. According to my wife, she wants 3 weeks. I think I will take 2.

Mr. Moss. I think probably tomorrow we can confirm the fact that we will be able to dispense with any requirement for your testimony for at least that length of time.

Mr. GEORGE SMITH. I want to be here, if you want me, sir.

Mr. Moss. I would like to see you have a rest and come back refreshed and ready to again engage in a battle of what I hope will be sharper wits than we have had displayed today.

Mr. GEORGE SMITH. Thank you, sir.

Mr. Moss. The committee will now stand adjourned until 9:45 in the morning, at which time the Commission will be present.

Mr. GEORGE SMITH. Do you want any of the staff in the morning with the Commissioners?

Mr. Moss. That is up to the Commission.

Mr. GEORGE SMITH. I mean as far as the Chair is concerned.

Mr. Moss. Does counsel desire any particular staff members to accompany the Commission?

Mr. LISHMAN. Yes, sir. I think there should be some staff members. We are going to continue the line of questions that has already begun concerning Overmyer's acquisition of the Pittsburgh, Houston, and San Francisco permits, and his financial capability to put these stations into operation.

Then, following that—

Mr. Moss. I think we can shorten it if the counsel will notify the Commission Chairman that the committee expects the Commission to appear prepared to answer in a responsible manner all questions which might be put to it on this subject, and leave to the Commission the determination of its own requirements for staff.

With that instruction, the committee stands adjourned until 9:45 tomorrow morning.

(Whereupon, at 4:50 p.m., the committee adjourned, to reconvene at 9:45 a.m., Thursday, August 1, 1968.)

TRAFFICKING IN BROADCAST STATION LICENSES AND CONSTRUCTION PERMITS

THURSDAY, AUGUST 1, 1968

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

As I understand from the subcommittee chairman who was presiding yesterday, we had agreed that the Commission would be first this morning. So, will the Commission come forward and take the chairs at the witness table?

I want to thank you gentlemen for coming up. The situation in the House is a rather uncertain thing. We don't know how long we will be here. However, we will get started.

Mr. Hyde, would you identify the gentlemen?

Mr. HYDE. We have Commissioner Robert Bartley, Commissioner Kenneth Cox, Commissioner Robert E. Lee. Commissioner Johnson is expected. Commissioner Wadsworth was really in some distress this morning. He won't be able to be here this morning.

The CHAIRMAN. Have all of you gentlemen been sworn? Those who were not, will you please stand?

Do you solemnly swear the testimony you are about to give to the subcommittee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BARTLEY. I do.

Mr. COX. I do.

Mr. LEE. I do.

TESTIMONY OF HON. ROSEL H. HYDE, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ROBERT T. BARTLEY, COMMISSIONER; ROBERT E. LEE, COMMISSIONER; KENNETH A. COX, COMMISSIONER; AND NICHOLAS JOHNSON, COMMISSIONER

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Chairman, is it correct that in approving the transfer of these five construction permits the Commission relied chiefly on the memorandum of the staff dated October 27, 1967?

Mr. HYDE. The Commission relied heavily upon the memorandum and recommendation of the staff.

Mr. LISHMAN. There was testimony here yesterday by the staff that the participants who drafted that staff memorandum did not know

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until June 30, 1967, that Overmyer had already sold these permits to another company on March 28, 1967.

Are you familiar with that testimony?

Mr. HYDE. I understand there was some discussion about the alleged failure of Overmyer to file a contract before the filing of his application. Is this what you are referring to?

Mr. LISHMAN. What I am trying to elicit is when did the Commission itself first know that Overmyer had consummated a transaction on March 28, 1967, disposing of the five construction permits?

Mr. HYDE. Of course, no permittee can dispose of his authorizations without the approval of the Commission. I understand that a contract looking toward the transfer of them, subject to Commission approval, was filed with the Commission within about 28 days of making the contract which would be in accordance with the rules of the Commission.

Mr. LISHMAN. Weren't there three applications outstanding for extensions of time for several of the construction permits?

Mr. HYDE. That may very well be because it is expected that application will be made to extend the permit well in advance of the expiration of the permit.

There are certain rights that accrue under the Administrative Procedures Act if an application for renewal of extension is filed before the termination of the previous authorization.

Mr. LISHMAN. Doesn't rule 1.65 of the Commission require an amendment of an extension application whenever there is a substantial change in the financial status of the applicant?

Mr. HYDE. I haven't the text of the precise rule in mind but as a matter of regulation we do require the filing of information to keep us informed as to changes in ownership and so forth.

Mr. LISHMAN. Was the Commission ever informed that there had been a violation of rule 1.65 in that Overmyer had not amended his extension applications to show that he had already disposed of the five construction permits?

Mr. HYDE. Well, he couldn't have disposed of the five construction permits without approval of the Commission.

Mr. LISHMAN. He had entered into a contract for disposal.

Mr. HYDE. Any such contract would have to be subject to the approval of the Commission. He could not dispose of his interest without the approval of the Commission.

Mr. MOSS. Mr. Chairman.

The CHAIRMAN. Mr. MOSS.

Mr. MOSS. Mr. Hyde, I think you are equivocating because the question is readily answerable by yes or no. He did not apprise this Commission of the fact that he had entered into any such agreement, did he?

Mr. HYDE. I think he had, Congressman Moss.

Mr. MOSS. If he did, how?

Mr. HYDE. It is my understanding that a copy of the contract looking toward the sale of his interest subject to Commission approval had been filed under our rules requiring that changes in ownership, interest, or options be filed within 30 days.

Mr. MOSS. All I can say to that, Mr. Chairman, is that you twice certified, once yourself and another time the Secretary of the Commission, that this committee had been supplied with copies of all docu-

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ments relevant to this case and this committee has not been supplied with any documents indicating such filings.

Did they come into being after the committee requested them?

Mr. HYDE. Congressman Moss, we endeavored to supply you with all the documents in this case.

Mr. MOSS. Mr. Chairman, that is not satisfactory. Your endeavor is not an accomplishment. In fact, your files should contain every item pertinent to this case. If you did in fact supply those to us, then any such filing would have been supplied to this committee.

Mr. HYDE. Congressman Moss, we made an earnest, diligent effort to supply all the papers. This is a case of many documents, as you know. Obviously, the staff preparing the materials for me to submit directed their attention to the applications, the applications for permits, the applications for modification of permits, the applications for consent to assignment of licenses.

Apparently they overlooked the filing of certain documents that are filed in our ownership records which are separate from application files. This is something that could easily happen though you are making a most conscientious effort to supply all relevant documents.

Mr. MOSS. I must respectfully disagree with you because the committee staff, this committee staff, has repeatedly inquired because they had a sense of disbelief that there would not have been such information in the files and they have repeatedly inquired as to whether or not the information was contained in the files.

So, this is not an inadvertent overlooking. I think this becomes a very serious omission in supplying information to this committee.

Mr. HYDE. Congressman Moss, you do have the information. The contract itself was filed in connection with the application. The only thing that is missing—

Mr. MOSS. No; you are getting around here to mixing two different things.

On June 30, or roughly in June, a request for a transfer of the construction permit was made—that application contains the copies of the contract and all of that. We are talking about the filing in connection with the request for an extension of the construction permits which occurred in March.

Mr. HYDE. It is my understanding that the contracts looking toward possible sale, subject to Commission approval, had been filed separately from any application filed in connection with the requirements of a rule requiring disclosure of ownership interest or options looking toward change in ownership interest.

Mr. MOSS. What date?

Mr. HYDE. I can't give you the date from memory.

Mr. MOSS. Don't you have those documents with you?

Mr. HYDE. No; I don't have them with me.

Mr. MOSS. Does anybody here have them?

Mr. HYDE. They probably would. Mr. Rawson?

Mr. MOSS. Bring him up. He has been sworn already.

The CHAIRMAN. Will you gentlemen come to the stand and supply us with that information. It seems to me, Commissioner Hyde, that we have to go a long way to get a lot of these documents and information.

Mr. HYDE. Mr. Chairman, I regret very much that there would be any misunderstanding about such a simple matter as this.

We had a very extensive file in this case. Applications of various kinds which are filed in, you might say, for processing of applications for various authorizations, exchanges and whatnot. We made a most searching effort to comply with your request. It does happen that in another office of the Commission we do get the filings of information about contracts and whatnot which were overlooked.

The CHAIRMAN. Thank you. I will say this: I think the Commission has known for some time that we wanted to look into this matter.

Will you state your name, sir.

FURTHER TESTIMONY OF ROBERT J. RAWSON, CHIEF, RENEWAL AND TRANSFER DIVISION, FEDERAL COMMUNICATIONS COMMISSION

Mr. RAWSON. My name is Robert J. Rawson.

The CHAIRMAN. Have you been sworn?

Mr. RAWSON. Yes, I have.

The CHAIRMAN. Will you tell us about these papers, where you got them, and where and why the Commission does not have them?

Mr. RAWSON. Obviously there is some very serious misunderstanding. The committee staff never made any inquiry of the Commission staff concerning whether the contracts and pledge agreements had been filed in accordance with the rules.

The letter that you sent to us asked for the information and these contracts; all the information that I have here was provided to your committee.

The CHAIRMAN. You mean they have those?

Mr. RAWSON. They have everything that I have in my hand.

The CHAIRMAN. Mr. Lishman?

Mr. LISHMAN. That is not correct. Mr. Rawson, I will now ask you: The staff asked for the extension applications; is that correct?

Mr. RAWSON. Yes; I believe so.

Mr. LISHMAN. They received the extension applications; is that right?

Mr. RAWSON. I believe so.

Mr. LISHMAN. Did the extension applications show that Overmyer had made a disposition of the five construction permits on March 28?

Mr. RAWSON. Well, they said they had not made a disposition of—

Mr. LISHMAN. I am asking a very simple question. Did the extension application make that disclosure?

Mr. RAWSON. No; it couldn't.

Mr. LISHMAN. Under the rules of the Commission, under rule 1.65, wasn't the applicant required to amend his application to show a substantial change in his financial condition?

Mr. RAWSON. I don't know. I would have to take a look at the application and examine it. This has nothing—I am very sorry, Congressman Moss—I have nothing to do with that aspect of the application. I don't know whether it does or not. I would have to look at the application and look at the information.

Mr. LISHMAN. Rule 1.65 is very clear. I will read it to you.

Mr. RAWSON. I am very familiar with it.

The CHAIRMAN. Let him read it, will you please.

Mr. LISHMAN. It says, "substantial and significant changes in information furnished by applicants to the Commission."

It says, "The applicant shall as promptly as possible and in any event, within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate."

Now, that language is clear. Isn't it also true that the Commission has repeatedly ruled that the mere filing of a contract in the ownership section is not a compliance with this rule 1.65?

Mr. RAWSON. I believe there have been cases along that line.

Mr. LISHMAN. Isn't that the consistent ruling of the Commission?

Mr. RAWSON. I believe so.

Mr. LISHMAN. Why was this rule not observed and its violation not brought to the attention of the Commission?

Mr. RAWSON. I haven't any idea. The question that was asked of me was, Why wasn't this material furnished? When the staff asked for the modification applications they asked for all the applications and this information is contained in the applications to transfer control of the stations.

They were offered at one time.

Mr. LISHMAN. I think we are being confused here.

Mr. Moss. This man yesterday spent almost the entire day ducking and dodging, just as he is dodging now.

Mr. RAWSON. I beg your pardon.

Mr. Moss. Don't beg my pardon, because it is a fact.

Mr. RAWSON. I am not dodging anything.

Mr. Moss. It is a fact.

Mr. RAWSON. The record will speak for itself.

Mr. Moss. You just be silent. We are discussing what you are trying to do now. You said the application to transfer control. We are not talking about that. What we are talking about is the application to extend the construction permits. One act took place in March, the other took place in June.

For you to stand there and deliberately attempt to obfuscate this record is a disservice to the Commission and to the committee.

Mr. RAWSON. Congressman Moss, the record here shows that the information was furnished to the committee. This is the information that is in our ownership files. This was furnished to the committee at the committee's request.

The CHAIRMAN. Just a minute. You say such information was furnished to the committee?

Mr. RAWSON. This information is all part and parcel of the information that was furnished to the committee along with all the other information and at the same time.

The CHAIRMAN. Just one minute. Mr. Lishman.

Mr. LISHMAN. I do not know what the gentleman has in his hands. Do you have in your hands the filing of the contract?

Mr. RAWSON. Yes, sir; filed on April 28, 1967.

Mr. LISHMAN. That information was not furnished to us.

Mr. RAWSON. The information is furnished—well, you asked for the information before the Commission. This information is the stock purchase agreement, and assignment, a stock pledge escrow agreement, and a loan agreement.

They are all contained in the files before you.

Mr. LISHMAN. I will respectfully submit that the April 23 letter was never submitted to this committee. We had no knowledge of the filing of that contract and one of your own witnesses testified here yesterday that he didn't know about it until yesterday.

Mr. RAWSON. Mr. Lishman, I wasn't sure. You are the one that made the statement it had not been filed. I assumed you were correct.

Mr. LISHMAN. I didn't say it had not been filed.

Mr. RAWSON. You said it had not been filed in accordance with the rules. When I went back to the office I checked the ownership section where this material goes. It has nothing to do with applications. We found the information is my files.

Mr. LISHMAN. My point is that under rule 1.65 where there had been a substantial change in the capacity of the applicant, he must file an amendment of his application for extension.

The CHAIRMAN. Just one minute. I understand from Mr. Moss that he has said it is available but it had not been filed with the committee yesterday.

We will go back to the records to ascertain the truth before we get through here. I am beginning to believe that we might find an awful lot in this matter that the Commission doesn't know about, but I believe it is their duty to know.

Do you have some comment?

Mr. HYDE. Yes, Chairman Staggers. The whole difficulty in this matter is that certain information was filed separate and apart from the applications.

The information about the contract looking toward sale subject to Commission approval had been filed separately from the filing of the applications for extensions.

The material was in what we call the ownership files of the Commission and was brought to the attention of the Commission not from the ownership files but in connection with applications for assignment of permits.

The CHAIRMAN. Mr. Chairman, a few moments ago you said you didn't know about this. I asked if anybody on your Commission knew. Nobody answered. You finally got the gentleman sitting in the back to testify.

Mr. HYDE. No; Mr. Rawson really confirmed what I had stated, that the information regarding the contract for sale had been filed in the ownership section of the Commission's organization but that the same material had been filed in connection with the application for assignment of license and had been given to the committee in connection with the application for assignment of license.

What is bothering Mr. Lishman is simply this.

The CHAIRMAN. Don't tell me what is bothering Mr. Lishman. We will let Mr. Lishman tell us what is bothering him. I think you went all the way around the subject I asked you about. I think that most of these questions can be answered yes or no.

I asked about the information that had been filed and you said you didn't know.

Mr. HYDE. No. I thought you asked me did I have the papers here. I did not.

The CHAIRMAN. I did not ask you if you had the papers. I wanted to know whether the committee has them.

Mr. HYDE. The committee has them.

