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Pt. 2

Part 2

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

**APPENDIX TO
HEARINGS**

BEFORE THE

SPECIAL SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

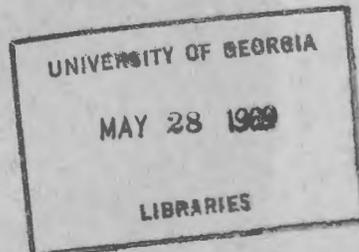
FIRST AND SECOND SESSIONS

ACQUISITION AND TRANSFER OF FIVE OVERMYER
TELEVISION CONSTRUCTION PERMITS

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

Serial No. 90-51

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



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U.S. GOVERNMENT PRINTING OFFICE

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TRAFFICKING IN BROADCAST STATION LICENSES AND CONSTRUCTION PERMITS

HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE, SPECIAL
SUBCOMMITTEE ON INVESTIGATIONS

APPENDIX

ITEM 1

IN THE MATTER OF:

OVERMYER HEARINGS RE TRAFFICKING IN LICENSES

Deposition of George Kinsley taken by members of the special subcommittee staff at 2 p.m., on Friday, September 20, 1968, at 1330 Avenue of the Americas, New York, N.Y.

Present: Mr. William Druhan and Mr. S. Arnold Smith, appearing on behalf of the subcommittee, and Mr. George Kinsley, witness.

Mr. George Kinsley, former controller of the D. H. Overmyer Co. and subsidiaries, called as a witness, was examined and testified as follows:

Mr. SMITH. Will you identify yourself for the record?

Mr. KINSLEY. I am George Kinsley, former controller of the Overmyer Co. and subsidiaries.

Mr. SMITH. Mr. Kinsley, do you solemnly swear or affirm that the testimony you are about to give to representatives of the special subcommittee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KINSLEY. I do.

Mr. SMITH. The questions will be handled by Mr. Druhan.

Mr. DRUHAN. Overmyer testified that the Overmyer Co. was founded in March 1966. If that is correct, when were the expenses first recorded for that company?

Mr. KINSLEY. Well, let's see. I know it was in the beginning of the year; I am not sure whether we recorded expenses in March or June. I don't really remember, to be honest with you. Or possibly in May. But it was in 1966.

Mr. DRUHAN. Were expenses recorded as of a particular date or were they phased in? Did he start recording payroll one month and other expenses some other month or did he start recording all expenses as of some date?

Mr. KINSLEY. If my recollection is right, I think it was as of a date but at this point I don't remember what the date was, because we did eventually get payroll transferred to the Overmyer Co. and I believe we filed payroll tax returns under the name of the Overmyer

Co. or I suppose the D. H. Overmyer Warehouse Co., and I am not sure at this point which way the allocation of overhead was made, whether or not all the overhead was in the Overmyer Co. and we allocated some to the warehouse company or vice versa.

I don't know. It's kind of foggy at this point.

Mr. DRUHAN. We appreciate that.

The income tax return filed as of August 31, 1966, for Overmyer Co. and subsidiaries lists the Overmyer Co. as one of the subsidiaries.

Mr. KINSLEY. Well, who would it be a subsidiary of?

Mr. DRUHAN. Probably the Ohio Co.

Mr. KINSLEY. It's either that or the other way round, because I know it was set up as sort of a management services company and it was either—

See, I don't know who owned who at this point because I thought it was the Overmyer Co. that owned the others.

But we always used this as the management services company which in effect would be the top company to which allocations are made to all the others.

Whether or not they owned the other ones, or whether somebody owned them I don't remember.

Mr. DRUHAN. Would the expenses shown on the income tax returns labeled "Overmyer, Inc., and subsidiaries" as at August 31, 1966, be complete for the period of time involved?

A footnote said that the Overmyer Co. and certain other subsidiaries came into existence sometime between January 1 and August 31 of that year.

If they are shown as coming into being, be it March or May or June would the expenses for the period shown be the complete expenses for the company for that period? Or would some expenses still be buried in the warehouse companies?

Mr. KINSLEY. Well, I would say that they would probably be buried so to speak in the warehouse company prior to the time the Overmyer Co. was actually organized and operational.

But from the time that it actually became an operating company, people were transferred to that company, and so on and so forth, then all the expenses should have been in that company.

Mr. DRUHAN. Overmyer allocated expenses to the communications company based on a period of September through December 1966. He contended that the Overmyer Co. expenses were not available for the period prior to September 1.

To your recollection is that correct?

Mr. KINSLEY. They should have been. There were books set up.

Mr. DRUHAN. The books were set up and it was reported for income tax purposes and therefore he should have been able to get one month or some such period?

Mr. KINSLEY. For income tax purposes I can't tell because I never had anything to do with the income tax preparation but there was Overmyer Co. books and they had to have payroll books and everything else.

Mr. DRUHAN. As a normal function of the Overmyer complex how often were financial statements prepared? Monthly? Quarterly? As needed?

Mr. KINSLEY. For publication purposes or internally or—

Mr. DRUHAN. Any purpose.

Mr. KINSLEY. For publication purposes the attempt was first made to get them out quarterly, which I don't think we did because we were so far behind initially and I think if I am not mistaken they came out in February and August for publication purposes, August 31 being the yearend and February being the semiannual period.

Starting with February of 1966 I started getting out monthly reports, internal reports, that wouldn't have any relationship as such to published reports, and I got them out for February, March, and April.

Mr. DRUHAN. 1966?

Mr. KINSLEY. Yes. Now I don't know whether, I can't remember whether there was anything for May or not.

Mr. DRUHAN. My question on the delay is pointed to the fact that he attempted to sell the communication companies sometime in the period January through March of 1967.

At the time of negotiations in March 1967 he had a balance sheet as of February 28, 1967. He contends that in April and May expenses for the Overmyer Co. were not available.

Mr. KINSLEY. Was this 1967 or 1966?

Mr. DRUHAN. 1967.

Mr. KINSLEY. Well, there I wouldn't know. I left in November of 1966.

Mr. DRUHAN. Right, but what I want to find out is what the normal operational delay would be.

If he had a balance sheet as of the end of February in the early part of March, why couldn't he have had a report of the expenses in April or May for the same date? That is, February and March. Wouldn't that normally be available to him? Is there that much of a backlog?

Mr. KINSLEY. I really couldn't say with any certainty because I don't know what happened, but take for example, that I mentioned I got statements out in February, March, and April. Now I got them out about 45 days after the close of business.

In other words, February's were out about April 15. Now in May he demanded that the accounts payable operation and the accounting department be set up on a centralized basis, one company paying all the bills and charging it back and forth, and I had to set up a machine accounting operation, and that took about 3 months to get the bugs ironed out.

That is, I don't know if I even issued a May statement. It could be something like that came up for the period you question but I am not aware of it.

But if he had a February 28 statement he should definitely have January and February expenses.

March is debatable when he could have them.

Mr. DRUHAN. But it should certainly be within the same time period; if he could get a February statement out in the middle of March, he should be able to get a March statement out by the end of May?

Mr. KINSLEY. I would say so, yes. It would seem logical.

Mr. DRUHAN. In summary then, of that line of questioning, would you agree that as of May 1967 he should have been in a position to

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know the expenses of the Overmyer Co. from inception, be it April or May of 1966, through March of 1967?

Mr. KINSLEY. Well, I really couldn't say that with certainty, you know.

Not being there, I don't know.

Mr. DRUHAN. It would have been normal when you were there, wouldn't it?

Mr. KINSLEY. Well, it wouldn't be, depending on what developed or what came up because, as I said, if somebody came up to me in July—

Mr. DRUHAN. We have already established that he certainly should have had it pre-September.

Mr. KINSLEY. Yes. Well, he had to file income tax returns and everything else. So I would say he definitely should have had them from inception to August of 1966.

Mr. DRUHAN. In point of fact he did have them through December.

Mr. KINSLEY. Right. But really I am not qualified to judge what he did or didn't do after I left. It wouldn't be fair, you know, saying that he should have if I don't know.

Mr. DRUHAN. You testified previously that real estate was recorded at appraised value. In the case of a newly constructed warehouse, which I understand they were constructing fairly rapidly in this period, am I correct?

Mr. KINSLEY. Yes.

Mr. DRUHAN. Who would normally do the appraising and at what point in time would he do it and when would the value of the warehouse be recorded on the books? When would it be capitalized?

Mr. KINSLEY. Well, we had a policy of capitalizing the month after the building became operational, in other words after the construction people said it was fully complete and there were people in there or they were ready to do business, a month after that we would start capitalizing, we would start depreciating it, so at that point it would be set up on the books. It would be capitalized when the building is complete and ready to be operational.

Mr. DRUHAN. Who did the evaluations?

Mr. KINSLEY. Just members of that American Appraisal Institute. Various and sundry, depending on where it was. I think the normal practice was they tried to get fairly local appraisers.

Mr. DRUHAN. And they would do their appraisal at that time also?

Mr. KINSLEY. No. As I remember we did have appraisals prior to the time the building was complete and sometimes it was prior to the time any work at all was done.

Mr. DRUHAN. The balance sheet shows an item for the value of warehouses under construction. How was that obtained?

Mr. KINSLEY. Let me think.

I know initially it was based on actual construction costs. I am not absolutely certain but I think then we changed to percent of completion basis.

In other words if the building was complete or 50 percent complete as of a certain date, we would capitalize or set up in construction-in-progress, 50 percent of the estimated cost of the building, even though we might not have all the bills since there was a rather late billing

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from the construction companies and sometimes 6 months after the building was complete we would be getting bills in.

So I think, I am pretty sure, there was a change to percentage of completion basis. We set it up as a construction-in-progress and accounts payable.

Mr. DRUHAN. You testified that you resigned in November 1966 because of a disagreement as to the degree of adoption of certain acceptable accounting principles and procedures.

Could you elaborate on that position? Could you explain in detail just what the disagreement was and which policies you were referring to?

Mr. KINSLEY. The basic principle of accounting was that, while a building is under construction, it is good accounting to capitalize all expenses that are related to the construction of that building.

Now we had adopted the policy that certain overhead within the New York office, controller's department and legal people, people going around looking for the buildings and people of that nature should be capitalized and we would capitalize expenses attributable to them for that period and charge them to the building, in other words, increase the cost of that building.

And I feel there was nothing wrong with that. It is an acceptable accounting principle.

At the time I had the disagreement I couldn't reconcile in my own mind the amount of expenses that they desired to capitalize. I felt that it was too exorbitant and it wasn't warranted under the circumstances.

In other words they wanted to capitalize, say, 95 percent of administrative salaries and so on and so forth, which I didn't feel was justifiable. I felt some other amount would have been justifiable but not that.

Mr. DRUHAN. What kind of accounting entries would you make after they had recorded these as cost of the building and recorded the appraised value of the building? What would be the disposition of the difference?

Mr. KINSLEY. Basically the difference between the cost and the appraisal was put into capital surplus. In effect it's an appraisal surplus and Overmyer just put it into surplus on the statements.

Anything to increase the cost that didn't affect the appraisal would have a negative effect on surplus. In other words it would be a charge to surplus, reducing surplus for that amount.

Mr. DRUHAN. Were they consistent in recording warehouses at appraised value, or was it cost or appraisal value, whichever was greater?

Mr. KINSLEY. It was all appraisal value as far as I know while I was there.

Mr. DRUHAN. Do you know an instance where appraisal value was less than cost?

Mr. KINSLEY. I can't remember any specifically. I think there might have been one but I am not sure.

It sticks in my mind Minneapolis might possibly have been but I don't remember. It might have been the land or buildings, if we had an appraisal on land plus buildings.

There might have been one or possibly two, but that would be at the most.

Mr. DRUHAN. You testified that you were employed by Overmyer commencing in August 1964. Would you then be familiar with the balance sheets prepared as of August 31, 1964, and August 31, 1965?

Mr. KINSLEY. The August 31, 1964, one I would be familiar with in that I didn't have anything to do with the preparation of it but I at various times had to check into it and see what made it up, et cetera.

I don't even know whether that was prepared in New York. It's possible it might have been prepared by the Toledo people.

The August 1965 one, I would be the one that would have been responsible for preparing the financial statements for that period.

Mr. DRUHAN. We will come back to those in a minute. First I would like to clarify the terminology. Overmyer testified that companies under construction would remain State corporations until the first building was completed and then it would be transferred to the Ohio company.

When this happened would it be correct to say that the company under construction became a subsidiary where previously it would be considered an affiliate?

Mr. KINSLEY. Yes. That's correct.

Mr. DRUHAN. These companies were not absorbed by the Ohio company? They were just considered a subsidiary?

Mr. KINSLEY. Right. They remained a separate corporate entity, and it was just that their stock was now owned by the Warehouse Co. of Ohio instead of by Mr. Overmyer personally.

Mr. SMITH. So when it was owned by Overmyer personally—

Mr. KINSLEY. It was at that point an affiliate.

Mr. SMITH (continuing). It was an affiliate. When it was owned by the warehousing company it was a subsidiary?

Mr. KINSLEY. Right.

Mr. DRUHAN. Overmyer testified that at August 31, 1964, he had 15 affiliated companies which were not included on his income tax because the income tax included only the Ohio company and wholly owned subsidiaries. A number of these affiliated companies were not included on the 1965 income tax.

Could you explain whether or not these companies were ever in existence or what happened to them?

Mr. KINSLEY. Are you referring to strictly warehouse companies?

Mr. DRUHAN. I believe I am. He didn't say.

Let me read off a few of them. They are all called D. H. Overmyer Warehouse Co., with the State following in parentheses.

He lists them for Missouri, Colorado, Texas, Arizona.

Mr. KINSLEY. Well, they were actual corporate entries, and they did at one time or another have warehouses.

Now it is possible they might have been affiliates, construction might have been completed after August 31, 1965. That should be the only reason why they were left out.

Mr. DRUHAN. Why wouldn't they be listed then as an affiliate in 1965? If they came into being as an affiliate prior to August 31, 1964, it seems to me that from that date forward they would be either an affiliate or a subsidiary.

Mr. KINSLEY. Right.

Mr. DRUHAN. Why aren't they?

Mr. KINSLEY. Well, I would assume they are either an affiliate or a subsidiary.

Mr. DRUHAN. They are not listed for 1965.

Mr. KINSLEY. As what? A subsidiary?

Mr. DRUHAN. As anything.

Mr. KINSLEY. They have to be somewhere.

Now are you talking about income tax return or published financial statements?

Mr. DRUHAN. Published financial statements do not list individual companies. All they list for published statements that we received and that the Federal Communications Commission received was a consolidated statement which we understand by later testimony was to have included affiliates.

Mr. KINSLEY. Affiliates.

Mr. DRUHAN. Take the warehouse company—Maryland—that is shown in 1964 as an affiliate.

In 1965 it is not shown as a subsidiary or as an affiliate. Do you recall what happened to the Maryland company?

Mr. KINSLEY. I know definitely the Maryland company was in existence and it did have an operational warehouse, I believe, in Baltimore, and I know or I should say it was a subsidiary but at what period it actually became a subsidiary I couldn't tell you, you know, without looking at the records.

But I would say it would have to be either an affiliate or a subsidiary at that point in time and it was either an affiliate if the building wasn't complete or, if the building was completed, it would be a subsidiary.

The only thing that might be confusing everyone here is the distinction between the tax return and the books, and I believe, since for tax purposes you have a consolidation, I don't believe it is mandatory that you consolidate every company that you have if it hasn't previously been in a consolidation.

So it is possible that the consolidated return was filed in 1964 and the Maryland company at that point was not consolidated and, even though it became a subsidiary the following year, they might have taken the option not to consolidate it at that point.

That's why it wouldn't show up on your tax return as a subsidiary.

Mr. DRUHAN. He is trying to reconcile his tax return to his published statements. So it would have to show up some place and he doesn't show it in his 1965 reconciliation.

Mr. SMITH. How many other warehouses are there that don't show up in 1965?

Mr. KINSLEY. Does he actually show you a list of what he has on his financial statements?

Mr. DRUHAN. He lists them by companies, but not by amounts.

Mr. KINSLEY. And he doesn't have the Maryland company as an affiliate or subsidiary in the financial statements?

Mr. DRUHAN. Not in 1965; no, sir.

Mr. KINSLEY. No?

Mr. DRUHAN. He does in 1964.

There are seven other companies of that nature: the Pennsylvania company, the Massachusetts company, the New York company, the

Washington company, the California company, the Connecticut company, and the Oregon company.

None of these companies are shown on the 1965 reconciliation, although they are shown as affiliated companies in the 1964 reconciliation.

Mr. SMITH. You are saying that if he didn't consolidate these companies in 1964, taxwise it wouldn't be necessary to consolidate these in his 1965 statement? He'd have the option?

Mr. KINSLEY. I believe that's right, taxwise.

Mr. DRUHAN. That's right, he could show the affiliated companies separately but for reconciliation purposes with his consolidated published financial statements they would have to show up as something.

Mr. SMITH. But where does he show in this breakdown that he in fact consolidated these companies or that they were included in his consolidated return for 1964?

Mr. DRUHAN. Where he is making the statement that the difference between the published statement and the income tax statement for subsidiaries is a difference of affiliated companies.

He says all companies were included in the published statement as affiliates of Ohio, but the consolidated tax statement showed only subsidiaries.

Mr. KINSLEY. Well, where is Maryland as far as the statement goes?

Mr. DRUHAN. We don't know.

Mr. KINSLEY. That's not listed?

Mr. DRUHAN. It's not listed in 1965 as a subsidiary, nor as an affiliate, nor are any of the other eight companies.