The CHAIRMAN. Now he says he doesn't have them.

Mr. HYDE. He doesn't have the letter relating to the——

The CHAIRMAN. That is what I was talking about and I asked you about it and none of the Commission seemed to know about it and finally one of the staff told about it.

He said it is filed and Mr. Lishman says it isn't. I think there should be a covering letter on all the information that has come in.

Mr. Cox, you held up your pencil. What do you have in mind?

Mr. Cox. Mr. Chairman, I would like to make this point: I think Mr. Lishman would be right, there would be a serious question raised under section 1.65 of the rules if the Commission had acted on these requests for extension of time to construct without learning of his plans to dispose of the permits.

However, in fact, as is quite often true in the case of transfers, the Commission did not act on the extension requests until it approved the transfer. I did not vote to approve the transfer, but at that time, in December 1967, the Commission was advised, of course, that while the extension requests were pending, Mr. Overmyer had contracted, subjected to Commission approval, to sell the permits.

So that in some sense his failure to advise us promptly, as the rule requires, of change in his financial condition—which would have or could have affected action on the extension request—was corrected by lapse of time, because the Commission did have that information when it acted.

The CHAIRMAN. Is this the common practice in the Commission?

Mr. Cox. Which? To wait and act on the extension permits until the transfer action?

The CHAIRMAN. You people do not know what is going on until the very end of an application's processing, and then you say go ahead.

Mr. Cox. No. I think the staff—if they have an extension request pending and then find that the permittee is requesting authority to sell the permit—they usually put those in a package and bring them to the Commission at the same time.

The Commission, if it does not wish to authorize the transfer, not only designates that for a hearing but also designates the extension request for a hearing.

If, as was the case here, a majority of the Commission approves the transfer and finds no real problem with extending time to construct the stations, it again handles both aspects in the same order. I think that was done here.

The CHAIRMAN. Just one question and then I have to go to another meeting. Is this not a little unusual?

Mr. Cox. I don't recall another instance where we approved a transfer of five permits at once. Certainly, of course, the fact that we were asked to authorize the transfer of five at a time when we had an interim policy against allowing anyone to acquire more than three in the top 50 markets was one of the grounds on which I dissented to the transfer.

But I don't think the procedure is necessarily unusual. I think the thing that was unusual was the size and character of the transaction.

The CHAIRMAN. That does sound kind of strange, does it not, when you had an interim policy of just three in the top markets. You would think then that you would go into the background pretty thoroughly to see that everything was just so.

Mr. Cox. I thought we should have had a hearing, and so indicated. But the staff indicated in its memorandum that it believed that a compelling showing of grounds for waiver of the interim policy had been made.

I think it took that position in the light of some earlier actions of the majority of the Commission in approving transfers, where I also dissented.

The CHAIRMAN. One thing is this: The Commission took to a great extent the word and recommendation of the staff.

Mr. Cox. I think it has to, pretty much.

The CHAIRMAN. I am sure of that. But in such an unusual transaction such as this, the first of its kind, maybe the only one, you would have thought that perhaps the Commission would have gone into it a little further.

Mr. Cox. I think the majority should be asked why they didn't.

The CHAIRMAN. That is what we want to find out, why the transaction did take place, why certain documents were not filed with us and why we had a hard time getting them. I will turn the meeting over to Mr. Moss. I must go. I will try to come back.

Mr. HYDE. May I make a very brief statement about the compiling of information?

The law prohibits us from requiring applicants to file repetitious information. We are told by Congress not to burden applicants with filing information already on file. The information about these contracts—

Mr. Moss. Mr. Chairman, we are not talking about repetitious information. The inquiry of the staff of the committee goes to supplemental information concerning substantive changes in the financial picture of the applicant seeking an extension of construction permits.

The question bears upon whether or not that was filed in a timely fashion and whether it was filed in a proper form.

Mr. HYDE. What I wanted to explain was that the information about the proposed sale had been filed in the ownership files of the Commission and was not repeated, apparently, in the applications for extension of permits.

Mr. Moss (presiding). You could amend something by filing the amendment without the original document.

Mr. HYDE. It could be done.

Mr. Moss. You will have to give me a whole new body of law and I haven't time for the instruction. But the very nature of amendatory information dictates that it became a part of the original.

Mr. HYDE. I take the position that the Commission is on notice of the change in conditions if the information has been filed in the ownership file.

Mr. Moss. You didn't know a thing about it until in June—

Mr. HYDE. We certainly did.

Mr. Moss. Tell me how you found out.

Mr. HYDE. Mr. Rawson listed a letter that was filed in March.

Mr. Moss. You said you didn't know about it until June. You did say that and it is on that record which that gentleman has just taken.

Mr. HYDE. I would be charged as a matter of law that notice of all materials are filed in the agency.

Mr. Moss. I am not going to read it. I have volumes of testimony which shows that the staff as late as yesterday, the overwhelming

majority of your staff, didn't know about it. So I think the important question is, was the document supplied to this committee in compliance with the request of the chairman?

Mr. HYDE. In filing the information about the applications we apparently did not supply the information that was available in the ownership file.

Mr. DINGELL. Will you yield?

Mr. Moss. Yes; I will yield.

Mr. DINGELL. Is the ownership file a part of the record for the purposes of extension or the transfer of the CP's?

Mr. HYDE. It is a part of the Commission's records for other purposes, consideration of applications at any time or any other matters.

Mr. DINGELL. You indicated that you could amend without filing a formal paper, am I correct in that matter?

Mr. HYDE. You can amend without filing any formal petition.

Mr. DINGELL. What is 1.65?

Mr. HYDE. Rule 1.65 is simply notice to interested parties prosecuting an application that they must keep the Commission apprised of changes in circumstances.

Mr. DINGELL. Does that not require formal notice to the Commission?

Mr. HYDE. It can be done by a very simple submission by letter. We are talking, of course, of nonadjudicatory cases, cases that have not become the subject of a formal hearing procedure.

Mr. DINGELL. I want to ask a very simple question. Your records are supposed to be such that on judicial review it will be possible to appropriately determine what the facts are and decide whether the proceedings were fair and everybody had a full opportunity to be heard, whether full information was disclosed to all persons.

Now we have a whole series of rules, the Administrative Procedures Act, requirements of the Constitution as far as due process, we have requirements of the Commission's own rules.

Are you going to tell us that any of these requirements are satisfied by the simple filing of a letter on questions as important as this before the Commission which goes into one place, which is not and does not really come to the attention of the Commission in the course of their deliberations on the matter?

Mr. HYDE. There obviously should have been some reference to the ownership matter in the extension but I would urge upon you that the ownership file is a public file. The Commission is on notice of material that is in the agency.

Mr. DINGELL. In theory it is on notice. In fact, in this particular case it was not on notice.

Mr. HYDE. I'm sorry—

Mr. DINGELL. I said in theory it is on notice by the filing of the paper but in fact it was not so on notice. A large percentage of the staff down there who were responsible for the transaction were not aware of the fact that the document was filed.

It appears that you have rather poor housekeeping down there in that the staff's left hand does not know what the right hand is doing.

Mr. HYDE. Congressman, before the Commission took any action either on the extensions or the assignment it was fully advised as to the contract.

Mr. Moss. Mr. Lishman, you may proceed.

Mr. LISHMAN. My original question was intended to elicit the date on which the Commission first learned that Overmyer had no intention of fulfilling his construction obligations and operating the stations;

That substantial liens had been filed against his organizations in the fall of 1966, which should have been disclosed in extension applications in Atlanta and Pittsburgh;

That these liens impaired the permittees' financial stability and would preclude fulfillment of their financial representations and this should have been disclosed in the Atlanta and Pittsburgh extension application;

That Overmyer intended and had already made arrangements to sell the five construction permits. This should have been disclosed in his Atlanta and Pittsburgh application;

That a buyer for the five construction permits had been found, a stock purchase agreement executed on March 28, 1967, and \$1 million received as a downpayment with respect thereto. This should have been disclosed in his applications for extension with respect to Cincinnati and Houston, which were filed 1 day after the execution of the stock purchase agreement and prior to his filing of any contract with the Commission, and in the San Francisco application which was filed 22 days after the March 28 transaction;

That a \$3 million loan agreement had been consummated with the proposed construction permit assignee on March 28, 1967. This should have been disclosed in the Cincinnati and Houston applications which were filed 1 day after the execution of the loan agreement, and in the San Francisco application which was filed 22 days thereafter;

That all of the permittees' stock had been pledged as collateral security for funds extended pursuant to the stock purchase and loan agreement. This should have been disclosed in the Cincinnati and Houston applications which were filed, as I said, 1 day after the execution of the stock pledge agreement and in the San Francisco application 22 days thereafter;

That \$1½ million was received pursuant to the loan agreement on May 3, 1967. This should have been disclosed in the Cincinnati, Houston, and San Francisco applications, all pending at this date.

Now the thrust of my question is, where you have such serious indications that this applicant was no longer going to be in business, which was not disclosed in his applications for extension on form 701, wherein it is stated: "Have there been any changes in this information submitted in the original application for construction permit, any amendment thereto or modification thereof since filing? If the answer is yes, give the particulars in the space below." And Mr. Overmyer and his interests did not supply that information, my question is, Why not?

Mr. HYDE. Well, it is my understanding that he had filed certain information in connection with our ownership records of which the Commission would be on notice.

Now I am not in a position at this moment to analyze your question. I would have to have the specific information about these various applications.

Mr. LISHMAN. This is already in our record from the testimony and documents. I wish to point out that it is a fact that in the *Cleveland Broadcasting Co.* case, in the *Central Broadcasting Corp.* case and in

the *Gordon Sherman* case the Commission ruled that the filing of a contract under rule 1.613 does not satisfy the mandate of rule 1.65 which requires an amendment of the extension application itself in order that the Commission may have it directly.

Are those citations still in force?

Mr. HYDE. I presume you are correct.

Mr. LISHMAN. Otherwise, what would be the purpose of rule 1.65?

Mr. HYDE. The purpose of rule 1.65 is to assure the Commission is fully advised as to the applicant's circumstances when he is applying for some new authorization of any kind. The Commission also has access to other records in its files.

Mr. LISHMAN. I also wish to point out that according to the testimony of Mr. Saady yesterday none of the extension applications filed by Overmyer were known, at least to the persons working on the application for transfer approval, until June 30.

Now, isn't that a rather unusual situation?

Mr. HYDE. We expect to be advised of all interests of an applicant who has a case before us at the time we act.

Mr. LISHMAN. Why shouldn't the persons who process extensions and renewals have some knowledge of what had been in the contract files and bring that to the attention of the Commission, particularly in view of the substantial nature of this transaction involving five construction permits in the top 25 markets?

Mr. HYDE. I think they should.

Mr. LISHMAN. Why didn't they?

Mr. HYDE. I don't know.

Mr. LISHMAN. When did the Commission, itself, first know of the March 28, 1967, transaction?

Mr. HYDE. Well, such matters are usually reported in the trade press. I think there has been a great deal of discussion of the Overmyer project as an attempt to establish a fourth network, the difficulties he encountered.

There is usually a news item in the several specified reporting services and magazines which report—

Mr. Moss. That is evasive, Mr. Chairman. You are supposed to have official notice. How did you get official notice?

Mr. HYDE. Our official notice would be the filing of the contract in the ownership records of the Commission.

Mr. Moss. I don't think it is necessary for you to start talking about stuff you may or may not have read. If you want to talk about specific items you have read and the dates, go ahead, but let us not have this evasive answer.

Mr. HYDE. The letter which Mr. Rawson had awhile ago would give the data of the official notice to the Commission.

Mr. Moss. That is fine.

I suppose it tells who on your staff was actually working on it, this becomes repetitious and it becomes tiring to you and it certainly does to me, but the man who was working on it didn't even know it existed.

Your files apparently are not cross-indexed. Amendments to applications are not filed with applications. It is a most unique filing system.

Mr. HYDE. I think amendments to applications are associated with applications.

Mr. Moss. Was it in this case?

Mr. HYDE. There is provision for filing ownership information separate from applications.

Mr. MOSS. This refers to 1.65 amendments giving you notice of substantive change in the financial condition of the applicant.

Mr. HYDE. I will agree that there ought to have been an appropriate reference in the applications for extension to the filing of material in the ownership file.

The fact it wasn't there does not mean that the Commission would not be on notice.

Mr. MOSS. This case is unique——

Mr. HYDE. This case is really not unique. This is one case out of many applications for UHF, many applications for consent to assignment of license. This is the case of where an applicant who had a bona fide interest so far as any information that has been brought to light has shown——

Mr. MOSS. The staff yesterday agreed this was unique in every respect. The dissenting opinion, and I want to congratulate the gentleman who wrote it, found it to be a most unusual case.

You may cite another transfer where there was a loan agreement and the application——

Mr. HYDE. No two of them are alike.

Mr. MOSS. The top 50 rule was violated. You can't give me another one?

Mr. HYDE. Yes, I can. There are several cases where applications for assignment were approved. No two of them are exactly alike.

Mr. DINGELL. I am much troubled about one thing. Are you telling us, Mr. Chairman, that this committee is to assume that you feel satisfied the requirements of due process and good administration down there in the FCC are fully met if you are informed through the trade press about circumstances rather than through formal filings before your Commission?

That is the distinct impression I got from the colloquy you had with Mr. MOSS, that you were satisfied with what you read in the trade press about the business affairs of Overmyer.

Mr. HYDE. That is not what I stated at all. The chairman asked me when did I first learn of this Overmyer contract. I could not tell him precisely when I first learned of it. For purposes of the Commission's official interest we learned of it when the contract was filed.

Mr. MOSS. The question was put to you by the counsel of the committee and it was quite clearly in the context of when did you first gain official notice.

Mr. HYDE. I answered that, Congressman.

Mr. MOSS. You answered it with a widespread discussion of your reading of the trade press.

Mr. HYDE. Congress MOSS, I did not give my reading of the trade press as the official notice to the Commission. I cited the letter which Mr. Rawson said.

Mr. MOSS. Will you please continue, Mr. Lishman.

Mr. LISHMAN. I would like to get back and attempt to complete some questions concerning Overmyer's acquisition of the permits in the first instance. We have already had considerable testimony on it. Members of the FCC staff have testified that they relied on a \$1 million Overmyer Warehouse Co. liquidity as a resource to back up the finan-

cial capacity of Overmyer to undertake the construction and operation of these stations.

I would like to ask, how much of this \$1 million was actually available for communications company purposes?

Is there anyone here than can answer that?

FURTHER TESTIMONY OF MARTIN I. LEVY, CHIEF, BROADCAST FACILITIES, FEDERAL COMMUNICATIONS COMMISSION

Mr. LEVY. I am Martin Levy, Mr. Lishman.

Mr. LISHMAN. I have a number of questions along this same line, so I assume I may be asking you a considerable number of questions.

Mr. LEVY. My recollection is, Mr. Lishman, that Mr. Overmyer through Mr. Adams, in fact, committed all the assets of the D. H. Overmyer Warehouse Co. Affiliates.

Mr. LISHMAN. With respect to the working capital situation——

Mr. LEVY. Yes, sir; are you talking about the 1964 balance sheet or the 1965 balance sheet?

Mr. LISHMAN. 1964.

Mr. LEVY. Yes, sir, 1964; about \$1 million in liquid assets.

Mr. LISHMAN. How much of that cash was actually available for the use of the communications companies?

Mr. LEVY. We don't know. Of course, what I said was that Mr. Overmyer through Mr. Adams purported to commit all of the assets of the D. H. Overmyer Warehouse Co. Affiliates.

We have no knowledge of any specific asset that might have been available. The balance sheet did indicate, however, a liquidity of about a million dollars.

Mr. LISHMAN. You relied on that liquidity as being available applicable to the communications company's enterprise?

Mr. LEVY. Yes, sir; because of Mr. Adams' commitment.

Mr. LISHMAN. Would it not be important to ascertain whether some of that cash had to be used to guarantee warehouse construction?

Mr. LEVY. That is not a normal practice.

Mr. LISHMAN. How can you say that you relied on \$1 million liquidity when you don't know whether that million dollars was committed in several other directions?

Mr. LEVY. Because that is what Mr. Overmyer relied upon to show his financial ability.

Mr. DINGELL. Just a minute. Aren't you on very vital questions of public interest supposed to go behind what Mr. Overmyer relies upon and ascertain whether in fact the filings made by Mr. Overmyer are true, relevant, and give the Commission a true, fair and correct picture of Mr. Overmyer's actual financial ability to carry out his responsibility as a licensee?

Mr. LEVY. Yes, sir, we try to.

Mr. DINGELL. What did you do to accomplish the objective to which it alludes?

Mr. LEVY. In the sense that Mr. Lishman is asking and you are asking, we relied upon these balance sheets that were submitted.

Mr. DINGELL. That is precisely it. The balance sheets were not verified or certified; they were not submitted by a CPA firm. They were not based upon appraisals by certified appraisers.

They are in the language of the law something which can best be denominated as a purely self-serving document, are they not?

Mr. LEVY. Yes, sir.

Mr. DINGELL. Are you a lawyer?

Mr. LEVY. Yes, sir, I am.

Mr. DINGELL. Would this kind of document be admitted in any kind of proceeding in court?

Mr. LEVY. I assume it would if Mr. Overmyer asked that it be introduced in evidence.

Mr. DINGELL. What would this kind of document prove in court?

Mr. LEVY. I don't have to have valuations as to cash, Mr. Dingell. The Commission placed no reliance in this case—

Mr. DINGELL. This is a hearsay document, is it not? It is simply a self-serving document.

Mr. LEVY. Yes, sir, it is a self-serving document. It is a document prepared by the Overmyer interests, obviously.

Mr. DINGELL. There is nothing there to verify that the appraisals are bottomed on any scrutiny by certified appraisers. There is no statement of a certified public accountant as to the accuracy of these documents.

How in the name of commonsense did you people in the FCC rely on them? Would you rely on them in a personal transaction you were going to engage in with Mr. Overmyer?

Mr. LEVY. I can't answer that question.

Mr. DINGELL. I think you can. Would you loan Mr. Overmyer \$100,000 on the basis of that balance sheet?

Mr. LEVY. No, sir, I don't think I could.

Mr. DINGELL. You would not but you would give him a radio license or a television license. Am I correct?

Mr. LEVY. This is what we did, yes, obviously the Commission did give it to him.

Mr. DINGELL. You did that without the vaguest idea what the real facts are and as near as I can ascertain no steps were taken by either the staff or the Commission itself to find out precisely what the real facts were in regard to Mr. Overmyer's worth.

Mr. LEVY. We didn't go behind the document submitted in the application.

Mr. DINGELL. You concede you would not loan Mr. Overmyer on it?

Mr. LEVY. Probably not.

Mr. DINGELL. Thank you.

Mr. LISHMAN. Did the staff ascertain whether there were any legal restrictions on Overmyer's ability to withdraw liquid assets from the warehouse company?

Mr. LEVY. Not from the application, no, sir.

Mr. MOSS. "Not from the application, no, sir," is not an adequate response. Did you make any, was the question.

Mr. LEVY. The answer is no, sir, Mr. Chairman.

Mr. MOSS. All right, fine.

Mr. LISHMAN. Does this balance sheet contain any provisions or does Overmyer's personal balance sheet for the same period contain provisions for the contingent liability Overmyer was incurring in guaranteeing alleged bank loans?

Mr. LEVY. No, sir.

Mr. LISHMAN. Now the staff memo of June 14, 1965, said, and I quote, "\$4,270,000 in unencumbered physical assets of the assignee will be available as a credit source when needed."

Is that correct? That is the staff memo of June 14, 1965.

Mr. LEVY. I wasn't responsible for that one, Mr. Lishman.

Mr. LISHMAN. The memo so states, does it not?

FURTHER TESTIMONY OF JAMES O. JUNTILLA, DEPUTY CHIEF, BROADCAST BUREAU, FEDERAL COMMUNICATIONS COMMISSION

Mr. JUNTILLA. Yes, it does.

Mr. LISHMAN. On what basis did the staff determine that such an amount was presently available?

Mr. JUNTILLA. The staff, as Mr. Levy testified, relied on the balance sheets and the statements of Mr. Overmyer or Mr. Byrnes. That was the basis for it, sir.

Mr. LISHMAN. Did you make any independent inquiry as to the correctness of the statements on this uncertified balance sheet?

Mr. JUNTILLA. No, sir.

Mr. LISHMAN. On what basis did the staff determine that such an amount would be available in the future?

Mr. JUNTILLA. On the basis of the documents that we have discussed.

Mr. LISHMAN. Did the staff attempt to ascertain whether Overmyer's outside commitments already would affect this \$4,270,000?

Mr. JUNTILLA. No, sir.

Mr. LISHMAN. Did the balance sheet show that a hold would be put on these funds by Overmyer so that they would in fact be available for communications company operations as distinguished from his other operations?

Mr. JUNTILLA. No, sir.

Mr. LISHMAN. What financial statements must an applicant submit to the Commission other than those in his original application for the permit?

Mr. JUNTILLA. They must file an annual financial report.

Mr. LISHMAN. I am talking about an applicant for a construction permit.

Mr. LEVY. He is required to keep the information in the application up to date. Other than that he has no obligation to file anything.

Mr. LISHMAN. Since Overmyer was not an applicant or a permittee whose station had been operating during the year, he would not have to file the annual report that Mr. Juntilla just referred to, would he?

Mr. LEVY. That is correct.

Mr. LISHMAN. I just wanted to make certain that he was not under that obligation.

Don't you think it would be prudent for the Federal Communications Commission to require periodic financial statements from permittees not covered by financial statement requirements in order to keep itself apprised of the changes which occur?

Mr. JUNTILLA. Perhaps so.

Mr. LISHMAN. Could we have an answer on this point from the Commission as well, please?

Mr. HYDE. I see no reason why we should make any demand beyond what we already have.

Mr. LISHMAN. Isn't it a fact in this case that if the FCC had required periodic financial statements from Overmyer there would have been no question that they would have been almost contemporaneously apprised of his March 28 transaction wherein he entered into an arrangement for \$4 million to dispose of these construction permits?

Mr. HYDE. We were contemporaneously advised about his change. We got the notice when he filed his contract.

Mr. LISHMAN. But the persons who prepared the staff memo on which the Commission relied testified yesterday they did not know about this until June 30, 1967, when Overmyer filed his application for transfer approval.

Mr. HYDE. Well, they should have known.

Mr. LISHMAN. Well, they didn't know.

Mr. HYDE. The Commission was fully advised before they came to the point where they took any action.

Mr. LISHMAN. Again I come back, when did the Commission itself know? I am not talking about official notice. When did the Commission itself know that this transaction occurred?

Mr. HYDE. At the time they would be making decisions.

Mr. LISHMAN. That would be when? In December?

Mr. HYDE. You have the dates before you, I presume.

Mr. MOSS. You ought to have them, too, Mr. Chairman. You should be here prepared to respond to questions.

Mr. HYDE. Congressman Moss, the staff has been raking over this thing for 6 months. During that period we have had our full weight of administrative duties to do.

Mr. MOSS. During that same 6 months this committee has been working over it, too, and we have had our full weight of congressional duties. These are part of those duties just as supplying information to the Congress of the United States is a part of your duties.

Mr. HYDE. Aren't you asking a good deal when you ask me to remember every date of Commission action on these? We handle hundreds of cases.

Mr. MOSS. I think if you were appearing before the committee to obtain an additional grant of authority or before the Appropriations Committee for an additional dollar you would have a carefully indexed book. You would have been briefed so precisely that you could respond to any question.

It is convenient here to delay and not answer.

Mr. HYDE. I suggest that these question are asking for very obscure information and that it is unreasonable to expect that the chairman of the agency would have detailed answers to each one of these questions.

Mr. MOSS. Mr. Lishman, there is no need to pursue further this line of questions with the Chairman. The record of this hearing is so abundantly clear. It is a record upon each member of the committee can comment, can make findings, conclusions, and recommendations, I think for that purpose it is adequate.

I suggest you move on to the next subject.

Mr. LISHMAN. I will just go back to the balance sheets of August 31, 1964, and August 31, 1965, submitted to the Commission in substantiation of the financial capacity of the applicant to construct and operate a station.

I would ask the question of Mr. Levy. I wish to point out that in the 1964 balance sheet of the Overmyer Warehouse Co. & Affiliates it shows the total long-term debt at \$8,760,000. It also shows the current portion of this debt as \$237,000.

Do you follow that?

Mr. LEVY. Yes, sir.

Mr. LISHMAN. That is 0.27 percent of the total debt. Is that correct?

Mr. LEVY. Yes, sir. I will take your word for that.

Mr. LISHMAN. Now, turning to the August 31, 1965, balance sheet, it shows the total long-term debt increased to \$25,585,494.67. Is that correct?

Mr. LEVY. That is right.

Mr. LISHMAN. Now the current portion of this debt has increased to only \$450,000 or 0.017 percent of the total debt.

My question is whether there is anyone here who can explain why the required debt-amortization would be lower for \$25.6 million than it would be for \$8,760,000?

Mr. LEVY. I couldn't explain that, sir. I think only Mr. Overmyer could.

Mr. LISHMAN. Did the Commission itself or its staff raise any question as to this very unusual situation?

Mr. LEVY. No, sir.

Mr. LISHMAN. Doesn't it strike you as being extremely unusual?

Mr. LEVY. I am not an expert in the amortization of long-term debt, sir. I couldn't answer that question.

Mr. LISHMAN. According to the figures on the balance sheet it would take approximately 33 years, would it not, to amortize the \$8.76 million and it would take 70 years to amortize the \$25.6 million?

Mr. LEVY. Yes, sir.

Mr. LISHMAN. Don't you think that is an unusual enough situation that the staff itself could have made an inquiry into it?

Mr. LEVY. The staff didn't make an inquiry, sir.

Mr. LISHMAN. Why didn't they?

Mr. LEVY. It apparently was not caught up in this balance sheet or it did not appear unusual to the people who looked at it.

Mr. LISHMAN. The Commission has to rely to a large degree because of the volume of business as you well know, upon the expertise of the staff. It seems to me you would not have to be an expert accountant to pick this out.

Mr. LEVY. The Commission relied upon the truthfulness, the veracity of the applicant who filed this and took it at face value.

Mr. LISHMAN. How could this statement be truthful?

Mr. LEVY. Sir, it was filed under the certification of the application. It was assumed by the Commission to be truthful. Insofar as we know, it is true.

Mr. MOSS. Assuming the truthfulness of it, the very period of time required on the face of the balance sheet certainly should have raised a question as to reasonableness. It does not appear to me that it is normal to have 10- or 15-year amortization periods for a commercial-type loan or funding.

Mr. LEVY. The previous one was over a 30-year amortization, Mr. Congressman.

Mr. MOSS. I realize that counsel has commented on that.

Mr. LEVY. Yes, sir. The answer is that it was not analyzed by the staff. That is the only answer I can give you.

Mr. MOSS. Do you regard that as a responsible role by the staff when it fails to analyze?

Mr. LEVY. I don't think that the staff is able to analyze in minute detail every item.

Mr. MOSS. This is not minor. This is very substantive.

Mr. LEVY. I can't answer other than I have. The main reliance on this balance sheet was on the current and liquid assets, not on the fixed assets.

Mr. DINGELL. If you will yield, Mr. Chairman.

Mr. MOSS. Mr. Dingell.

Mr. DINGELL. Mr. Overmyer's personal balance sheet, which was unquestioned by the FCC at the time in question as I understand it—

Mr. LEVY. To my knowledge, it was not relied upon at all, Mr. Dingell, the personal balance sheet.

Mr. DINGELL. It was not?

Mr. LEVY. No, sir.

Mr. DINGELL. It showed he had \$962.14.

Mr. LEVY. I am aware of that. We did not rely on that.

Mr. DINGELL. It showed he had over \$5 million in unappraised closed corporation stock.

Mr. LEVY. And we didn't rely upon that.

Mr. DINGELL. You agree, however, though, that stock in a closely held corporation is impossible to evaluate, actually?

Mr. LEVY. That is right.

Mr. DINGELL. And, indeed, experts on Wall Street reviewing the same closely held corporation can arrive at very, very different estimates as to its value?

Mr. LEVY. Yes.

Mr. DINGELL. Of course, no such estimates were presented to the Commission here. You also agreed in connection with Mr. Overmyer and his personal balance sheet that no provision was made for contingent liabilities, personal guarantees securing bank loans totaling at least \$2.7 million.

Am I correct?

Mr. LEVY. That is right.

Mr. DINGELL. In the warehouse company balance sheet there are a number of circumstances that I want to explore. There is an unlabeled surplus of some \$5 million.

Mr. LEVY. Yes, sir. We don't rely upon surplus, either.

Mr. DINGELL. You did not?

Mr. LEVY. No, sir.

Mr. DINGELL. Here he shows a liquidity of a million dollars, but with restrictions imposed on present or future use of construction permits undetermined.

It also showed increase in real estate mortgages from \$8.7 million in 1964 to \$25 million in 1965 with no corresponding increase in amortization to pay off the debt. And no support was rendered for appraised value of assets.

Isn't this remarkable under such circumstances?

Mr. LEVY. It is a remarkable balance sheet.

Mr. DINGELL. It is.

Thank you, Mr. Lishman.

Mr. LISHMAN. I would like to go further into the balance sheet because I understand the witness has testified that the cash position shown therein was relied upon by the Commission.

Mr. LEVY. On the liquid position; yes, sir.

Mr. LISHMAN. The 1964 balance sheet shows cash at \$1,660,000; is that correct?

Mr. LEVY. That is correct.

Mr. LISHMAN. Is it correct that the 1965 balance sheet shows \$2,262,000?

Mr. LEVY. That is right.

Mr. LISHMAN. How much of this cash was available for TV construction?