Mr. SMITH. Just read this. This is a statement of what they made claim for. Here's the reconciliation and statement in 1964 followed by the 1965 reconciliation [handing document to witness].

Mr. KINSLEY. The only thing I could think of is possibly the wording in here; he says again as in 1964 the published statement includes all of the above-mentioned companies as well as the following companies which are owned by Mr. Overmyer but were not consolidated.

Possibly he is saying whatever is here should be taken away from whatever is here [indicating], and what's left over should be added to this group. I don't know.

Mr. SMITH. Well, if that's the case, then, these eight companies would have to appear down there.

Mr. DRUHAN. And there would be no logic why some companies appear as affiliates in 1964 and in 1965 some were repeated as affiliates and some became subsidiaries and some dropped off the board.

Mr. KINSLEY. Yes, but if you will notice now all these affiliates are completely different from what's on here [indicating].

Mr. DRUHAN. Right. So they are new companies under construction. I would assume that to be the case.

Mr. KINSLEY. What I am saying is possibly again that in 1964 the published statements include the above companies as well as the following companies which were owned, again this was a new company, was not in existence at this time; however, the group that has been transferred out of here to here would be the subsidiaries and the remaining ones that haven't been transferred are still affiliates.

So in order to get the true affiliate picture you still have to take all of these plus these less those [indicating].

In other words, you are saying Alabama doesn't appear here anywhere on the list. So these are new companies in 1965.

You take this list and you can knock off Arizona, Colorado, whatever it is, Georgia, Indiana.

You are going to come to those groups you are maintaining are missing. What I am saying is possibly whatever hasn't been transferred from this group to this group should be added down to this.

That's the only thing I can gather. It is like a jigsaw puzzle but, as I was saying before, it is impossible to lose the Maryland company because I know they did have books and had construction in progress and everything else.

Mr. DRUHAN. Would it be possible they sold it?

Mr. KINSLEY. No. There was nothing sold as long as I was there up until November 1966. They had sale and lease-back later, I think that's the only thing you can surmise from the papers.

Mr. SMITH. One thing we will surmise: this deposition won't read any clearer than it sounds.

Mr. KINSLEY. If you can figure out what I said, then you are all right.

Mr. DRUHAN. Is it accurate to state that the liquidity of the affiliated companies would not be available for any purpose other than construction?

Mr. KINSLEY. Well, what do you mean by liquidity?

Mr. DRUHAN. Let's take the cash available in affiliated companies. Is it not true that it was obtained through construction loans?

Mr. KINSLEY. I would say most of it.

Mr. DRUHAN. Is it not true that the cash was encumbered for construction purposes only?

Mr. KINSLEY. Well, I don't know that there was any specific agreements with the lending institutions or anything that money had to be specifically used for any specific thing. So therefore I don't think you could say that it was encumbered in any escrow type of deal or anything like that, because I know there was transfers of funds between companies. I assume that's what you are getting at.

Mr. DRUHAN. Yes. What I am getting at is it appears from the statements that he submitted that he had at August 31, 1964, \$1,350,000 cash in affiliated companies, whereas only \$312,000 in the Ohio company and its subsidiaries.

Now aside from legal encumbrances, was it not the policy and practice of the company that the cash available to the affiliated companies was in fact going to be used for construction?

Mr. KINSLEY. Well, I would say basically the philosophy was that, since it was all one group of Overmyer companies, money available to one company was available to all companies.

Mr. SMITH. Warehouse companies?

Mr. KINSLEY. Yes.

Mr. SMITH. So that you could commingle warehouse funds in terms of making funds available, but your question was whether you could use funds for a subsidiary, use affiliated funds in the affiliated pot for a communication subsidiary.

Mr. KINSLEY. I am talking warehouse companies. These financial statements don't include anything other than warehouse companies.

Mr. DRUHAN. What we are trying to establish is the availability of cash for communications companies. We believe that the \$1,350,000 cash on hand in affiliated companies was not necessarily available to construct television stations but rather to construct warehouses.

Mr. KINSLEY. Well, there again I think it's just a philosophy that wherever the money was needed it would be used. That's just the philosophy that he had—

Mr. DRUHAN. Wouldn't the money be needed to construct warehouses?

Mr. KINSLEY. Yes; it would be but it was one of those constant flow processes that everything was always under construction and always drawing down based on this percentage of completion and so on.

Mr. DRUHAN. But the time was to come when without another source of cash—

Mr. KINSLEY. Right. Without generating revenue or getting it some other way, that money would have to go for construction and whatever the money was borrowed for.

Mr. DRUHAN. It really wasn't as though you had \$1,300,000 that needed investing.

Mr. KINSLEY. I would say I have to go along with that.

Mr. DRUHAN. The balance sheet at August 31, 1964, for affiliated companies shows a surplus in excess of \$1 million. What does that represent?

Mr. KINSLEY. As of 1964?

Mr. DRUHAN. Yes, sir. This would be affiliated companies, so I would assume, since you said that affiliated companies became subsidiary companies upon the completion of the building, that these affiliated companies were under construction.

How did they attain a million dollars surplus while under construction?

Mr. KINSLEY. In 1964? Let me see.

At this point I really wouldn't know offhand.

Mr. DRUHAN. Take a look [referring to documents].

Mr. KINSLEY. Now these affiliates are the same ones we have been looking at before that are not completed, right?

Mr. DRUHAN. Yes, sir.

Mr. KINSLEY. Oh, OK, it's ringing a bell. When you say he had the same thing in 1965, the consolidated financial statements of the warehouse company and its subsidiaries, the financial statement of the warehouse company and affiliates includes the affiliated companies on top of the subsidiaries.

So in effect, if you had \$2 million worth of surplus on the Ohio company, you must have had somewhere along the line \$1 million loss on the affiliates up to that point.

Mr. DRUHAN. No; because adding it comes up to three, not two. It increases.

Mr. KINSLEY. We will have to strike that one out.

Mr. SMITH. That was a good theory, though.

Mr. KINSLEY. I just want to know which way it was going. I am trying to think. I can't really think at this point whether or not—

Mr. DRUHAN. Are you familiar enough with the company to know that it was earned surplus and not paid-in surplus?

Mr. KINSLEY. Well, I would say it wasn't earned surplus or, if it was, it was a very minor portion of it. Whether it was paid in at this time I can't tell you.

Mr. SMITH. It would more likely seem to be appreciation surplus wouldn't it?

Mr. KINSLEY. That's what I am thinking about. I am trying to remember how we showed the fixed assets on the affiliate group because, if it was just on a construction cost basis, there wouldn't have been any surplus involved but, if we did it on percentage of completion based on appraisal, there would have been some surplus there, but I don't remember at this point what we did.

That would be one answer but I don't know that that's correct.

Mr. DRUHAN. Is it not correct that Overmyer's investment is basically represented by his common stock investment?

Mr. KINSLEY. I would say "Yes."

Mr. DRUHAN. For these affiliates he lists common stock of \$16,000. Would you say that that represented the bulk of his investment?

Mr. KINSLEY. I would say "Yes," it does.

Mr. DRUHAN. The balance sheet for August 31, 1964, for affiliated companies shows an amount of \$1,561,000 for buildings. It also shows \$920,000 for construction in progress. Why would they show a building asset when it has been testified that an affiliate becomes a subsidiary when the building was completed?

Mr. KINSLEY. Well, it might have been that it was completed in the last month. It could have been completed theoretically in August and as such we wouldn't start depreciating it and so on until September. So it wouldn't be transferred until September 1. That would be possible, that buildings could be completed in that last month. In effect the turnover wouldn't take place until the following month.

Mr. DRUHAN. Why would they list construction in progress under an affiliated company?

Mr. KINSLEY. Because the others hadn't been completed buildings yet, so they are all construction in progress. You don't classify a building complete until it's complete.

Mr. DRUHAN. Right, but why do subsidiaries have construction in progress?

Mr. KINSLEY. Oh, say the Ohio company, they may have a completed warehouse in Toledo but they may be putting up a second warehouse in Toledo. So they may be a subsidiary and have a completed building on their books but there will also be construction in progress because they will also have another building going up.

Mr. SMITH. Apparently it has been said that at any time Overmyer could have had his statements certified and would have willingly done so were it a requirement of a bank or an insurance company or even of the FCC. From your knowledge of his books and records and your experience with the mechanics of his accounting setup, would this have been reasonably possible?

Mr. KINSLEY. Well, I don't know whether the term "reasonable" is correct. It would be feasible. He could have an audit and a certificate could be issued but it would contain a disclaimer due to the fact that land and buildings are on an appraised valuation, and also the audit

firm would naturally have to agree or disagree as to his policy on capitalization. Now if they agree, naturally nothing would be stated. If they didn't, they would have to take a disclaimer on that also.

Mr. DRUHAN. Actually you are misquoting Mr. Overmyer. He stated he could obtain a certification of the communications companies. He did not state he could get one for the warehouse companies.

Mr. KINSLEY. That's right.

Mr. DRUHAN. All right. I don't doubt that about the communications.

Mr. KINSLEY. But you asked could he also on the leasing.

Mr. DRUHAN. This is required by law.

On the warehouse companies you think he could have gotten a certification but one which would have been qualified?

Mr. KINSLEY. Yes. The opinion is rendered but it's not accepted as a certified audit due to the fact it is not acceptable accounting practice to show real property at appraised valuation.

Mr. DRUHAN. In fairness, he always indicated on his statements that they were at appraised value.

Mr. KINSLEY. Yes. Well, I would have had to walk out sooner if he didn't.

Mr. DRUHAN. When was it actually with respect to Green & White that Overmyer knew that these were very substantial debts that were going to have to be assumed by the warehousing company?

Mr. KINSLEY. Well, I think he became aware of the magnitude of the debt and the bills of Green & White sometime in the latter part of 1966.

Mr. DRUHAN. Would it refresh your recollection if I read from your diary? It was not submitted for the record. You were writing in October, October 18, 1966, to be exact, the Green & White liability was going to be substantial and you knew that fact as of that time. Did Overmyer know that in October too, that it was substantial?

Mr. KINSLEY. Yes. Somewhere; that's about the period. Somewhere in October.

Mr. DRUHAN. To the best of your knowledge did the lawyers know that he was going to have to start looking about, shifting about to find funds to discharge these debts?

Mr. KINSLEY. I don't know at that point how they had planned to take care of that or anything.

Mr. DRUHAN. Did he realize his responsibility for these debts at that time or just the fact that these were substantial debts?

Mr. KINSLEY. No, I believe he realized it was his responsibility one way or another, either through the warehouse company or—

Mr. DRUHAN. One way or another. In other words there was no question that he was not going to pay it?

Mr. KINSLEY. No, I felt that he knew it and that he would pay it. Just a matter of how.

That was another one of the things we had an argument over. I wanted to make sure that liability was recorded properly.

Mr. DRUHAN. You are not talking about these monthly internal statements that you were concerned with?

Mr. KINSLEY. No.

Mr. DRUHAN. On what kind of a published statement? What would have been the date of the published statement?

Mr. KINSLEY. Well, August 31, I think.

Mr. DRUHAN. 1966?

Mr. KINSLEY. They were aware that there was a liability at that time of Green & White. Now it was never a subsidiary or an affiliate. I think it would be a contingent liability of Overmyer. So it's a question as to whether there should have been a footnote on the financial statement.

Mr. DRUHAN. Let me ask you, while we are on contingent liabilities, another question. Why didn't a provision for Overmyer's contingent liability appear on his balance sheets, both warehouse and personal? You may not be able to answer this question completely because it also deals with his personal statement, in connection with which he personally guaranteed certain bank loans.

Why wouldn't these guarantees have appeared as a contingent liability against his assets?

Mr. KINSLEY. Well, it doesn't necessarily have to show up in the figures, but it's best to explain it in a footnote.

Mr. DRUHAN. Are you familiar at all with his personal statement of August 31, 1964?

Mr. KINSLEY. No.

Mr. DRUHAN. Did you do any work at all on his personal financial submission to the FCC?

Mr. KINSLEY. No. Tom Burns usually did that.

Mr. DRUHAN. Did he have personal statements on an annual basis too, like he did for the warehouse companies?

Mr. KINSLEY. I think he used to issue one included with the warehouse statements like another exhibit.

Mr. DRUHAN. So it would have been your feeling that, properly referenced, it should have been shown in a footnote?

Mr. KINSLEY. Well, there again I think if a CPA had done it, it would have been required. But there again it's not a certified statement. I can't remember whether in the notes they had any reference to guarantees or anything of that nature.

Mr. DRUHAN. I see. The reason I asked you is basically because you are familiar with the warehousing company. Mr. Overmyer claims that the full resources of the warehousing company, as well as his own personal resources, stood behind what he did with the communications companies.

And by the time you left the company he had accumulated well over \$2 million of contingent liabilities in the form of bank loan guarantees on behalf of his communication companies.

Assuming that he didn't show these on his personal statement, which he didn't for the one in 1964, why wouldn't the warehousing company balance sheet, if it was in fact involved with communications company financing, have indicated some reference to these contingent liabilities?

Mr. KINSLEY. Well, I would guess there probably should have been a footnote to the effect that the company has guaranteed loans of affiliates or something of that nature. I can't specifically say why.

Mr. DRUHAN. There are no contingent liabilities provided for at all in the warehouse statement. Is it normally handled that way?

Mr. KINSLEY. It's not normally. It's normally done with a footnote. I don't know at this point why it wasn't done.

Mr. DRUHAN. Let me ask you: Since there was no footnote on the statements, one might reasonably assume that there were no contingent liabilities of any kind against the warehousing company?

Mr. KINSLEY. I don't think you can assume that because a lot of companies don't list contingent liabilities, depending on their materiality or other circumstances, but I think probably it would have been required, had the certificate been issued or a certified statement was published.

There, again, it's a management decision as to whether to include it or not include it. He just determined not to include it, I guess.

Mr. DRUHAN. Were you involved after the Green & White revelation with preparing statements or beginning to prepare statements before you left in November for presentation to a would-be purchaser of these communications companies?

Mr. KINSLEY. No.

Mr. DRUHAN. Were you aware at any time of any negotiations involving work to be done by the accounting department for projections in connection with any such sale?

Mr. KINSLEY. I can't remember any. I know that we were always making various projections for this, that, and the other thing. The only projection for sales that I was involved in was where the leasing company bought the land or something of that nature. That's the only sale I was aware of.

Mr. DRUHAN. Were you aware what the costs were for the leasing of the studios and antenna site in San Francisco?

Mr. KINSLEY. Not in detail; no. As I mentioned earlier, my accounting supervisor would have been on top of that and I would have gotten involved if there was a problem or something of that nature. That was the least of my worries at that point.

Mr. SMITH. Well, if there are no further questions, this deposition is concluded.

(Whereupon, at 2:50 p.m., the deposition was concluded.)

(The following additional material was submitted for the record:)

ITEM 2

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In re Application of

File Nos. BTC-5376, BTC-5377, BTC-5378, BTC-5379, BTC-5380

D. H. OVERMYER (TRANSFEROR)

and

U.S. COMMUNICATIONS CORPORATION (TRANSFeree)

For Voluntary Transfer of Control of D. H. Overmyer Communications Company, Inc., permittee of Stations KEMO-TV, San Francisco, California; WECO-TV, Pittsburgh, Pennsylvania; WSCO-TV, Newport, Kentucky; and WBMO-TV, Atlanta, Georgia; and for Voluntary Transfer of Control of D. H. Overmyer Broadcasting Company, Inc., permittee of Station KJDO-TV, Rosenberg, Texas

PHILADELPHIA TELEVISION BROADCASTING COMPANY (ASSIGNOR)

and

U.S. COMMUNICATIONS CORPORATION (ASSIGNEE)

For Assignment of License of Station WPHL-TV, Philadelphia, Pennsylvania

ORDER

Adopted: December 8, 1967. Released: December 11, 1967. By the Commission: Commissioners Bartley, Cox and Johnson dissenting and issuing statements; Commissioner Loevinger concurring and issuing a statement.

1. The Commission has before it the above-captioned transfer applications, under which D. H. Overmyer proposes to transfer control of the permittees of five UHF television station to U.S. Communications Corporation. The Commission also has before it the above-captioned assignment application, which proposes to assign the license for Station WPHL-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 R.R. 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 television 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 Company, Inc., permittee of Stations KEMO-TV, San Francisco, California; WECO-TV, Pittsburgh, Pennsylvania; WSCO-TV, Newport, Kentucky; and WBMO-TV, Atlanta, Georgia, from D. H. Overmyer to U.S. Communications Corporation, are granted.

It is further ordered, That, the application for transfer of control of D. H. Overmyer Broadcasting Company, Inc., permittee of Station KJDO, Rosenberg, Texas, from D. H. Overmyer to U.S. Communications Corporation, is granted.

And, it is further ordered, That, the application for the assignment of the license of Station WPHL-TV, Philadelphia, Pennsylvania, from Philadelphia Television Broadcasting Company to U.S. Communications Corporation, is granted.

FEDERAL COMMUNICATIONS COMMISSION,¹
BEN F. WAPLE, Secretary

DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

In light of Commissioner Cox's dissenting statement, it is inconceivable to me that a majority of the Commission could vote to grant its consent to this transfer.

If this case should become precedent, I think the Congress may as well repeal Section 310(b) of the Communications Act and recognize that it is public policy that, once a permit is granted, it can be bartered at the convenience of the private parties, without placing on the Commission any responsibility for making a determination that the transfer is in the public interest.

The policy against profiteering from permits is one which has been followed by this Commission prior to the incumbency of any present member.

The Interim Policy, worked out after years of effort, had as one of its prime objectives the prohibition against sales of blocks of stations. Some of us in the majority believe that this would lead eventually to less concentration of the medium into fewer and fewer hands—even in the cases which were grandfathered in.