Mr. LEVY. I can't answer that, sir. As I said before—

Mr. LISHMAN. You said you relied on it.

Mr. LEVY. Overmyer committed the warehouse, the warehouse assets.

Mr. LISHMAN. Did you make any investigation to find out how much of that cash could be used for TV construction?

Mr. LEVY. No, sir.

Mr. LISHMAN. Did you make any inquiry as to how much of this cash was encumbered with warehouse construction loans?

Mr. LEVY. No, sir.

Mr. LISHMAN. Isn't it a fact that this cash was obtained from loans for warehouse construction?

Mr. LEVY. I don't know, sir.

Mr. LISHMAN. Did you make any inquiry to ascertain that?

Mr. LEVY. No, sir.

Mr. LISHMAN. What reliance did you place upon Overmyer's representation that he had money available for TV construction?

Mr. LEVY. Upon his own representations to that effect and the balance sheet that we are discussing which shows on its face no encumbrance.

Mr. LISHMAN. Turning to the costs of financing the Houston permit, do you have those.

Mr. LEVY. Yes, sir. What are you referring to, Mr. Lishman?

Mr. LISHMAN. In the figures submitted on this—

Mr. LEVY. Is this in the memorandum to the Commission you are speaking of?

Mr. MOSS. Will you identify the document, Mr. Lishman?

Mr. LISHMAN. It is in the application to the Commission. It is also in the memo.

Mr. MOSS. Is this for the sale?

Mr. LISHMAN. This is for the acquisition of the Houston station.

Mr. LEVY. This was an application for a new construction permit.

Mr. LISHMAN. Is it a fact that in connection with the Houston application construction costs less equipment credit came to \$340,000?

Mr. LEVY. Yes, sir.

Mr. LISHMAN. That first-year operating expense was submitted as \$320,000?

Mr. LEVY. Yes, sir.

Mr. LISHMAN. Now, is it also true that there should be added to these costs equipment installment payments, interest, and bank interest, and that would amount to approximately \$297,000?

Mr. LEVY. I think that is probably right, sir. I think in this case that that was not added.

Mr. LISHMAN. But you admit that those are items of cost, don't you?

Mr. LEVY. Yes. We would ordinarily add them.

Mr. LISHMAN. Adding \$297,000 to the figures which were submitted, that would make a cost of \$957,000?

Mr. LEVY. Yes, sir.

Mr. LISHMAN. Now on financing it was indicated there would be a bank loan of \$550,000?

Mr. LEVY. That is right.

Mr. LISHMAN. And a warehouse loan of \$250,000?

Mr. LEVY. That is right.

Mr. LISHMAN. That makes a total of \$800,000?

Mr. LEVY. That is right.

Mr. LISHMAN. How were they going to make up the deficit between the \$957,000 cost and \$800,000 financing?

Mr. LEVY. I think the memo to the Commission indicates that we felt that the balance sheet indicated that Mr. Overmyer would be able to make up anything necessary above what we found he had actually committed.

Mr. DINGELL. If you will yield. Didn't you just get done telling me that you did not rely at all on Mr. Overmyer's personal balance sheet?

Mr. LEVY. Not on his personal balance sheet.

Mr. DINGELL. What did you rely upon?

Mr. LEVY. On his warehouse balance sheet.

Mr. DINGELL. You did not rely on his personal balance sheet at all?

Mr. LEVY. No, sir. In no instance did the Commission rely on his personal balance sheet.

Mr. LISHMAN. Mr. Levy, wasn't the extent of the Overmyer warehouse commitment an agreement to make a \$250,000 loan?

Mr. LEVY. Yes, sir; it was in this instance.

Mr. LISHMAN. Do you know the reason why the equipment installment payments and interest and interest on bank loans were not shown in the staff memorandum, the FCC staff memorandum?

Mr. LEVY. Yes, sir. We went into that. It appears it was simply an oversight. At that time we were changing from the 3-month requirement that the Commission previously had to the requirement of 1 year.

Apparently in preparing the item there was some confusion and that was missed. At this point that is the only answer I can give. We did go back over it and tried to figure out, we discovered it had been missed and we tried to figure out why.

The only answer we could come up with was that in the confusion of changing over from one policy to another it was missed.

Mr. LISHMAN. I would like to know in connection with the bank loan representing the \$555,000, did the Southern National Bank letter of January 1965, which I believe was submitted to you—

Mr. LEVY. Yes, sir; I have a copy of it.

Mr. LISHMAN. Did that letter meet the requirement of section 3, form 314?

Mr. LEVY. Not explicitly; no.

Mr. LISHMAN. Do you think it met the requirements of the reasonable assurance test?

Mr. LEVY. Under today's standards the answer would be no. Under the standards that were being applied at that time, yes.

Mr. LISHMAN. Did that bank loan letter state what the rate of interest would be and the date for the beginning of any amortization?

Mr. LEVY. No, sir; it did not.

Mr. LISHMAN. Didn't that letter also provide that any arrangements would be subject further to Mr. Overmyer's "substantiating the principal assets in a manner and form satisfactory to us?"

Mr. LEVY. Yes, sir; it did.

Mr. LISHMAN. Would you construe that language as indicating a commitment?

Mr. LEVY. No, sir; I would not.

Mr. LISHMAN. What did this language mean?

Mr. LEVY. At the time we felt there was some indication of the ability of Mr. Overmyer to get a loan from this bank in this amount.

Mr. LISHMAN. Are you aware that in response to a letter from the subcommittee, the Southern National Bank advised with respect to this so-called letter of commitment, and I will quote from the bank letter: "Inasmuch as Mr. Overmyer's statement reflected a substantial investment in a closely held interrelated company we would have required a certified statement substantiating the principal assets of Mr. Overmyer and his company."

Are you familiar with that response?

Mr. LEVY. I don't believe I have seen it but it sounds reasonable.

Mr. LISHMAN. Why do banks have higher standards than the Federal Communications Commission? Isn't the Federal Communications Commission in a position of fiduciary relationship so far as the public interest is concerned?

Mr. HYDE. Mr. Chairman, may I answer that question?

Mr. MOSS. Wait a moment.

Mr. LEVY. I can't answer the question, Mr. MOSS.

Mr. HYDE. I would like to try.

Mr. MOSS. Do you want the chairman to respond to your question?

Mr. LISHMAN. Yes, sir; that would be fine.

Mr. HYDE. When you make applications at the bank for a loan you are asking for credit and the bank in protection of its depositors and in protection of its stockholders likewise must have some assurance that the loan will be repaid.

An applicant before the Commission is not applying for a loan. He is applying for an opportunity to risk his capital in developing a business.

As I told you in a previous hearing, if the Commission wanted to make the requirement of financial ability as strict as, for instance, the requirement for a loan of funds, we could require a showing that they have money on hand sufficient to build a station and to operate it for 3 years.

If we did that we would preclude the entry into business of any except the rich, the wealthy and so forth.

Mr. MOSS. Mr. Chairman, I do not want to appear unreasonable or arbitrary. You have given us that explanation before.

The committee is quite conversant with the item the applicant is applying for and the nature of the risk. It is also interested in why the Commission adopts certain rules, regulations, and policies and then proceeds to operate in contravention of those rules and policies.

To that point counsel has been addressing his questions and I think it is unnecessary to have—

Mr. HYDE. May I make this observation: He wants to know why a bank's examination would be more strict than the FCC's. The precise answer is that with the bank you are asking for a loan. At the Commission you are asking for an opportunity to try your skills and resources in developing—

Mr. MOSS. You want assurance that the applicant will be able to construct and operate?

Mr. HYDE. Yes, sir.

Mr. MOSS. You are asking for some prudent assurance.

Mr. HYDE. I think we got reasonable assurance in all of these cases.

Mr. MOSS. Again, Mr. Chairman, we stand on the record. The record is available to the committee to make its conclusions and findings and to base its recommendations.

Mr. LISHMAN, you may go ahead and proceed to your next question.

Mr. LISHMAN. Isn't it correct that as a result of the Overmyer guarantee of the \$550,000 bank loan for Houston and his guarantee of bank loans for the three other stations: Cincinnati, \$400,000; Atlanta, \$400,000; Pittsburgh, \$350,000, and Toledo, \$500,000, that bank loan guarantees would total approximately \$2,200,000. Is that correct?

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. What figure on either of the balance sheets, Overmyer's personal one of August 31, 1964, or for his warehouse, at August 31, 1964, supports his ability to provide for this contingent liability of \$2,200,000.

Mr. JUNTILLA. Nothing more than we have testified to, Mr. Lishman, on the balance sheets and the statements of the bank they were prepared to loan funds under certain circumstances as set out in the bank letters.

Mr. LISHMAN. Now, in the staff memo reference was made to Overmyer's balance sheet of July 15, 1965, and also to his personal commitment and the commitment of his warehouse company?

Mr. JUNTILLA. Yes.

Mr. LISHMAN. Where in the record are any documents containing these personal guarantees by Overmyer?

Mr. LEVY. In the application there is a letter signed by Mr. Overmyer as president of the D. H. Overmyer Warehouse Co. and addressed to the D. H. Overmyer Broadcasting Co.

Mr. LISHMAN. He is addressing himself as president of one company to himself as president of another company.

Mr. LEVY. He was addressing himself to the attention of Mr. Adams, the executive vice president of the broadcasting company.

Mr. LISHMAN. Is that for the \$250,000?

Mr. LEVY. That is for the \$250,000.

Mr. LISHMAN. I am asking for the \$2 million. Where do we have an unlimited commitment to cover this?

Mr. LEVY. There was a more general commitment by Mr. Adams, I believe. Not in the Rosenberg application, of course. Now you are not just talking about the financial commitments for the Rosenberg application, you are talking about more than that.

Mr. LISHMAN. Talking about the total; yes.

Before you testify, may I ask you to recognize that the Adams letter does not cover Houston.

Mr. LEVY. That is right.

Mr. JUNTILLA. In connection with the San Francisco application, I believe a statement was made that they were prepared to use the assets of the warehouse companies to the extent necessary to effectuate their proposal.

Mr. LISHMAN. Why wasn't the same kind of guarantee obtained with respect to Houston?

Mr. JUNTILLA. The guarantee was toward that particular one. In Houston the guarantee was toward that particular one.

Mr. LISHMAN. Doesn't the staff refer to all the assets of Overmyer as backing up this commitment?

Mr. JUNTILLA. We made a résumé in the item showing the various commitments.

Mr. LISHMAN. I still haven't been able to find any indication that bank loans aggregating \$2,200,000 and personally guaranteed by Overmyer were committed to these stations.

Mr. JUNTILLA. I believe in each one of the bank letters there is a statement that after review of his financial statement or contingent on a later review in some of the letters that the bank loans would be made.

Mr. LISHMAN. Turning to San Francisco, is it a fact—

Mr. MOSS. Let us clear this up because there has just been a statement made that I don't think accords with the facts as set forth in the letters from the bank.

I don't recall any bank saying that it would make a loan. I recall their saying that they had further requirements and if those requirements were satisfied they would then extend credit.

Mr. JUNTILLA. Yes, I believe that was the hallmark of several of the bank letters.

Mr. MOSS. I recall an exception to that hallmark.

Mr. DINGELL. As a matter of fact, you gentlemen will recall the very lengthy colloquy between Mr. Hyde and myself on that point on which we generally agreed that this was not something which constituted any agreement or commitment by the banks to in any way take any action on a loan application by Mr. Overmyer except to consider it.

Mr. JUNTILLA. I think we conceded on several bank loans there was not a firm commitment; yes, sir.

Mr. DINGELL. Thank you.

Mr. LISHMAN. The last station I would like to go into concerns financing at San Francisco.

In a CP application for that city, is it correct that it shows cost of construction less equipment credit, at \$135,000?

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. And first-year operating expenses of \$400,000?

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. Does it show equipment installment payments, \$91,000?

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. Interest on equipment and bank loans, \$65,000.

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. Total of \$691,000?

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. Now the financing. Capitalization, \$50,000?

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. Corwin loan, \$80,000?

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. Total of \$605,000?

Mr. JUNTILLA. Yes, sir.

Mr. LISHMAN. How was the difference between the \$691,000 cost and the \$605,000 financing provided?

Mr. JUNTILLA. In the item, Mr. Lishman, in appendix A, there is a wrap-up of all of the six Overmyer proposals and also in the text there is a description of the process which led to the conclusion that he was financially qualified.

It shows that in addition to the specific bank letters and equipment credits that reliance was placed on the warehouse assets that we have been speaking of and also an assumption was made that it would not be unreasonable to expect the six stations in major markets to generate total first-year revenues of \$1 million which would assume about \$160,000 per station.

This was the process by which financial qualifications were arrived at.

Mr. LISHMAN. Isn't it a fact that the application attempted to show \$400,000 of estimated first-year revenues?

Mr. JUNTILLA. I think that is correct; yes, sir.

Mr. LISHMAN. Was that accepted by the Commission?

Mr. JUNTILLA. No, sir.

Mr. LISHMAN. Why was it rejected?

Mr. JUNTILLA. It was felt that there was not a sufficient basis made for the projection of that amount.

Mr. LISHMAN. What would a reasonable basis be for projecting that amount?

Mr. JUNTILLA. The staff made the projection which I adverted to of roughly \$160,000 per station.

Mr. LISHMAN. I have no further questions on this station.

Mr. Moss. This concludes the questioning on the stations themselves. We will suspend for just a few moments while I consult with counsel.

The committee will now stand in recess until 2 o'clock.

(Whereupon, at 11:20 a.m. the subcommittee recessed, to reconvene at 2 p.m. the same day.)

AFTER RECESS

(The committee reconvened at 2 p.m., Hon. John E. Moss presiding.)

TESTIMONY OF HON. ROSEL H. HYDE, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ROBERT T. BARTLEY, COMMISSIONER; ROBERT E. LEE, COMMISSIONER; KENNETH A. COX, COMMISSIONER; AND NICHOLAS JOHNSON, COMMISSIONER—
Resumed

Mr. Moss. The committee will be in order.

Mr. Keith, you are recognized.

Mr. KEITH. Thank you, Mr. Chairman. It is a pleasant surprise to be the first one to have a chance to question the full Commission.

I read some days ago the opinion of the Commission and the minority views. I have not had a chance to review it since that time, so my recollection is not as detailed as I would like to have it.

I am not going to take the time to try to pick and choose from what is here. But I am going to try to get a few broad points out in the open so that I can understand the atmosphere in which you work and in which these decisions were reached.

Is there a breakdown of responsibility insofar as the various types of cases that are heard by the Commission are concerned? In other words, has somebody become a specialist in one area, or are you jointly interested and jointly responsible?

Mr. HYDE. The Commissioners are all jointly interested and jointly responsible. There was a time when the Commission had divisions, but for some years it has operated as a single administrative body.

There are situations where a committee of Commissioners will make a special study, but the approving or disapproving of applications such as these would be a joint matter.

Mr. JOHNSON. You might also, Mr. Chairman, want to mention the telephone company.