¹ See attached statements of Commissioners Bartley, Cox, Loevinger and Johnson.

If I sense a trend in policies of multiple owners correctly, it will not be long before the antitrust laws will come into play, which will result in the divestiture by some of the grandfathered groups.

If there is a majority of the Commission prepared to scrap the Interim Policy, it should be done forthrightly and not on a case-to-case basis.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX

The majority's action here further erodes our interim policy against concentration of control of television facilities in the top 50 markets, but even more serious are the blows it strikes at our long established policy against allowing the holder of a construction permit to sell it for more than the out-of-pocket expenses reasonably incurred in acquiring the permit. As a consequence, I view this action as one of the most serious instances of the Commission's inability or unwillingness to discharge its regulatory functions that I know anything about. And to compound the problem, no one in the majority is willing to state for the record a rational justification for the result reached. Presumably no one will appeal this disposition of the matter, since both parties before us seek this outcome, but I do not think this absolves an agency like this Commission of the duty to state clearly the grounds for important actions which it takes—and I don't think anyone will dispute that this is an important and difficult case.

It is a truism that hard cases make bad law, and I think this represents a classic example. Mr. Overmyer was a very successful operator of a chain of warehouses. He developed a thriving and expanding business which generated substantial income. He became interested in UHF television, and decided to commit a substantial part of his profits to it. He acquired six construction permits in major markets, put one station on the air (in Toledo), and is here seeking approval of the sale of the remaining five permits (for San Francisco, Pittsburgh, Newport, Kentucky (the Cincinnati market), Rosenberg, Texas (the Houston market), and Atlanta).

I do not question Mr. Overmyer's sincerity in acquiring the permits, nor do I suggest that he sought them for the purpose of speculating in permits or licenses. I think he intended to build and operate the stations and expected them to be profitable—as I am sure they will be in time. He also embarked on an ambitious network project, which he turned over to others when he encountered financial difficulties.¹ These problems were encountered in his basic warehouse business. I am satisfied that he is selling the permits because he is no longer able to implement them as planned, but also, I think, to raise funds to meet his commitments in the warehouse business. I hope he is successful in resolving his difficulties in the warehouse field, but do not believe the Commission has any obligation to stretch its rules or policies to accommodate him. I think the majority's action in doing just that is a serious disservice to the public interest which cannot be justified in terms of sympathy for an individual who has fallen into financial difficulties in a non-broadcast field.

I recognize that the Communications Act contemplates the alienability of construction permits, but it is clear that Congress has acquiesced—with approval, I believe—in our long-established policy limiting the price to be received for such a permit to the seller's reasonable out-of-pocket expenses in acquiring the permit. I think this is a wise and necessary policy which should be rigorously enforced in order to prevent speculation in permits.

There are very few businesses in which a man who plans on starting a new enterprise but is unable to open for business can recover all, or substantially all, of his expenditures in trying to establish his projected business. Normally his authorization to engage in the business is of no value because anyone can get one just like it, and his other expenditures may not represent items of any real value to someone else interested in his proposed business field. But anyone who wants to go into broadcasting must have a permit or a license, and it is usually much simpler to acquire an outstanding authorization than it is to prepare and file an original application, run the risk of competing applications, and, if any are filed, the delay, cost and risk of failure involved in a comparative hearing. So one who obtains a permit but later encounters difficulties can usually dispose of it without suffering any out-of-pocket loss. I think that is all anyone is entitled to expect, and our policy has always been to prevent such a permit holder from realizing a profit in disposing of his authorization. I think the majority is breaching that policy here.

¹ The network ceased operation after a very short period.

We have been quite strict in holding sellers of permits to their actual expenses, and have often required the elimination of improper or doubtful items. Here, however, the majority has allowed Overmyer to claim credit for more than twice the amount spent directly by or for the five permittees. The balance (\$666,514) represents unreimbursed staff services furnished the permittees by other Overmyer companies, including legal, accounting, payroll, personnel, messenger, public relations and other services. The method of calculating this sum, as outlined by our staff, seems very complicated and open to possible abuse. Certainly it represents a novel approach which I think would have to be tested in a hearing before it could be accepted.

But even if we assume that Overmyer has actually reasonably spent \$1,331,900 in acquiring the five permits here involved, I think this transaction still violates fundamental policy. If one accepts this figure, this would mean, under our normal practice, that Overmyer could sell all his permits outright for \$1,331,900. Certainly that would be a clean transaction raising a minimum of questions. But that sum apparently is not large enough to take care of his other financial problems. If he is to be able to use the permits to resolve his difficulties, he must arrange matters so that he can produce a substantially larger amount in the immediate future. So he agreed to sell 80% of his interest in the permits for \$1,000,000—all of which was paid, as a so-called down payment, on March 28, 1967, before the applications were filed with the Commission.

AVC then agreed to lend Overmyer \$3,000,000—again, half of this amount was advanced on May 3, 1967, with the remaining half to be turned over to him on closing of the stock purchase agreement. This large loan is to be secured by the pledge of Overmyer's remaining 20% of the permits, by second mortgages on certain of his non-broadcast properties in which he has an equity of over \$6,000,000, and by the execution of guaranties of the debt by Overmyer and all his companies. Great emphasis is placed on these security arrangements, and they seem adequate—though apparently Overmyer could not raise a comparable sum from anyone other than AVC. But if, in fact, Overmyer wished to retain a 20% interest in the broadcast properties for the indefinite future—and if AVC were willing to settle for 80% of the permits and to make the loans as a separate transaction purely on the basis of the security offered—then why the option which permits AVC to acquire the remaining 20% during a one year period three years after closing under the stock purchase agreement? The price under the option is to be determined by an odd formula which capitalizes gross receipts, rather than net profits as in most cases with which I am familiar, but shall not exceed \$3,000,000—which just happens to be the amount AVC has agreed to lend Overmyer.

It seems to me that the realities of the situation are as follows. I think Overmyer is willing to dispose of 100% of his construction permits, but not for \$1,331,900 which our policies would allow him to realize—if one accepts his claims as to out-of-pocket expenses. I think he is willing to sell out completely for \$4,000,000. On the other hand, I think AVC would much rather acquire all of Overmyer's interest in the permits, and that it is willing to pay \$4,000,000 to achieve this result. After all, I know of no other way in which AVC can acquire five authorizations in the top 25 markets for so little—or, indeed, at all. Our interim policy on concentration of control in the top 50 markets would limit them to a maximum of three—I shall refer further to this below. In any event, if the company were to seek entry into these five markets in any other way it would find that no channels remain unassigned in Pittsburgh, and that there are one or more applications pending for the last channel in each of the other four. If it went into hearing it would face substantial costs, probably a significant delay, and the very real likelihood that it would not prevail in all four cases—and the possibility that it might lose all of them. Our criteria for comparative cases do not favor non-local corporations with no past broadcast experience whose principals do not propose to be personally involved in management of a station applied for—and if AVC did get one permit, this factor would weigh against it in the remaining proceedings if its opponents there did not have other broadcast interests. So if AVC could not do business with Overmyer, it would have to try to buy permits or operating stations from a number of other parties holding authorizations for these markets. I think no one would deny that this would be difficult to accomplish, and that even if possible, the cost would be much greater.

So for these reasons, as stated above, I think that AVC is willing to meet Overmyer's terms—but they were no doubt told that the Commission would

not approve sale of the permits for so high a figure. The result, I think, is the elaborate transaction now before us. If I am right in my appraisal, consider how things will work out. Overmyer will get \$4,000,000 to meet his immediate and urgent needs—in fact, he has already received \$2,500,000 of that sum. While this is cast partially in the form of a loan, I don't think Overmyer will ever repay the \$3,000,000 which he is purportedly borrowing—and I don't think the parties ever contemplated that he would. Instead, having received \$1,000,000 outright for 80% of his interest in these permits, Overmyer is getting an additional \$3,000,000 for the remaining 20%—a mark-up of 12 to 1 for this last fifth of his present holdings. I think this represents profiteering from the sale of permits in violation of our past policies and practices. I think this entire complex transaction has been carefully designed to achieve exactly this heretofore prohibited result.

It is argued first, of course, that AVC may never exercise the option. It is true that is a possibility, but I think it is so unlikely that it can be ignored. AVC is clearly going into television on a large scale, presumably after careful study of the prospects for these facilities. While no one thinks that independent UHF operation in these multi-station markets will be easy, I think that all careful students of broadcast developments anticipate that UHF stations in markets the size of these five will become modestly profitable in a reasonable period of time and that they will eventually be very profitable. Thus I think both parties expect the option to be exercised, and I am morally certain that it will be.

Next it is argued that the option price may be less than \$3,000,000, since that is stated as a ceiling. But as pointed out above, the formula for calculating the price is an unusual one, based on gross receipts instead of income. If the five stations have combined gross revenues of just \$3,000,000 in the fourth year after closing under the stock purchase agreement, then the maximum price will be payable. I think the parties fully intend this result and that Overmyer—having gotten the \$3,000,000 in advance—will never be required to repay the purported loan in that amount.

It is also contended that Overmyer's 20% stock interest may be worth more than \$3,000,000 by the end of four years, and that the option is therefore disadvantageous to him. As indicated above, I think this is quite likely—but if so, the increase in value will be largely due to additional investment by AVC in the construction and operation of these stations, and Overmyer will have no equitable claim to more than the 12 to 1 mark-up he is to get under the agreement. In fact, for all practical purposes the parties have made a present contract for the complete sale of Overmyer's five construction permits for \$4,000,000—they have simply deferred part of the transaction for up to four years in an attempt to get around our policy of limiting the price for permits to the holder's reasonable expenses in acquiring them. In other words, I think the parties bargained for the sale and purchase of these permits as if our policies didn't even exist; then, having agreed to the overall price, they sought to fit their transaction to the policies which we have been following for years. The result is to violate the spirit of our rules in a way which I find intolerable.

The final aspect of the transaction to which I object is that it violates our interim policy against concentration of control in the top 50 markets. Overmyer acquired or applied for these permits before we adopted our interim policy in June, 1965, and since we stated that we did not presently intend to require divestiture of holdings in excess of the indicated limit, he has grandfather rights to build and operate these five stations—in addition to the one he already has on the air in Toledo. But in saying that we would not require divestiture, we went on to state that if a holder of more than the specified maximum number of stations decided to liquidate his holdings, the parties to whom he sold would have to meet our policy. Thus while Overmyer can sell his permits, he cannot confer his grandfather status on the buyer. Under our policy, AVC is not entitled to control more than three television stations in the top 50 markets. However, the two transactions the majority is approving here—the second one involves acquisition of control of WPHL-TV, a UHF station in Philadelphia—will result in AVC's acquiring control of six stations in the top 25 markets (Philadelphia 4, San Francisco 7, Pittsburgh 9, Cincinnati 16, Atlanta 19, and Houston 25). This is a flagrant violation of our policy—and of the public interest in a diversely controlled broadcast system.

And, again, the majority does not state the grounds for its action. Its order simply recites the conclusory formula that “the applicants have affirmatively and

compellingly shown that a grant of the applications would be consistent with the *Interim Policy*.” (See note A below.) This is the same meaningless justification the majority has used in approving transfers of two other UHF stations in major markets in violation of the interim policy—one in Boston and one in Cleveland²—while in approving an earlier transfer in Boston, they issued no order at all.³ It is true that in the *Harvey* and *Superior* cases individual members of the majority wrote brief concurring opinions. However, none of these really considered the purposes of our *Interim Policy* or marshalled any facts in the particular case which were claimed to justify different treatment than that we had said we would give in such situations generally. Instead, they talk of need for strong financial support for new UHF operations (though we said when we proposed the rule that we need not rely on multiple owners for the development of UHF), of the desirability of treating UHF as “favorably” as VHF (though I do not think it favors a service to allow it to fall into relatively few hands, and we were trying principally to avoid concentration in UHF), and of the fact that grant of the application would bring a new service at the earliest possible time (which is true in every case). But there has never been a real effort to meet the objections of the minority or to justify the particular relief being granted in concrete terms.

It has been common in the past for certain members of the Commission to say that they did not like the pattern of concentration which has developed, but that they could not reverse the trend established by earlier members of the agency. It was to correct this, and put everyone on notice and treat them all equally, that our interim policy was announced. This was late in the game, but held the promise of preventing our expanding UHF television service from following the pattern of closely held ownership which has developed in VHF. But the majority which is approving this transaction has so eroded the policy that we seem well on the way to an even higher degree of concentration in VHF—and just as high a level in UHF as well. Certainly they cannot claim that their predecessors are responsible for this development, or that they do not know what they are doing. If the public eventually finds itself saddled with an undesirably closely held television system, my colleagues of the present majority will be responsible. Of course they believe this is in the public interest. If this is so, why do they not state the reasons for this conclusion, instead of simply parroting the requirement of the policy that one seeking a waiver must make “a compelling affirmative showing”⁴ in order to avoid designation of his application for hearing? I think they have a duty fully to explicate the grounds for the result they reach.

NOTE A.—Since the preparation of my dissent I have received a revised draft of the order in which the paragraph in question has been changed somewhat. Rather than rewrite the entire section of my dissent dealing with this aspect of the case, with consequent increased delay, I will simply attach this added comment.

The order now reads as follows:

“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 television service to the public. It is therefore believed the public interest would be served by a waiver of the *Interim Policy*.”

This represents a slight change, but I'm not sure it's an improvement. The original draft at least said that the applicants had made an affirmative and compelling showing in support of their efforts to avoid the operation of our *Interim Policy*. While I don't think that is true here, at least it recognized the standard we set for these cases—which certainly is a high one requiring something more than a routine conclusion that the public interest would be served by grant of the application in the face of our policy statement.

Look at what is offered in support of this watered-down conclusion. The majority now says (1) that this action will foster the development of UHF television stations, and (2) that this is consistent with our efforts to provide a more competitive nationwide television service. I certainly favor the expansion of our growing UHF television service, but I am not willing to disregard sound, long established policies or to ignore pending rule proposals simply because

² *Harvey Radio Laboratories, Inc.*, 8 RR 2d 660, adopted October 20, 1966; *Superior Broadcasting Corp.*, 11 RR 2d 211, adopted September 19, 1967.

³ *New Boston Television, Inc.*, 7 RR 2d 857, adopted July 27, 1966.

⁴ *Interim Policy on Television Multiple Ownership*, 5 RR 2d 271, adopted June 21, 1965.

someone offers to build a UHF station. The development of UHF stations would also be fostered if Overmyer were to sell his permit to two or more parties—so that no one would acquire control of more stations than our interim policy contemplates—at prices aggregating no more than his reasonable out-of-pocket expenses in acquiring the authorizations. In any event, I do not think the majority can make a finding, on the basis of what is now before us, that there is such an unusual and urgent need for additional television service in these five communities that we must disregard important policies in other areas in order to rush these stations to completion. UHF is important, but not all-important.

Similarly, I am in favor of a more competitive nationwide television service. I have done what I could to promote that goal ever since I had some part in the efforts of the Senate Commerce Committee in 1956-1957, to galvanize the Commission into action in this direction. But I do not think that our chances of getting an improved competitive climate depend upon our allowing profiteering from the sale of permits or permitting our burgeoning UHF service to fall into the same patterns of concentrated ownership and control which characterize the older VHF service.

In other words, I think the revised explanation of this action has no relevance to the facts of the case or the country's very real long range interest in a widely-based competitive television service in which UHF stations must play a growing part.

Also since my dissent was written, Commissioner Loevinger has added a separate concurring opinion. I do not wish to prolong matters unduly, but would add the following brief comments.

Initially, he says that this transaction involves transfer of five construction permits and one license "from a financially weak, and possibly insolvent, enterprise to a financially strong one." To the extent this puts Philadelphia Television Broadcasting Company, the assignor of the license of WPHL-TV, into the same category financially as Overmyer, I think the statement is clearly mistaken. While Philadelphia Television has lost a substantial amount of money, as is true of virtually every new television station, there is nothing in the record before us to suggest that it is "financially weak, and possibly insolvent." I do not think any argument can be made that we must approve assignment of its license in order to insure that the people of Philadelphia will continue to get a worthwhile and competitively effective service from WPHL-TV.

Commissioner Loevinger concedes that my arguments "are not without some force," but says that on balance he thinks the public interest objectives of competition and diversity will be better served by approving this transaction than by rejecting it. What are the countervailing considerations he advances to justify this conclusion?

First, he notes that a number of licensees now hold more than the number of licenses specified under our Interim Policy, but that we have not proposed divestiture of any of their interests. This overlooks, however, that the proposed rule includes a Note reading as follows:

"Note 5.—Paragraph (a) (2) of this section will not be applied so as to require divestiture, by any licensee, of broadcast facilities owned prior to June 21, 1965. That paragraph will not apply to applications for assignment of license or transfer of control filed in accordance with § 1.540(b) or 1.541(b) of this chapter, or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if the assignment or transfer to the heirs or legatees does not create interests proscribed by the paragraph. Paragraph (a) (2) will apply to all applications for new stations, and to all other applications for assignment or transfer. Commonly owned "stations or stations prohibited by paragraph (a) (2) may not be assigned or transferred to a single person, group, or entity except as provided in this Note."⁵ [Emphasis supplied.]