Mr. HYDE. We have a Telegraph and Telephone Committee, and it has supervised the hearing in the A.T. & T. investigation. It handles a lot of matters by delegation from the Commission.

We have had various assignments of Commissioners to handle particular projects or lines of responsibility. Commissioner Cox is currently our Defense Commissioner. He handles liaison with the executive department on that.

But I think your question goes to who is responsible for a finding on applications such as these we have been examining here.

Mr. KEITH. I realize that you are all responsible, but I wished to ascertain whether there was any specialization. For example, on this committee I might be considered to be an expert on matters pertaining to the SEC, because I am on a subcommittee which deals with that area.

Mr. HYDE. There is no committee on broadcasting matters as such. The whole Commission undertakes the responsibility.

Mr. KEITH. Another question that concerns me is the horizontal kind of operation that you have. The staff does some work and then the Commission does some work. The petitioners are supposed to be removed from those two activities. However, there seems to be some "interface" between members of the staff and petitioners. Does that interface extend to the level of the Commissioners?

Mr. HYDE. There may be a situation where a petitioner on a non-controversial matter may have occasion to bring to the attention of an individual Commissioner, but that is the exception. In our organization we have bureaus organized to handle the work of the three important divisions of industry.

We have our Broadcast Bureau. They in general will handle matters relating to that industry.

We have a Common Carrier Bureau—

Mr. KEITH. I don't want you to elaborate on it, particularly.

Now, if you have a minority view shaping up as something is discussed within the Commission, doesn't that put all of you on notice, and you say: "Well, there is a difference of opinion here. We should look into this more closely."

Mr. HYDE. This usually develops at the time a recommendation is submitted to the Commission. Sometimes there will be a division in the staff. If so, we will undertake to get the views, the different views of the staff.

Mr. KEITH. On the case we are reviewing here, some very serious charges were made, particularly by Commissioner Johnson who filed a dissenting view and, if I recall correctly, he was very critical in his opening sentence of the rest of the Commission.

He must have felt deeply about this. As you sat around the table trying to resolve this problem, you must have made an effort to defend your point of view, and he must have made some effort to defend the minority view.

Mr. HYDE. That would be the procedure. It is at the Commission meeting where the consideration of views of the several Commissioners would take place.

Mr. KEITH. Under those circumstances, Commissioner Cox, you made what I thought was an extraordinarily well written justification for the minority view. How did you go about getting your facts? How did you resolve the questions that must have been in your mind, and were at variance with those of Mr. Hyde?

I have in mind particularly the out-of-pocket expense which seemed to be extraordinarily poorly documented, and which would have alerted me at once that this whole matter should be studied more closely.

I wondered how you went about satisfying yourself that your minority views were well founded.

Mr. Cox. I proceeded, Congressman Keith, basically on the document, the staff report, that was before the Commission and on the answers I got from questions to the staff in the course of our deliberations. I did not have the opportunity to dig into the applications themselves. It seemed to me, on the face of the analysis that the staff had made, that this was the first instance in which we had had this kind of effort to establish out-of-pocket expenses.

Also, the method they outlined, as I understood it, seemed to be open to serious question. The position I took was not that I had gone into the files and really satisfied myself that the out-of-pocket expenses were something else, but that it appeared to me that if this was really what the applicant was doing, we clearly needed a hearing to explore this, because it seemed to me it would probably require more than simply the analysis and study of the application to find out what was the actual basis for some of the estimates that went into the out-of-pocket calculations.

Mr. KEITH. It would appear to me that there was a reason for a hearing, but to develop this thing did you call any representatives of the Overmyer outfit and ask for their justification?

Mr. Cox. I did not call them in. I talked a couple of times to counsel for Overmyer. I believe in the early stage, when the application had been filed, Mr. Overmyer came to my office and undertook to explain this. I asked him some questions about this matter. I did not get a lot of detail that they had not already supplied. They indicated that much of this material was in the application and indicated that any information that the staff wanted additionally they would be happy to supply.

Mr. KEITH. In view of the time that it would take on some other aspects of this, I would like to have the committee counsel furnish me with the statement of figures that were considered to be out-of-pocket expense and ask you, Mr. Chairman, or Mr. Cox, if your research went as far as, for example, here is an outstanding item.

I will start the ball rolling and ask what were the legal fees in connection with this application?

Mr. Cox. I don't think that that was broken out for us. We were given certain lump sum figures, which were described as being actually expended by and for the communications company. They then added an even larger sum, which they said was an estimate of services performed on a part-time basis by employees in other parts of the Overmyer operations.

Mr. KEITH. I have seen a document somewhere that indicated that the employees who were listed as those who had done some work had their salaries allocated and were sent letters. And I believe 17 or 18 out of the 23 replied that their efforts as far as television stations were concerned were minimal at best, and certainly nothing justifying the salary allocation that was contained.

Is this the information you had that made you want to have a hearing?

Mr. Cox. No; it was the lack, really, of precise information that made me feel we should have a hearing. We don't really have staff enough to explore all of these things in the field, as perhaps might be desirable. If we are not able to satisfy ourselves on the basis of the information supplied by the parties, we would normally designate the matter for hearing, and call witnesses.

Mr. KEITH. I imagine that the customary thing has to be that you don't have hearings or you wouldn't get much done; otherwise you would be having hearings all the time.

In this particular case I have been led to believe by, I think, Mr. Hyde that he was pretty lucky to get these interests to take over these five or six stations and get going with them. Yet I think it was last Sunday's New York Times that indicated that the ultrahigh frequency range, let us say, of CC Standard Radio Broadcast is virtually used up across the Nation. Only two television channels in the very high frequency range and nine TV channels in the ultrahigh frequency range remain unoccupied.

Mr. HYDE. I did not see that article.

Mr. KEITH. The UHF stations referred to are in the 50 top standard metropolitan areas. I do not want to read it out of context.

Mr. HYDE. I believe all of them were.

Mr. KEITH. So they are in demand, and it would have been, it seems to me, in the public interest to have a broader base rather than letting private industry dispose of these at will.

Mr. HYDE. Congressman, the demand is not as urgent—

Mr. KEITH. The demand is so good, Mr. Chairman, that they were keen to buy them.

Mr. HYDE. They were sufficiently interested to enter into this arrangement with Overmyer; this is true. But the Commission is currently sending out notice to a substantial number of UHF permit owners putting them on notice that they must undertake the development of their stations or show cause why their permits should not be deleted because of failure to develop them.

Mr. KEITH. AVC certainly was very eager to get these. They were willing to pay the price equal to the out-of-pocket expenses.

Mr. HYDE. Let me say this to you. Suggestion has been made that we ought to have had a hearing. If we had hearings in the early instance,

where there was some question as to the details of their financial resources, this could well delay any construction for years.

Mr. KEITH. In this salary allocation matter to which I referred a moment ago, the reported efforts of those who were questioned, a total of 33 were questioned, and 23 of them responded that they had made no effort in connection with the radio companies.

Mr. HYDE. These were apparently questions made by your—

Mr. KEITH. When this case began to get hot, when the Congress began to inquire into it, when the minority views were expressed, didn't you begin to make some inquiries and recheck yourselves?

Mr. HYDE. This case was discussed, according to the markings on the agenda items I have before me, on November 8, November 15, and November 22. Each time the matter was left for further discussion until the 22d. There was an inquiry made, but it related particularly to the identity of the transferees.

The Commissioners, the majority, were more interested in improving their information about the American Viscose, AVC Corp., which was to undertake the responsibility. There wasn't any great division on the allocation of cost by Overmyer until Commissioner Cox's dissent came out.

I personally felt that the allocation on its face was reasonable, and I noted in that connection that Overmyer was undertaking to inaugurate a network which was certainly closely related to his interest in these applications and permits, did not undertake to charge any of the cost of the effort of the network to venture into station construction.

There was another aspect of this, too, that I would like to mention.

Mr. KEITH. I have given you a little bit more license to elaborate, because I want to give you every opportunity. I must admit from what I have seen thus far a lot of things on their face, instead of appearing reasonable as you suggest, appear unreasonable. On its face, these expenses seem unreasonable to me, particularly when the payroll appears to have been approved by you.

I would question the source of the information. I wonder if you think this payroll on its face is reasonable. It raises a cloud over similar petitions.

Mr. HYDE. We must, because of the limitations on the staff, place lots of reliance on—

Mr. KEITH. You should cover yourself in writing. Probably you have.

But, at any rate, I would like now to get back to Mr. Cox and to Mr. Johnson. Gentlemen, Mr. Overmyer is new at this business of processing applications for television stations. He has a counsel, and counsel is an old hand. He must have developed a reputation with you people for his expertise, for the authenticity of what he said, and he must have developed a reputation in the field for getting things done for his clients. Certainly in this case he appears to have gotten very generous treatment for his client.

Are these expenses, in such large amounts, customary, Mr. Cox?

Mr. Cox. I would think not. We have some sales and transfers of permits, even television stations, which go for between \$5,000 and \$20,000, because that was all that was in them.

In this case we would have expected more than that because, as to at least two of the stations, some real effort had been made to get them

on the air so that there were, I think, expenditures for sites and for equipment.

But it seemed to me that the claim of in excess of \$1,300,000 for out-of-pocket expenses for simply acquiring five permits and getting them no further along than was the case here was excessive on its face.

In other cases, where we have had lesser sums, I have sometimes raised questions about it because I think we have to be careful to be sure that these claims are supported.

Mr. KEITH. I would think you would.

I have people in my district who called me this morning to inquire about your decision to hold up all applications for small radio stations for an indefinite period of time.

Mr. Cox. Yes. We have put a freeze on new applications for AM radio pending consideration of long-range policy there, largely because we think the standard radio service has pretty much reached maturity, that the addition of stations at this point is tending more to create additional interference than it is to bring added needed services.

We think the trend now should be to have FM radio for the aural service, and we should reserve AM perhaps essentially for longer range use in areas yet to be developed where they will need local stations. So, for the time being, we are not accepting new applications. We are continuing to process those which are already on file under the old rules.

Mr. KEITH. For those prospective stations which have gone some way toward filing but have not filed, the cutoff is immediate and final?

Mr. Cox. Yes. There is no doubt there will be individual hardships. The trouble is that that is true at any time you establish a cutoff. If you establish a cutoff down the road to allow anyone who is in process to complete and file, you get a lot of people who will file hurried applications, which would simply clog up your processes and defeat your purpose.

We also had a concern about our ability to continue to handle the applications under existing staff levels.

Mr. KEITH. No matter whom you know in the communications counseling business, you could not get one in under the wire?

Mr. Cox. It is always possible to file and ask for a waiver. Our rules are stated to be of general applicability. Any party who feels that the application of the rule in his situation is contrary to the public interest, or produces a peculiarly harsh result, can file and ask us to waive it. We sometimes do this. In some fields we grant extensive waivers. I don't know what the practice will be here.

Mr. HYDE. It certainly does not depend on the fact of who is making the application.

Mr. KEITH. I am happy to make that point.

Commissioner Johnson, I was somewhat surprised at the brevity of your statement. You are, may I say with a smile, guilty of the same charge which you levied at the Commission when you took it to task for not even making a token effort to defend its decision with reasons.

You performed an old trick that my daughter uses in college. You incorporate your dissent by reference, but do not develop references that I lack the patience to look up.

I guess if one did look them up, it would substantiate your point of view. In any case, would you care to elaborate now the reasons which you thought compelled you to develop a dissenting opinion?

Mr. JOHNSON. Yes, I would be happy to, Mr. Keith.

First, I would like to thank you, because it is very seldom that I have been criticized for being too terse. I welcome this public reprimand for that particular offense.

The fact of the matter was, quite candidly, that while this is an important case, it is really but one of a great many cases that I have found equally offensive. Some involve a concentration of control of media in a small community by someone who owns the newspaper and AM station. Some involve the galloping control of multistation owners. Some involve the ownership of stations by conglomerate corporations.

It seemed to me in this particular instance that Commissioner Cox had done an excellent job of setting forth the reasons. And it seemed to me at the time that I had expressed my views so often that there was very little to be gained by my going into it again and largely repeating what I had said before and what he had said in this case.

If I may say so, it seems to me that the general matter that you are addressing yourself to here is quite serious and is well worth your attention. It is what might be characterized as the distinction between, on the one hand, the "broadcasting business" or the "programming business," and, on the other hand, the "finance business," the "moneymaking business," the "station transfer business." This may arise in a number of contexts.

Here you have addressed yourself to the standards applied by the FCC in awarding the construction permits initially, to the information before us at the time the construction permits were extended, and to the standards applied by us at the time the construction permits were transferred. But each of these, I would suggest, is illustrative of practices that tend to make possible trading in stations by individuals who are more interested in profiteering from involving themselves in the station-trading business than they are really interested in the broadcasting business.

Problems may arise with regard to the financial qualifications of someone who applies for a station. They may arise at the time when we grant extension after extension after extension to someone who is not really building stations. They may arise at the time we approve the assignment from one party to another.

They are involved, I think, when we approve ownership by conglomerate corporations, multiple owners, nonresident owners, newspaper owners, and so forth.

This case is, in short, an illustration of a number of serious problems that are, I think, more significant than this case taken alone.

Mr. KEITH. The thing that interests me most of all is this question of transfers. That is a problem that is present in a great many areas where people get a license to use land for one purpose and then they dispose of it. If the Government overlooks the investment put there, a number of abuses can develop.

It is obvious that someone has benefited substantially from these transfers, and it is not the intent of Congress that an individual should profit from such transactions. Therefore, in the case of a

transfer I should think that the likelihood of a hearing would be greatly increased.

How often are transfers of this sort made?

Mr. JOHNSON. I don't know how I would interpret that qualification. Certainly the concept of transfer is quite common.

Mr. KEITH. I mean a transfer of this sort where someone had been granted a construction permit and then made only modest efforts to develop it and subsequently disposed of it without a hearing.

Mr. JOHNSON. Yes, Congressman Keith; that is not at all uncommon. Let me suggest that the full reach of your inquiry really goes to why it is we permit transfers of construction permits at all, why it is that we permit transfers of licenses at all.

It is one thing to inquire into the standards that we use when we approve the transfer of a construction permit. One undoubtedly could devise better standards than we have for the evaluation of assignments of construction permits. But I would suggest that a far more fundamental question is why we have the assignment of construction permits at all. Why do we not have a standard whereby a person who wants a construction permit comes to the FCC and gets it? If he puts the station on the air, he enjoys the profits that result. If he does not succeed in putting the station on the air, he turns his construction permit back into the FCC—and if there are other members of the public who would like to try their hand, they have the option to do so.

When a station is assigned, why should the owner of a station be the one to select who his successor will be? Why is this not a matter for public choice? Why is this not a matter for FCC deliberation?

The answer to that question, in fairness to the Commission, is in large measure the statute which you gentlemen enacted (sec. 310(b)). It provides that at the time of the license transfer we cannot view this as we would a comparative hearing, but must rather simply look to the applicant that the owner of the station chooses to sell to.

Mr. KEITH. Before I turn to the other Commissioners, would you care to make any further observations in connection with your minority views?