Furthermore, our Interim Policy stated:

"Divestiture will not be required, but commonly owned stations in excess of the number set forth in the proposed rule which are proposed to be assigned or transferred to a single person, group or entity will be designated for hearing."⁶

These provisions clearly contemplated that the transfer of concentrated holdings would give us a chance to reduce such concentration. Commissioner Loevinger voted in favor of both the Interim Policy and the proposed rule, so I am at a loss to understand his apparent surprise that the policy is "now con-

strued" to require breaking up a group on transfer. Furthermore, I cannot agree with his conclusion that such a policy would "result in decreased competition and increased concentration." Certainly it cannot result in increased concentration of ownership since the clear effect would be to substitute two or more separate owners for the single individual or entity to whom the group had therefore been licensed or authorized. It may be true that smaller, more closely held multiple owners are more likely to withdraw from broadcasting—and therefore dispose of their stations—than entities like RCA, Westinghouse and GE. But even such limited reduction of concentrated ownership would inject additional competitive interests into broadcasting. But I think the crux of his position here is contained in the three sentences following:

"Further, the policy will prevent any other large or strong enterprise from acquiring group holdings. The result of such a course will be to leave us finally with a very few large and strong corporations holding "the maximum number of licenses now permitted under the rules, while all others will be limited to two or three licenses, and will be prevented by FCC rules from acquiring broadcasting facilities that permit them to compete with or challenge the few large protected group licenses. Thus I believe that the position contended for by Commissioner Cox proceeds from inadequate and unrealistic economic and market analysis and moves in the direction of promoting monopoly rather than competition."

Again, in view of his support of the policy and the rule proposal, I simply cannot understand his position. The whole purpose of these actions was to prevent other large or strong enterprises from acquiring group holdings comparable to the existing concentrations which gave rise to our concern in this area.⁷ So I must confess that I am amazed at his apparent view that we should fight an already undesirable degree of concentration by allowing other major group owners to develop. We would not be protecting the grandfather group owners—we simply indicated we would tolerate them. Admittedly it would be more logical—and I think desirable—to reduce existing concentration to our proposed lower level. If Commissioner Loevinger wishes to lead a move in that direction, I will be happy to support him. If he is saying that the present owners of five VHF stations in the top 50 markets are presently a monopoly—whose interests he seems to think I would be promoting by preventing AVC from acquiring six UHF stations in the top 25 markets—then we should be doing more than just trying to restrict further development of concentrated ownership. We should be moving to deal with the existing monopoly. I do not think that present group ownerships—however undesirable—constitute monopoly in any accepted sense. If Commissioner Loevinger feels that we now have a monopoly power in broadcasting which can only be countered by the creation of equally powerful group holdings, then I think he should set forth his grounds for this belief and suggest appropriate action to deal with the problem. Actually, the holders of multiple station interests have always contended that they enjoy no competitive advantage *vis a vis*

⁷ It is an interesting historical fact that Commissioner Loevinger was one of the principal movers in the effort to tighten our multiple ownership rules, as was natural in view of his background in the antitrust field. When I used to dissent from actions resulting in local concentration in small communities, he would say that I was worrying about inconsequential aspects of the concentration problem, and that we should act, instead, to prevent concentration on the national level through the ownership of facilities in the maximum permissible number of major markets. That is precisely what we are trying to do, but he seems to have lost his enthusiasm for the project. See, also, his dissent in connection with the assignment of WCBM and WCBM-FM to Metromedia, Inc., Minute #463-A-63, meeting of November 27, 1963, where he said:

"Of more significance, the licenses held by assignee cover large concentrations of population. Assignee's AM and FM licenses are in the same communities, namely New York City, Philadelphia, Cleveland, Kansas City and Los Angeles. The total population of these metropolitan areas is about 25 million people. An additional 2,600,000 people live within the areas covered by assignee's television licenses outside of New York, Los Angeles and Kansas City, where assignee has television as well as AM and FM stations. The transfer involved here will add the sixth largest metropolitan area with over one and three-quarters million people to the population encompassed within assignee's broadcasting markets.

"It seems to me that these circumstances in themselves suggest the existence of an issue involving the most important and delicate function entrusted to this Commission. The most significant task of this Commission is to insure diversity and dispersion of control of the media of mass communications and to prevent any tendency or incipient development toward monopoly or concentration in this field. The proper performance of this task requires, at the minimum, a careful inquiry, full examination and deliberate judgment concerning any transaction that will significantly increase the market scope of an enterprise that includes a substantial percentage of the population within the market of the licenses which it already holds. However, the Commission here permits such a transaction with casual, cavalier and perfunctory formalities."

⁵ Television Multiple Ownership Rules, Docket 16068, adopted June 21, 1965, 5 RR 2d 1609, at 1620.

⁶ *Supra*, footnote 4, at 272 (Par. 6).

independently owned stations in the communities where they operate. While I am inclined to doubt their claims, if they do have such an edge over individual competitors this should be a reason for reducing concentration, rather than allowing it to grow. In any event, I think that if AVC were allowed to acquire three of the six stations here involved, it would be able, with its resources, to compete effectively against the multiple owners in these markets. I do not think it needs all six stations to become an effective competitor.

I think these comments are quite applicable here.

Secondly, Commissioner Loevinger says the contention that the transferor may profit from this transaction has more weight than the argument concerning competition, but that "accounting involving substantial sums in complex corporate organizations is not yet an exact science." I think this may come as a shock to the accounting profession, but surely it is clear here that Overmyer has not put more than \$1,331,900 into the acquisition of his permits—in fact, he claims no more than that. I don't think it requires any precise accounting to see that, appraised realistically, this transaction is really equivalent to a sale of his interests—though in two steps—for \$4,000,000, which nets him a substantial profit. I do not think the staff concluded that this transaction does not afford any profit to Overmyer as Commissioner Loevinger says. They recognized that the loan arrangements had to be carefully examined and simply said that "they" are consistent with the public interest. This view seems to have rested largely on the fact that the loans are fully secured by collateral, that they bear interest at a premium rate, and that the principal is repayable at the end of three years. I have no quarrel with the loan agreements as to their validity or legal effectiveness as between the parties—but I object strenuously to the result which is to be achieved through these business arrangements. I think we have to look underneath the surface to the real nature of what the parties are accomplishing. I don't think the staff ever reached that stage.

Finally, Commissioner Loevinger refers to the cost in manpower, money, and time that would be involved in a hearing on this matter, and the delay in institution of new service in these five markets that would result. In the first place, if Overmyer had been content to sell his permits to two different buyers for no more than he reasonably expended in obtaining them, he could have obtained approval of the transfers, without hearing, some time ago. He, not the Commission, chose to follow a course which presents the problems I have discussed. Even now, he need not go to a hearing and I doubt if he would, though we cannot deny his applications without affording him that opportunity. He can still comply with our rules and policies and get rather routine approval for the disposition of his permits. If delay in instituting a service is to be advanced as an argument against resort to the hearing process when serious issues are presented, then we simply cannot discharge our obligations.

CONCURRING STATEMENT OF COMMISSIONER LEE LOEVINGER

(In re transfer of Overmyer interests)

I concur in the Commission Order permitting the transfer of the Overmyer interests because it seems to me that this will increase competition and diversity of source in the field of television broadcasting.

The transaction now before the Commission involves applications for approval of the transfer of Construction Permits for 5 UHF television stations and the license of one UHF television station from a financially weak, and possibly insolvent, enterprise to a financially strong one. Two objections are urged against the proposal. First, it is argued that a Commission policy against permitting transfers that will result in a licensee holding more than three UHF licenses is violated; and second, it is objected that the transferor here will profit from sale of the construction permits, which is also contrary to Commission policy. These arguments are not without some force, and the issues are not free from all doubt, but, on balance, I think that the public interest objectives of competition and diversity will be better served by permitting the proposed transaction than by forbidding it.

Present FCC rules set absolute numerical limits on the number of licenses (or construction permits) that can be held by a single licensee, and the limit for UHF television licenses is seven. Because such a numerical limitation is a crude measure of concentration the effort has been made to devise a more refined and discriminating rule. The most recent such effort resulted in the adoption by the Commission of an interim policy subjecting to exceptional scrutiny any trans-

action that would result in one licensee holding more than two VHF or three UHF television licenses in the top 50 markets. That policy expressly recognizes that present licensees holding more than such number may continue to do so, and no divestiture is proposed or has been contemplated by the Commission.

A significant number of licensees now hold more than the number of licenses specified under the interim policy. If that policy is now construed or applied so that whenever any licensees (or permittees) seek to transfer their holdings the Commission will require that the group be broken up, this will inevitably result in decreased competition and increased concentration. One thing quite certain is that of the present group licensees it will be the weak ones (like Overmyer) rather than the strong ones (like RCA, Westinghouse and GE) which will from time to time find it necessary or advantageous to transfer their stations. Consequently the weaker of the group licensees will eventually be broken up and only the few very largest and strongest will survive. Further, the policy will prevent any other large or strong enterprise from acquiring group holdings. The result of such a course will be to leave us finally with a very few large and strong corporations holding the maximum number of licenses now permitted under the rules, while all others will be limited to two or three licenses, and will be prevented by FCC rule from acquiring broadcasting facilities that permit them to compete with or challenge the few large protected group licensees. Thus I believe that the position contended for by Commissioner Cox proceeds from an inadequate and unrealistic economic and market analysis and moves in the direction of promoting monopoly rather than competition.