Mr. JOHNSON. Well, I would simply refer and supply, if you wish, numerous other opinions in which these issues have come up. We have discussed them.

I would also make a general observation that I think one could not help come to as a result of this morning's experience. Here we had the Federal Communications Commission of the United States on the one hand, the U.S. Congress on the other, trying to get information about public licensees. I would only say, if we have difficulty, gentlemen, it is probably virtually impossible for the public, itself, to come into this agency and find out who the owners of property are in their community and what the details are of their ownership and their operation.

We have numerous files. The ones to which we have already referred are not the only ones. It is very difficult for someone, even within the U.S. Congress or the FCC, to get this information. Certainly for the public the information is not compiled in one place. Beyond that it is difficult to find in public files. I think that is most unfortunate.

Mr. HYDE. I would like to answer that.

The Commission application files, the license files, have been public since the inception of the organization. Any member of the public

can examine the entire license record of any station, including applications presented to the Commission.

There is, in addition, a separate file where ownership data is placed. It is true that because of the voluminous character of the information that it may not be as readily available as would be desirable. We are undertaking to put this on a computer so that it can be had instantaneously.

I do not think that the agency should be accused of not having the information about its licensees and I don't think that there is any reason for the suggestion that the public cannot find out who the owners of stations are.

Mr. KEITH. Mr. Chairman, that is a side issue but I think that generally speaking the public is under the impression that it takes a Philadelphia lawyer to elicit such information.

Mr. HYDE. It is a mistaken impression.

Mr. KEITH. I am glad to hear it. Now, the impression has been given here that you don't have adequate staff at the FCC.

Mr. HYDE. We could use more adequate staff. We have made representations to this effect from year to year in our budget hearings.

Mr. KEITH. How many additional staff members did you request at the last Appropriations Committee hearings?

Mr. HYDE. In the order of 1,500 individuals for our entire operation.

We asked for additional manpower, particularly for the regulation of community antennas, a new operation with us.

We asked for additional manpower for common carrier. We were under the Executive, you might call it, directive to limit our expenditures to what would be essential matters.

We were asking for a substantial increase at the time of our presentation to the Budget Bureau.

Mr. KEITH. This is fairly general.

I assumed that with a good deal of pressure on you to get more people to do a better job, you could make an adequate record before the Appropriations Committee.

Mr. HYDE. I suppose you could say the record is not adequate if we don't get the money but I thought we had made a very good presentation.

Mr. JOHNSON. I want to clear up the record about what Chairman Hyde said that I said.

I did not mean to suggest that the agency does not possess pieces of paper within the building at 20th and M Streets that have the requisite information upon them—although there are instances when we do not. That was not the point I was making.

The point is that the files which we have are numerous. In addition to ownership, applications, financial reports, and license files we have separate files on fairness complaints, and separate files on other complaints.

My point is that it would be difficult for members of the public—as it would be difficult for a Commissioner or a Member of Congress—to pull together all the information he might like to have about stations in which he was interested.

Mr. KEITH. I would like to ask you one more question.

I was quite surprised to discover that a transcript of the first day's testimony, which was not yet available to me, was volunteered

as a favor to members of the Commission by an attorney with business before the Commission.

It raises a question in one's mind about the frequency of people with cases before the Commission dropping in and out of that agency as though it were an old home they were coming back to.

Is that a customary practice for this particular representative of Mr. Overmyer?

Mr. JOHNSON. I will note that this particular representative did not offer me a copy of the transcript of the preceding day's hearings.

My own standard is that I make it a practice, in general, not to see lawyers or clients about any business pending before the FCC—whether or not it is covered by the ex parte rules. Some lawyers have indicated to me that they welcome that standard.

So, I suspect I do not get as many people dropping in to say "hello" as I might otherwise. But my office is certainly open to any licensee who does not have business pending before the Commission, or any lawyer or anyone else with legitimate interest in seeing an FCC Commissioner at any time.

I did not see Mr. Gaguine in this particular case.

Mr. KEITH. Mr. Lee, how do you do.

Mr. LEE. How do you do.

Mr. KEITH. You were with the majority?

Mr. LEE. Yes, that is correct.

Mr. KEITH. In view of all that has transpired here, do you still feel that a hearing would not be advisable in a case where a petitioner submitted a similar bill of expenses?

Mr. LEE. I would say this: Obviously, if I had known at the time that I voted that 18 out of 23 people said they did not work on these problems, I would have undertaken to disallow in some way those expenses.

Mr. KEITH. That is just one item. Certainly if you find one item that is padded the chances are that a great many of the others are, too.

Mr. LEE. I am really not familiar with that.

Mr. KEITH. I don't want to prejudge this situation.

Mr. LEE. These, of course, are subsequent facts. I thought that the amount of the out-of-pocket expenses looked rather high to me but I couldn't prove anything wrong.

Mr. MOSS. If the gentleman will yield.

Your comment strikes me as most unusual. You couldn't prove? Is that your burden or is that the burden of the applicant?

Mr. LEE. As I reviewed the material given to me by the staff I was convinced that as far as I could see these were indeed legitimate expenses.

The alternative of setting up a hearing and delaying service to some 30 million people for 4 or 5 years was something I did not care to face.

Mr. KEITH. This permit would expire momentarily and then it would be up for grabs.

Mr. LEE. There were numerous applicants.

Mr. KEITH. It would only be fair under these circumstances that the numerous applicants should receive a hearing.

Did you know that \$66,000 was listed as preoperational travel and entertainment expenses?

Mr. LEE. No, offhand I don't think I knew that.

Mr. KEITH. That would be a red flag to me.

Mr. Cox. I think, Congressman Keith, if that was included in preoperating expenses it was not allowed as out-of-pocket expenses but was capitalized in the transaction that was taken over by AVC.

Mr. KEITH. He was allowed the portion he paid for, according to counsel.

In any event, if it is submitted as an expense and if an entrepreneur has to do that amount of traveling and that amount of entertaining in order to get that far along the way to building a station or a half dozen stations, there is something wrong with the system.

Mr. Cox. That figure was not called to our attention.

The point I am making is that I think undoubtedly Mr. Overmyer paid for some travel and did recover that from AVC.

The other travel I think was in accounts that he had not paid for, that had been paid for out of loans which AVC was assuming and, therefore, they became part of the capital structure of the new operation.

Mr. KEITH. To what extent does the attorney making these representations on behalf of this client fit into this picture? Does he certify that these are in fact the case?

Mr. Cox. I don't think he can do that because I don't think he has actual knowledge. He, of course, presents them on behalf of his client. As an advocate he tries to make the best case he can.

Mr. KEITH. He has to justify them, does he not?

Mr. Cox. I think he has to try to analyze the material that is supplied and make it understandable to the agency, either in written pleadings or in oral effort to explain it.

I have always found counsel who represented Overmyer a very persuasive, very able gentleman, but I always listen to him very carefully because I know he is an advocate for his clients and he is most likely to reflect their interests.

Mr. KEITH. How about you, Mr. Bartley, would you care to comment?

Mr. BARTLEY. On the open-door policy, I worked on the Hill here too long to close my doors. They are more or less swinging doors. I see almost anyone who has business with the agency with the exception of adjudicatory cases.

Mr. KEITH. Were you one of the majority or minority?

Mr. BARTLEY. Minority.

Mr. KEITH. What in particular prompted you to join that group?

Mr. BARTLEY. I would have been an advocate for a hearing if I had been alone in this. It had been my policy to oppose the granting of Commission consent to transfer of permits right in the beginning.

I may have done it a few times but I can't recall any in which I did. So I start right there, profit or no profit, out-of-pocket expenses or no out-of-pocket expenses, based on the idea that if the permit is not implemented, that it should go back into the public domain and be available to anyone else who wants to apply for it.

Mr. KEITH. That is a very forthright position to take.

I think you have been very generous, Mr. Chairman. I have no further questions, on the assumption that you will discuss this \$3 million loan.

Mr. Moss. It will either be discussed by me or by counsel.

Mr. KEITH. It was really too much for me to comprehend how this \$3 million figure was arrived at. I was told yesterday by witnesses for the AVC interests that they were willing to buy the stations for the full out-of-pocket expenses a revelation which leads me to believe that it must have been advantageous for Overmyer to take the 20-percent figure and use it as collateral to get a settlement more favorable than cash; itself.

There must be some value that could be assigned to that particular 20 percent, over and above what it represented in alleged out-of-pocket expenses.

Was the Commission aware that the buyer was eager to pay the full price of the out-of-pocket expenses?

Mr. HYDE. Our information was limited to what was in the application and the additional information that the staff had submitted. I had no contacts with the transferee at all. I never met them.

Mr. KEITH. This is a unique arrangement where the original license retains a minority interest in the five stations, reserving for himself the right to influence the decisions of those stations as a minority stockholder.

I would think it preferable that if there is to be a transaction, the stations should be bought outright.

Mr. HYDE. This would undoubtedly be an easier case to handle.

Mr. KEITH. I think that you should have said to the buyer: "Customarily we require that the transfer be complete. Why if you are willing to pay the cash don't you do just that and make it a clean deal?"

Mr. HYDE. I would suppose that this would be, as you put it, a cleaner way to handle it but there have been other instances where permits were assigned and the previous owner retained a minority interest.

Sometimes the original permittee has found it necessary to engage the help of other people that have more money as the expense of the operation became apparent.

There are several other cases where a minority interest was reserved in connection with the sale.

Mr. KEITH. Is a loan with an option proviso something you are customarily confronted with?

Mr. HYDE. I can't recall any other instances where there was a loan such as this.

Mr. KEITH. The thing that disturbs me, Mr. Chairman, is that you have approved a package of questionable items, not the least of which is this loan and option.

Mr. HYDE. You will recall that this loan was secured by mortgages, I believe second mortgages, but apparently fully secured by security.

My suggestion is that this is the counterpart of the offeror who makes the loan. The loan was not made solely as an inducement to make the assignment. It was made on the basis of adequate security.

Mr. KEITH. During the course of the hearings I have been marveling at the notetaking of Mr. Cox. I don't know what he is going to do with all the notes he has made.

Mr. Cox. I file them away, Congressman.

Mr. KEITH. You take notes sometimes when I am talking. I'm afraid to ask what you plan to do with them.

Mr. Cox. I refer back to them occasionally. That is one way I can follow what is going on.

Mr. KEITH. Would you comment on this particular phase?

Mr. Cox. Aside from the out-of-pocket expenses, this aspect of the transaction also bothered me greatly. It seems that, even assuming that Mr. Overmyer had had expenses of \$1,300,000, the most he could have obtained under the Commission's policy was that amount, but that in effect, as you suggested, by taking two steps he has gotten a million dollars in cash for out-of-pocket expenses, 80 percent. He has kept a 20 percent stock equity, on which he gave an option to AVC. They were to provide all further financing, so that if these businesses thrived and his stock would increase in value it would be due to no contribution on his part.

Meanwhile, not only did he receive \$1 million on the day of signing the contract, and before it was filed with the Commission, he also received \$1½ million of the \$3 million that was later to be loaned on the security of his stock and of the second mortgage on the warehouses at about the time, or before, the contracts were filed and months before the Commission acted.

It seemed to me in effect that he, rather than selling for \$1.3 million, had held out for \$4 million for his interest in these permits, which clearly would represent a profit and violate our policy. And while it was cast in another form, that seemed to me to be the reality of what had happened.

Mr. KEITH. Another area of concern to me is the fact that here you have a buyer who wants to obtain the stations for cash. Fictitious or not, the list price of out-of-pocket expenses, he had the money and he was eager to do it and the Commission apparently did not inquire as to why he would make that kind of deal instead of this one.

The easiest way to do it is selling it out and going into the trucking business.

Mr. Cox. I am interested in the Commission considering a policy that would announce that we will not permit this division of interest; that if a man has decided he doesn't want to continue with his permit, he should either sell it outright, or if he sells part of it and retains an interest that he should be obliged to bear the burdens of the business proportionately with the other parties. If he is willing to lend money to the corporation, if he is willing to put money in to replace losses, then that is fine.

I can see a case where a man started out in good faith and then did need assistance. I don't think that is the case in these transactions where the optionor is free of any obligation to help finance the further operation.

Mr. KEITH. It would have been much cleaner if he had sold four and kept one.

Mr. Cox. Yes, it would. I don't think if he had sold four and kept one that he would have ended up with \$4 million, though, and he obviously needed \$4 million.

Mr. KEITH. I have no further questions, Mr. Chairman.

I have a call to make in the adjoining office. I will leave the door open so that I can hear.

Mr. Moss. We have Mr. Adams here.

Now before turning the matter over to Mr. Lishman, I just want to find out if the Commissioners were aware of the fact that some expense was allocated here and part of the \$666,514 out-of-pocket that came through the internal allocation of personnel and facilities of Overmyer Co. included expenses incurred for the period July to December 1964 before they became an applicant before the Commission for a construction permit.

Mr. HYDE. I was not aware of that specific detail. But weren't the first applications filed in 1964?

Mr. Moss. Were they?

Mr. Cox. My recollection is that they were. There may very well be expenses incident to the preparation of such applications.

Mr. Moss. They incurred expenses from July to December of 1964 of \$36,397.

Mr. Cox. I think it is unlikely they incurred that much expense, but I think the application for the transfer of the Newport station was filed in August of 1964. It was not approved until March 1965, and so I assume that the significant expense—which was some hundred thousand dollars paid to the transferor—would not have been incurred until then.

Mr. Moss. These are not payments to the transferor. They are to Overmyer, Inc., the president's office, \$4,596; the controller's office, \$2,416; personnel department, \$2,763; purchasing and office services, \$947; taxes and insurance department, \$1,162; auditing department, \$1,026; legal department, \$2,057; treasurer's department, \$1,409; advertising and public relations, \$4,519; finance and development department, home office, \$8,376; finance and development, regional offices, \$6,076.

Mr. Cox. I was not aware of any of those details. Now the staff memorandum to the Commission did recite that the formula they worked out here started from a base period when they thought they had some records. They then applied a percentage factor to some other periods. It does show they applied the percentage factor to the last half of 1964.

I knew some such allocation was being made. It seemed to me this was based on mere assumption which we had not verified and therefore it was not wise to accept these results without further inquiry.

Mr. Moss. I quite agree with you. As a matter of fact, I want to also compliment you on what I think is an excellent dissent, well reasoned, and dealing with a subject matter which is very basic to the proper operation of the Commission.

I think Congress wrote quite clearly on the matter of trafficking in license following the 1958 hearings. As I recall, as a result of the reports of the Congress, it was the action of the Commission that brought into being the limitation on trafficking in licenses.

I might say that we are probably going to take, unless there is some more vigorous movement on the part of the Commission, an appropriate legislative enactment by the Congress to prohibit the trafficking in construction permits.

I, for one, when we reconvene, will introduce legislation which will place very stringent limitations upon the discretion of the Commission, because I think the majority in this instance has not acted in

accordance with the mandate of the Congress to protect the public interest.

I go now just to the application which you gentlemen had before you. I believe this is the reason for the proposed transfer. I have gone over these breakouts, the various officers who made their affidavits. I note the loose wording. "It is my opinion based upon my observation and experience that in excess of \$50,000 in unrecouped salaries and overhead cost were expended by Green & White for the Overmyer Communications Co."

Is that sound documentation for \$50,000 of out-of-pocket expense?

Then we go over here to Mr. Silcox. He deals with a matter of approximately \$126,396 of these. He says—

I have reviewed the application of the base period figures to other periods. It is my judgment that the level of TV activity in my department during most of the 1966 was on the order of 10 percent greater than it was during the September-December period.

The level of TV activity in my department in the other periods was at least as great as set forth in the attachment referred to.

Very sound documentation. From an accounting standpoint, I don't know how anything could be more persuasive. Well, the others are phrased as loosely and are invalid as a "certification."

In the controller's department—

The Controller's Department and other operating departments under my supervision had payroll expenses of \$207,602 for the September to December, 1966, base period, of which \$14,303 was properly allocated to the Communications Companies.

The allocations, based upon such base period for the year '66, '65 and part of '64 and '67, as set forth in Exhibit III, are reasonable and accurate in my judgment

This is the case of being able to audit yourself and certify that you have audited correctly.

The Commission accepted it, hook, line, and sinker.

Mr. Lishman.

Mr. LISHMAN. I have only three or four questions.

Does the Commission still consider local ownership, past broadcast experience and participation of the principals in the management of the station as key factors in granting of a license or construction permit?

Mr. HYDE. Local ownership would be a relevant factor, particularly in the instance where there were competing applications.

In many instances an applicant who was locally oriented has had a plus for that as against an applicant who did not have such local relationships.

Mr. LISHMAN. How about past broadcast experience?

Mr. HYDE. There have been some instances where past broadcast experience was emphasized. I personally think that this might not be a valid argument. If you are limiting the entry into the business to people who have experience you would never get new blood, new ideas, new imagination.

Mr. LISHMAN. As I understood it, the Commission in many cases has stated that the criteria in the granting of a license which is considered most important concerns local ownership, past broadcast experience, and the participation of the principals in the management of the station.

In fact, I have read many Commission decisions where licenses have been denied on the ground that one or more of these elements has been lacking.

Mr. HYDE. I think you can't find a single case where an application not in a comparative hearing has been denied on that.

Mr. LISHMAN. I am talking about comparative cases.

Mr. HYDE. In comparative cases where you must examine the relative merits of two or more applicants, previous experience, identify with the community, integration of ownership with the management have been found important decisional factors.

How different members of the Commission would consider this depends on the individual but I personally have some misgivings about the wisdom of putting too much emphasis on past experience.

I rather like to see new blood brought into the business.

Mr. LISHMAN. Is there some public interest consideration that justifies different criteria where there is no comparative hearing than where there is a comparative hearing?

Mr. HYDE. You have the necessity of making a comparison where you have a contest. In the case of where there is not a contest it may very well be in the public interest to grant the application of a man who has the substance to do it, to, for instance, put in a UHF station and make it operate.

Mr. LISHMAN. Did AVC possess any of these qualifications that are generally applied to the situation in a comparative hearing?

Mr. HYDE. I believe that they put some importance upon securing the services of personnel who had had experience in Philadelphia but on the overall this was not a company engaged in the broadcast business.

You know, Mr. Lishman, if they have broadcast interests then you have the question of multiple ownership and should they be expanding their empire. If you don't have experience, then you raise the question are they qualified.

I would urge upon you that if you have people of character and substance that we should welcome new blood.

Mr. Moss. Just a moment. At that point, don't you have both of those issues clearly in focus here because here you were granting a block of five licenses in the top 50 markets.

You were creating that multiple ownership.

Mr. HYDE. In none of these markets would they have anything approaching a monopoly. They would be in each instance undertaking an enterprise which would have challenged the VHF operators and others.

This was not a tremendous privilege which they were acquiring. They were really being permitted to make substantial investments in a pretty difficult—

Mr. Moss. Your interim rule went beyond just creating a monopoly locally. It also envisioned a restraint upon too much power in major market areas throughout this Nation.

Mr. HYDE. The interim policy had to do with the acquisition of additional stations in the top 50 markets.

Mr. Moss. If I have one and I buy four more, why am I in a different category than if I have none and I apply for five?

Mr. HYDE. I wouldn't say you are in a different category. I would like to tell you that an overall concern of the Commission in these cases was an interest in seeing the development of UHF to go ahead promptly. Here was a company that had the capacity to do it.

Mr. MOSS. I only observe, in any event, by the majority action of the Commission, that any possibility of a comparative consideration or evaluation of potential applicants was effectively foreclosed by the Commission granting this block of five.

Mr. HYDE. Congressman Moss, permits are subsequent to transfer. This is the policy set by Congress. We were considering these applications for assignment under the policy as expressed in section 310(b) of the Communications Act.

Mr. MOSS. Mr. Chairman, you can't cite me one single line of legislative history that will support the block transfer which took place in this instance.

Mr. HYDE. There is no discussion of the subject at all.

Mr. MOSS. I don't think there are any members of this committee who ever envisioned we would have before us an example of the block transfer of five construction permits, particularly in view of the strong admonition given to the Commission on the trafficking in licenses following the 1958 hearings.

Mr. ADAMS. Mr. Chairman.

Mr. MOSS. Mr. Adams.

Mr. ADAMS. Mr. Chairman, I have a question regarding the policy of the Commissioners on holding hearings when an application is made for one of the top 25 markets.

If an applicant were to come in during the time covered by this case and apply for a UHF station in one of these five markets, what would be your policy in holding hearings?

Mr. HYDE. Our statement of policy indicated that if an applicant could present compelling reasons a hearing would not necessarily be had.

Now, there were certain instances where we held what you might call abbreviated hearings. I can recall one instance which concerns the city of Denver where we invited the applicants to present their arguments to the Commission in a 1-day presentation.

You might call this an oral presentation. There were other instances and one of them relates to the city of Milwaukee, where because of the circumstances of the case we thought it would be in the public interest not to subject the case to a hearing. We felt under the circumstances a waiver was warranted. There were other such cases.

Mr. ADAMS. Oddly, then, if you have an applicant going into the top 50 markets during this period of time there would be more than one applicant and you will generally have a hearing on that, would you not?

Mr. HYDE. In any event, where there was a contest for the channel there would, of necessity, be a hearing.

I had reference to such instances as where Kaiser interests applied for assignment of a permit or license in Boston. We considered that as a case where a waiver was warranted.

Mr. ADAMS. In this particular case were you aware of the fact that the permits had, in effect, run out?

Mr. HYDE. Yes.

Mr. ADAMS. And that they were being held in abeyance without a hearing under a policy of extending a construction permit and allowing the rule to effect a toll on it whenever a transfer was pending?

Mr. HYDE. We were aware at the time the decision was made that there were applications for extension of the time for construction.

Mr. ADAMS. These had not been acted upon.

Mr. HYDE. No.

Mr. ADAMS. And would not be acted on?

Mr. HYDE. That is right.

Mr. ADAMS. Therefore, during the period of time that you are making your decision you have allowed this group, the Overmyer group, to maintain a valuable commodity in its license, itself, as opposed to the money that it put in?

Mr. HYDE. They would be able to maintain a position which has certain advantages or values as you put it. They would derive this from the operation of law.

Mr. ADAMS. Actually, it was a Commission policy between your two divisions, the Transfer Division and the division that would ordinarily grant extension of permits, that simply said that when anybody files a transfer application we will automatically extend the construction permit and in effect keep it in existence which in this case—I am not trying to play games with you—in this case, this then becomes the wheel around which the whole financial operation then comes into existence.

Mr. HYDE. They should not issue an extension of a permit unless there is some appropriate justification for doing so.

Let me go back just a step. You have a permit and it expires on a given date. If you have in the regular course or if you have as a matter of fact filed an application for an extension before the expiration date, then you have certain rights under the Administrative Procedures Act pending a determination on the merits of the application for extension.

Now when you have an expired permit and the holder of that permit had presented another application, perhaps bringing in some financial assistance, we would be dutybound to examine the two of them together.

Mr. ADAMS. In this particular case you had five potential stations involved and you had by extending these construction permits in effect created a commodity that a buyer going into the television business could not obtain any other place and he obtained this without a hearing or without any other competitive group being able to apply in any one of the five markets. I am trying to get into your procedures here as to why this was done without a hearing that might determine whether there were other applicants that might want one of these five because what is bothering me is by having the package of five and by not having a hearing he was then able to establish a financial operation that picked him up about \$4 million on a very shaky half million dollar investment, assuming all the facts that he presented were correct.

Mr. HYDE. Congressman, you are quite right. As the holder of the several permits he did have a position which made it possible for him to enter into arrangements with AVC as you have put it. But let me say to you that this is characteristic of the law which we must administer. You can always apply for a license by going to the person who has it

and when an application is made for assignment of a license to use the Commission is required by law, as Commissioner Johnson has mentioned, to look at it in terms of transferor and transferee and forbids us from looking at any alternatives.

Mr. Moss. Just a moment. Will you yield? I think we have a difference, unless I am confused, between the law that controls the construction permits and the law that controls licensing.

Mr. Hyde. I am sure that if you will refer to the language of section 310 that you will find that Congress provides that no permit may be assigned without the approval of the Commission, thereby making them subject to assignment.

Mr. Moss. I realize that they must always be approved by the Commission.

Mr. Hyde. But it does provide for assignment of permits.

Mr. Moss. It what?

Mr. Hyde. It specifically provides for the filing of applications for assignment of permits.

Mr. Moss. Now, except upon an unusual showing you are not supposed to permit a transfer of license under a period of less than 3 years.

Mr. Hyde. We have a Commission rule which says except under certain exceptional circumstances we will not entertain an application for an assignment of an operating station.

May I add this, that there has never been in the Overmyer application any indication or evidence that these were not bona fide applications looking toward construction of the stations.

You will find in Commissioner Cox's—

Mr. Adams. This is why I have waited, Mr. Chairman, for this point to ask my questions. I will, without going into the argument, if there be one, of whether Mr. Overmyer was legitimately going to build the stations and whether he had one on the air and so on. There may be questions on that that other members may want to pursue. The thing I want to pursue is what the Commission is doing in terms of their process as they start with the transfer of a license. What appears to me has happened, and that is what I want you to help me with and tell me what your rationale is. A man was able to build in effect a large financial package, using the Government's airways or licenses as it may be, to do this and that you are the group at the switch and you in this case let a man come in with five permits, a real package, that AVC or no one else could get any place else in the world, that was created by the Government. What bothers me even worse is that these had in effect expired.

In other words, you did not just take him in the middle of his operation and let him bail out but he went clear to the end, it expired, the Commission's practice allowed the things to stay alive, and then approved it without giving anybody else a chance at those five parcels.

Mr. Hyde. Our alternative would have been to conduct the hearings looking toward a decision as to whether permits should be extended. I should say that in light of the congressional policy to make such authorizations available that we proceeded in accordance with the policy set up by Congress.

Mr. Adams. Now, as the transfer came up and you had five stations available was any effort made, investigation conducted, or surveys created to determine whether there were other applicants that wanted

to break into these five markets with a UHF situation that, though it might not be in Mr. Overmyer's interests, that is, he would not pick up his \$4 million, but in the public interest somebody might come in?

Mr. Hyde. There was no such survey undertaken. One of the reasons why we would not make such a survey is that we are under an injunction from Congress not to consider alternative applicants in this situation.

Mr. Adams. Now explain that to me.

Mr. Hyde. There was a time when the Commission adopted some rules which required notice of a proposed transfer and an opportunity for other applicants to offer the same kind of conditions, the same compensation, in which event the Commission would then, according to those rules, undertake to make a comparative study. The Commission found this rule difficult of administration. It caused a good deal of difficulty through delays of transfers, particularly in some instances where the holder was in a situation of hardship. Congress was not satisfied when we abandoned the rule. They amended the act to make it clear that the Commission would have no authority to reinstate any such rule. If you will give me just a moment I will give you the language of the act. I am looking at the final sentence of section 310(b):

Any such application shall be disposed of as if the proposed transferee or assignee were making application under Section 308 for the permit or license in question, but in acting thereon the Commission may not consider whether public interest, convenience and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

Mr. Adams. Then I will ask you or Mr. Cox or Mr. Johnson this:

In your opinion if this had been denied, Mr. Overmyer or anyone had been denied, would these then have been available to other parties to come in, or would they, in your opinion, at that point simply have stayed dark?

Mr. Cox. I think there would have been other applicants. As Commissioner Lee indicated, this might take some time to get them on file, to get them in hearing, to get a decision reached. But as Congressman Keith indicated, in the top 50 markets there just aren't very many channels available for the asking any more. They are either granted, they are in hearing, or there are applications pending for them.

Mr. Adams. My understanding is that in these five markets there were in most of them no other channels available.

Mr. Cox. I think that is what I cited in my dissenting opinion.

Mr. Adams. You did.

Mr. Cox. Now I would point out that the chairman is quite right when he says that Congress indicated that, in passing on an application for transfer of a license or a permit, we may not consider that it might be more in the public interest for the permit to go to someone else. But the statute still requires that we have to find it in the public interest for it to go to the named transferee. Under our interim policy, I did not think we could find it in the public interest, setting all other matters aside, to have five permits in the top 25 markets go in one package to a single transferee.

Mr. Adams. Would anyone be aware of this in the industry generally unless you had a public hearing?

Mr. Cox. Oh, yes, We have a requirement of publishing notice of applications, so that anyone who is following this—not the general

public but anyone who is in the industry or who retains counsel in Washington and who is interested in any of these markets—would be advised when transfers were applied for.

Mr. ADAMS. If there is an application for transfer to AVC that notice would be filed. Then would you give notice that you are going to make a decision on it?

Mr. Cox. As the chairman points out, under an act of Congress our rules now require that an application for transfer has to be published in the local newspaper and also notice has to be broadcast on the station, itself, of the fact that the application has been filed and that copies are available.

Mr. ADAMS. What can anyone do at that point if they wanted to break up this package?

Mr. Cox. Not much.

Mr. ADAMS. Not anything, could he?

Mr. Cox. No, because of the provision of the statute. He could come in, in effect, and try to tell us that he thinks it would be better for these five stations to be transferred either by Overmyer to five separate individuals—

Mr. ADAMS. You can't do this unless you hold a hearing, can you?

Mr. Cox. We can't do it at all, because our option is either to approve the transferor's selection of the transferee and find that there is nothing contrary to the public interest, or to say that we cannot make that finding without a hearing, and then go into a hearing. But in that hearing the issue would not be whether there might be others who would serve the community better. The issue would be whether there is something disqualifying this transferee, or something about this transaction which makes it contrary to the public interest. In that hearing we could have found it contrary to the public interest either because a profit was being realized on the transfer of the permits or because it is contrary to public interest to have a single entity own five stations in these major markets. Having made that finding, we would then be in a posture of simply opening the permits up.

Mr. ADAMS. That is right, they would then open, would they not, in those five markets for application then. In some cases this was the only channel left.

Mr. Cox. Yes.

Mr. ADAMS. It would then open for someone to come in.

Mr. Cox. I believe so.

Mr. ADAMS. If they wanted to apply.

Mr. Cox. I believe that would be the case.

Mr. Moss. Will you yield for one moment?

Mr. ADAMS. Yes.

Mr. Moss. I want to make the point clear. I should have more correctly stated a different rule on this matter of construction permits. As I recall, when you folks adopted the rule following the issuance of the report of what was then the legislative oversight committee you exempted construction permits for the 3-year period of transfer because you felt that your requirement which would limit out-of-pocket expenses would provide the necessary protection of the public against trafficking in license. It would not be a problem to prohibit trafficking in construction permits. That was not applied in this instance because there was no diligence on the part of the Commission and after a very

sorry day both on the part of the staff and the Commission there was no diligence by the staff to determine, in fact, whether the figures for the out-of-pocket expenses were valid at all. It is my judgment after a careful review that they were at least 100 percent inflated. I think there I am being most generous in recognizing the validity even to that extent.

I thank the gentleman.

Mr. ADAMS. Indicate to me if you feel this is proper. I want to know whether decision was made not to hold a hearing. Is this done in your general course?

Mr. HYDE. Yes, it is.

Mr. ADAMS. Is it the present policy on these not to hold hearings on these transfer applications?

Mr. HYDE. It is our present policy not to hold a hearing unless there are circumstances that seem to require it. There was a difference of opinion on this matter. Reasonable men, of course, can disagree as to the showings made on the documents. There was no legal requirement for a hearing because there were not opposing parties. But the Commission would have had the discretion to hold a hearing on its own initiative as a matter of policy. When you do designate a matter for hearing you have to take into consideration the consequences of that action. It may mean in some instances a hardship, the complete destruction of a project. It will in almost any instance mean a considerable delay in any construction or implementation of a permit. You would have to consider these factors against the background of the Commission's interest in encouraging the investment of funds in the development of UHF stations so that people buying all-channel sets under the all-channel law would get something for their investment in UHF.

In the overall of this particular case representing one where you had an applicant who the Commission was satisfied had a bona fide interest in exploiting UHF stations, who had the money, at least a million and a half dollars in liquid assets when he entered the business, to put stations on the air. Our experience in UHF has been somewhat discouraging. We have issued permits in many instances where no construction took place. In this instance the permittee did proceed and his record is rather better than many UHF holders. Then he did come into financial difficulties. At that point he undertook this assignment to the AVC people. When this matter of assignment came up the Commission would have to consider, should we proceed on these applications for extensions, or should we look toward the possibility of some constructive course which would see these stations on the air promptly.

You have an applicant, AVC, which is in strong financial position and in the judgment of the majority it was in the public interest to get these TV stations going rather than to undertake deletion of permits and invitations to newcomers.

Mr. ADAMS. The point that we then come to, which is my last point, Mr. Chairman, is that we have been presented by the transfer, of a very unusual financial transaction. I have dealt with some few corporate mergers and various types of financial arrangements. I can say without doubt this is one of the cutest ones I have ever seen. It appears to me in it that you have, through the retention of the 20-percent interest and the basing of an option and repayment system on gross

revenues rather than on any type of operating profit, an almost assurance of Mr. Overmyer receiving \$1 million down and \$3 million in a period of time on a half million investment, basically because we got a package of licenses.

I went through this with your staff members on their recommendation and it looks to me as though everybody seems to say, "We are glad to see him be able to get out of the business. Whatever happens let us let him go in order to get these stations on the air."

Mr. HYDE. I would like to say to you that the Commission's concern at the moment of decision here was service to the public. It was not making this decision for the relief of Overmyer.

Mr. ADAMS. I am not saying that. What I am worried about is the proposition that if you are "cute" enough and you work the system well enough you can buy and sell licenses.

To me out of these hearings I would like to know what you gentlemen think as to whether we should do something more or you should do something more or is this thing so unusual that it will never ever happen again?

Mr. HYDE. This is unusual. We are dealing with a rather extraordinary situation. This comes up at a time when we are all very much concerned about the success of UHF, which is very, very important to the development of broadly based television, to the development of educational stations, many of the reservations being in UHF. There is a combination of circumstances here which does present an unusual situation.

Mr. ADAMS. Commissioner Cox, is my characterization of the fact that Overmyer in effect out of this picked up \$4 million with every expectation that he is going to net that out of it rather than being a loan, is that characterization in part true?

Mr. Cox. We are predicting. My analysis, like yours, is that the way the transaction is framed, this is the way it seems most likely to me to work out. And certainly at a time when he apparently felt he needed large sums of money, instead of simply getting back what he had invested in these permits through an outright sale of them, he got back 80 percent of what he claimed he had put into them plus a loan of \$3 million which I am morally certain AVC would not have made to him if he had not been in a position to transfer the permits. I don't think, if he had been willing to sell all these permits to them for \$1,300,000 in one transaction and if he had gone back to AVC the next week and said he would like to borrow \$3 million on the security of second mortgages on the warehouses, that they would have been at all interested in that transaction. I think he was able to get \$4 million, within a period of a relatively few months here, to help him in the difficulties he had gotten into in his warehouse business simply because he had the permits.

Now I was anxious, as was the chairman and the other members of the majority, to see UHF succeed, to see the public get more service, but I am not so anxious for that that I am willing to forgo all our other policies.

Mr. Overmyer could have sold the five permits for not more than—he could have sold them to three parties, two permits to one and two to another, and this would not have violated the Commission's then interim policy, which represented its then belief as to what was the public interest as far as concentration of control is concerned.

Of course, as you know, the majority, a couple of months after the Overmyer transfer, terminated that interim policy, so that there is now no numerical limit, except in the sense that anyone seeking more than three UHF or more than two VHF in the top 50 markets must still make some compelling showing of public interest. In other words, the public could have gotten these stations on the air, it could have gotten this service, we could have built UHF without violating either the interim policy or our longstanding policy of holding transferors to out-of-pocket expenses.

—It seems to me that the Commission was simply so concerned about expediting UHF service that they did not maintain a proper regard for these other two policies which I think are equally important.

Mr. ADAMS. The thing that is bothering me in this, and this happens in a number of the other regulatory agencies, is that you often have a situation where the two parties before the Commission on a particular point have the same interest. In other words, where both Mr. Overmyer as the transferor and AVC as the transferee have made their deal, so there is no competitive or adversary proceeding before the Commission. This being true who maintains the public interest of not letting the public license or permit be bought and sold and do we need some other set of rules, some other procedure or are you gentlemen here to tell us it is not going to happen any more.

Mr. HYDE. The responsibility certainly is with the Commission. It should not approve the transfer in any instance except that it is satisfied that the public interest will be served. I think that the delegation of this responsibility to the Commission is an adequate way to handle the matter. I think we should have the flexibility which the act now gives to us. That is my personal view. But if Congress feels that a permit should never under any circumstances be transferred they can simply amend the statute and prohibit such transfers. I think that that might be discouraging to people who might in good faith undertake a project and who might later find themselves in financial circumstances such as they could not complete their project.

Mr. BARTLEY. The question of legislation came up earlier in these hearings. At that time I suggested an amendment to 310(b). You will find that in the record here. I thought I would call it to your attention at this point.

Mr. Cox. I think, short of barring the transfer permits, we could tighten our policy or Congress could lay down more specific guidelines. I believe now we will not approve transfers involving this split of interest and an option whereby it appears that the transferor, while he gets only some part of out-of-pocket expenses for the interest which is transferred immediately, retains the right to dispose of the remaining portion at a later time.

Mr. ADAMS. What about a series of hearings where people are put under oath and on public record as to what they are doing. The reason that I might not accept the particular suggestion is that I think this just happens to be one lawyer's dream and that they will think up another one as soon as we moved on the split ownership. I can think of several they might try, in other words, to spin off a series of subsidiary corporations in which part of your out-of-pocket expenses were placed in those, and selling one subsidiary and not selling another. I can visualize that a smart lawyer might have a series of alter-

natives. It seems that nobody took the lid off this until after it was done and the dissent and majority opinions came out.

If I am mistaken in that and everybody went into it with their eyes wide open, then please inform me. The testimony yesterday indicated two different divisions within the FCC were playing Alphonse and Gaston on the construction permits and that nobody picked up the contract file and really looked into it in great detail prior to the recommendation. Then we get to the Commission level and there isn't a hearing, and I want to know whether—maybe you should have a public hearing on transfers involving more than one station or transfers involving more than a certain amount of money.

I don't want to burden you with any more hearings. I understand you are behind now. But there should be some place where the public interest is stated or the public concern is heard over the trafficking in license.

Mr. Cox. I would agree with the chairman's statement that we are going to continue to approve many transfers without hearings because we see no real problem, and nothing other than delay and extra expense would be involved in a hearing. I agree with him that when we see something which is unusual or raises questions we should have that hearing, whether or not there is agreement among the Commissioners as to when that situation presents itself. It seems to me, and I think Commissioners Bartley and Johnson, that in this case it was quite clear that this was a novel transaction, it was unusual in its scope, that there were a lot of loose ends. We thought, therefore, even though there would be delay and expense both to the parties and the Commission, that a hearing was imperative.

Now, a majority of the Commission disagreed. As long as you leave us with discretion to decide when we have hearings and when we don't, without more specific guidelines, you have the possibility, of course, that there will continue to be differences and that the majority will continue to feel that there is no need for a hearing—and that either we will never find these things out, or it will have to be through a process such as your committee's investigation.

I think that there is no doubt that your staff—which has been able to spend far more time on this than our staff did, certainly in the initial processing of these matters—have found out a lot of things that we did not find out in processing the applications. But I think we would have found them out if we had had a hearing—but we did not have a hearing.

Mr. ADAMS (presiding). Mr. Lishman.

Mr. LISHMAN. One question. On what basis did the Commission determine that each of the communities involved in the Overmyer transfer had an unusual and urgent need for additional television service?

Mr. HYDE. I think that this decision was discussed in the overall. In each instance it was a UHF station in an important market.

Commissioner Bartley reminds me that the Commission has made a UHF station allocation to each one of these communities and there would be, of course, an interest in seeing that made useful to the public. As I indicated in the very first day of the hearings in this matter, we had a situation where the grantee had found himself unable to proceed and here was an opportunity to approve a transfer to new interests who did have the substance to complete the construction and we thought this indicated an urgent need.

Mr. LISHMAN. Was there any determination that the public interest would be served with respect to each of the five communities involved by approving this transfer?

Mr. HYDE. Our finding of public interest applies to each situation. It does, yes.

Mr. LISHMAN. What elements of the public interest were considered, for example, in connection with Pittsburgh?

Mr. HYDE. I am reminded here that there were three network stations, three network commercial stations in the community, no independent, a general interest in getting additional stations in markets where you had such few alternatives for the public.

Mr. LISHMAN. What was the urgent situation that required a new station in San Francisco so as to make you waive your interim policy about 50 markets?

Mr. HYDE. It was the same need to have implementation of UHF policy in every one of these markets.

Mr. LISHMAN. How many stations are there in San Francisco?

Mr. HYDE. I understand that there are four V's if you include Oakland, one UHF, one of these Overmyer stations on the air and Kaiser on the air.

Mr. LISHMAN. What is there in the record to show there is an urgent need of a UHF station in San Francisco with more than 11 stations already there?

Mr. HYDE. There are not more than 11.

Mr. LISHMAN. How many are there serving that area?

Mr. Cox. I think that at the time the transfer was authorized there were four VHF commercial stations on the air, an educational VHF station on the air, and perhaps one commercial UHF station licensed to Kaiser Broadcasting which was either on the air or about to go on the air.

Now, there are other stations in that area, in San Jose and Salinas, but they would not serve the San Francisco market.

Mr. LISHMAN. I have no further questions.

Mr. Moss (presiding). I have just a few questions.

Mr. Chairman, you used the statement that this applicant had a million and a half dollars in liquid assets.

There is nothing here that shows that they had a million and a half dollars available in liquid assets. You don't know the nature of the encumbrance against them. You don't know whether the cash shown there was committed to the construction of warehouses or was not mortgaged.

Mr. HYDE. It is my understanding that the balance sheet we were looking at, at a previous hearing, of the Overmyer warehouses did show a million and a half dollars.

Mr. Moss. It showed \$1,661,728.87 in cash. You don't know what the ongoing commitments were and they were in the throes of an expansion, I believe.

Mr. HYDE. Congressman Moss, it is obvious now in the light of subsequent facts that this warehouse business was going to come into financial difficulties but on the basis of the information we had at the time I think it was reasonable to expect that they could finance this enterprise.

Mr. Moss. Mr. Chairman, are you aware of the fact that the member of your staff who has the responsibility for evaluating these balance sheets told this committee that he is not very well informed on balance sheets and the reading of them.

Mr. HYDE. I heard the testimony. The employee that you refer to is not responsible for final recommendation of staff to the Commission.

Mr. Moss. Who analyzes the balance sheets for the Commission?

Mr. HYDE. There is accounting talent in the Broadcast Bureau.

Mr. Moss. I would hope so.

Mr. HYDE. The officer you refer to is an attorney. I have taken steps since this discussion you refer to to see that an examination is made by a qualified accountant on any such application.

Mr. Moss. Now, then, on this matter of the anxiety of the Commission to get these stations on the air, that was certainly the objective of Congress because we enacted the all-channel reserve legislation. Creating by the enactment of that legislation the proliferation of sets capable of receiving the signals, we guaranteed that over a period of years they would become attractive investment opportunities to an increasing number of persons and relieve you of this rather onerous responsibility of going out and acting contrary to your normally established practice in order to encourage anyone to get into the business. Time, itself, is going to put them there.

Mr. HYDE. Congressman Moss, I fear that time alone will not provide the answer because of the development of community antenna services.

Mr. Moss. This is another very complex subject and the full dimensions of which neither you nor I can forecast.

Mr. HYDE. No, we cannot but I do urge this upon you, that we will still have need to encourage investment of funds to provide some UHF stations.

Mr. Moss. Mr. Chairman, I agree with you. I think you have need to use every prudent, reasonable, and orderly process to encourage the utilization of these channels so that the American public can be better served. I think a part of that need is also to determine the character of the broadcaster who is going to operate it. I think one critical need for broadcasting in this country is an upgrading of the character of it. That is why I have been a very strong proponent in this committee for educational television.

Mr. HYDE. I am with you on that.

Mr. Moss. I hope by diversity and by competition—

Mr. HYDE. You will remember my recommendation.

Mr. Moss. I do indeed. That is why I feel so disappointed with your actions in the case here of the blanket transfer of five potentially valuable avenues of access to homes in markets where competition certainly should be encouraged and doing it in a fashion which really makes no finding that the public interest will be served.

There being no further questions the committee will stand adjourned.
(Whereupon, at 4:15 p.m. the committee was adjourned.)

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