The contention that the transferor here may in fact profit from this transaction has more weight than the argument concerning competition. However, accounting involving substantial sums in complex corporate organizations is not yet an exact science. The Commission staff has examined and analyzed the showing made by applicants and has concluded that the financial arrangements do not, in themselves, afford any profit to the transferor for his Construction Permits, or otherwise violate Commission policy. I do not see that there is anything to be gained by holding a hearing on this issue.

A hearing is warranted only where we can specify factual issues and the nature of evidence that may be relevant to resolve such issues. A hearing is not justified merely because we are confronted with a difficult decision which it would be pleasant to defer. Difficult decisions very seldom become easier with the passage of time or the amassing of argumentative material in a diffuse hearing.

A hearing is required as a preliminary to denial of an application, since each applicant has a statutory last chance to try and persuade the Commission to change its mind before entering a final order of denial. But I do not think that the transaction here is so inconsistent with the statutory scheme or Commission precedent and policy as to warrant denial. On the other hand, a hearing in such a case as this would be a profligate expenditure of manpower, money and time. It would, at the very least, delay the institution of new, competitive, UHF television service in five major markets for a period of years, perhaps many years. It might forever preclude the establishment of another vigorous, competitive UHF group of stations. In comparison, the potential disadvantages of approval are slight. Accordingly, I concur with the majority of the Commission in voting to grant the application.

DISSENTING STATEMENT OF COMMISSIONER NICHOLAS JOHNSON

(In re application of D. H. Overmyer)

I strongly regret the majority's faithlessness to Commission policy and its cynical refusal to attempt even a token effort at defending its result with reasons. I join the articulate and thoughtful opinions of my colleagues Commissioners Cox and Bartley. See also my opinions in Harvey Radio Laboratories, Inc., 6 F.C.C. 2d 898, 903 (1966) (dissenting statement); ABC-ITT Merger, 7 F.C.C. 2d 245, 278 (1966) (dissenting opinion); F.C.C. 2d 336, 343 (1967) (concurring statement); 9 F.C.C. 2d 546, 581 (1967) (dissenting opinion of Commissioners Bartley, Cox, and Johnson); Paris-County Broadcasting, Inc. 6 F.C.C. 2d 894 (1967) (concurring statement); Farragut Television Corporation, 8 F.C.C. 2d 279, 285 (1967) (dissenting statement); Houston Consolidated Television Co., 8 F.C.C. 2d 205, 206 (1967) (dissenting statement); Flower City Television Corp., 9 F.C.C. 2d 249, 262 (1967) (dissenting opinion); Superior Broadcasting Corp., 10 F.C.C. 2d 100 (1967) (dissenting statement of Commissioner Kenneth A. Cox, in which Commissioners Bartley and Johnson join).

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

File No. BAPCT-399

In re Application of

THE SUPERIOR BROADCASTING CORPORATION (ASSIGNOR)

and

WKBF, INC. (ASSIGNEE)

For Assignment of Construction Permit for Station WAFT-TV
Cleveland, Ohio

ORDER

Adopted: September 19, 1967. Released: September 20, 1967.

By the Commission: Commissioner Cox dissenting and issuing a statement in which Commissioners Bartley and Johnson join; Commissioners Loevinger and Wadsworth concurring and issuing statements.

1. The Commission has before it the above-captioned assignment application, which proposes to assign the construction permit for Station WAFT-TV, Cleveland, Ohio, to WKBF, Inc. Assignee's stock is equally owned by the assignor and present permittee, The Superior Broadcasting Corporation and Kaiser Broadcasting Corporation. In view of Kaiser Broadcasting Corporation's other interests in television stations in the Top Fifty television markets, the application comes within the purview of the *Interim Policy Concerning Acquisition of Television Stations* (5 R.R. 2d 271) enunciated June 21, 1965.

2. The Commission is of the view that the applicants have affirmatively and compellingly shown that a grant of the application would be consistent with the Interim Policy.

Accordingly, it is ordered, That, the application for the assignment of the construction permit for Station WAFT-TV, Cleveland, Ohio, from The Superior Broadcasting Corporation to WKBF, Inc., is granted.

FEDERAL COMMUNICATIONS COMMISSION,¹
BEN F. WAPLE, Secretary.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX, IN WHICH
COMMISSIONERS BARTLEY AND JOHNSON JOIN

I dissent. This represents the most extreme departure the majority has made thus far from our interim policy against increasing concentration in the major markets. It seems to me that this is almost a point of no return insofar as our pending rulemaking is concerned.

It should be remembered that we instituted our rulemaking proceedings in Docket No. 16068 over two years ago because of our concern over the increasingly narrow concentration of control over television facilities in the largest markets. We found it difficult, if not impossible, to stem this trend in the course of case-by-case consideration of individual transfer applications. We therefore decided to attack the problem on an overall basis through rulemaking. Furthermore, we were so concerned about the accelerating trend toward tighter and tighter control of the stations serving the great bulk of our people that we took the unusual step, some six months before issuing our rulemaking proposal, of announcing that as a matter of interim policy we would not authorize the acquisition of a second VHF station in the top 50 markets without a hearing unless "a compelling affirmative showing" were made that the transfer would be in the public interest. When we later issued our new pending proposal for changing our rules, we relaxed this interim policy to the extent of permitting the holding of two VHF stations in the major markets before applying the hearing requirement.

¹ See attached statements.

That has been our stated policy for over two years. We have granted four waivers in that period [all but one of them over my dissent]. But all of those cases involved stations which had lost substantial sums and were in precarious condition—and one was actually off the air. Furthermore, at least some showing was made in each case that the transferor had first tried to sell to a party whose acquisition of the station would not violate the interim policy before completing a sale to a multiple owner. Thus in these past cases it could be argued that the public was assured a service which otherwise was, or might be, unavailable to it but for the transfer.

However, neither of these conditions exists here. The station has never been built, so has suffered no losses which might imperil its continued operation. The Commission has always been concerned about the transfer of bare construction permits, and that concern should certainly be present here. I believe that WAFT-TV's pending application for extension of completion date, File No. BAPCT-6410, should be set for evidentiary hearing to determine first whether valid reasons exist for such extension of the construction permit and, accordingly, whether there is a valid and subsisting construction permit which WAFT-TV could transfer. As to the merits of the proposed transfer, certainly no showing has been made that the transferor tried to sell to parties already owning not more than one station in the top 50 markets. It presumably decided to sell to Kaiser because this was the most favorable arrangement it could make for the disposition of its permit, even though this brings it into conflict with our interim policy.

It should be noted that there were originally three applicants, for this channel. The other two dismissed their applications—one of them, United Artists, presumably because it realized that it would be at a comparative disadvantage *vis a vis* Superior on grounds of diversity, local residence, and integration of ownership and management. Even though this left Superior as the only applicant, we required the latter to go through a hearing to establish its financial qualifications. After the Commission has thus gone to the trouble and expense of determining that Superior has the resources to build and operate its proposed station in Cleveland, the applicant now comes in and says that its proposal wasn't substantial enough to serve the public properly and that it should therefore be allowed to sell its permit to Kaiser, which has greater resources and can put together a more elaborate broadcast operation. In fact, this is one of the main reasons urged in support of the parties' request for a waiver of our interim policy. On the contrary, however, it seems to me that if Superior—while still in permittee status—is saying that its proposal was inadequate and that it is not financially qualified to build and operate the kind of stations which is needed, then it should be found to be unqualified and its permit should be cancelled. We would then be in a position to accept further applications from parties able to build the kind of facility Superior *now* says is needed—and hopefully some of them might meet our interim policy.

It seems highly unlikely that Kaiser would apply in such a situation. It already has stations or construction permits in the Los Angeles, Philadelphia, Boston, Detroit, and San Francisco television markets. It thus has present holdings in the top 50 markets far in excess of those permitted under our interim policy, by virtue of the fact that it applied for a number of these facilities before we adopted the policy and because the Commission has already waived the policy for Kaiser once to permit it to acquire a half interest in a UHF station in Boston.¹ It really seems to me that it is rather presumptuous in pressing for still further erosion of our policy on diversification.

But our interim policy aside, these holdings would place Kaiser at a serious comparative disadvantage if it were to seek to compete with local applicants or with smaller multiple owners. Thus we have here the situation which has plagued us so often—and has recently caused expressions of concern in Congress—namely, the transfer of a permit or license to a party who could not have prevailed in a comparative proceeding, and here the transfer takes place before the station has been built. If the parties are correct in saying that the public interest requires the initial construction of extremely high powered UHF stations, and that only multiple owners with strong financing and previous UHF experience can build and operate such facilities, then it seems to me the majority should move to amend our rules to increase the minimum power required for UHF operation and to modify our comparative hearing criteria to delete all demerit for concen-

¹ See my dissent to that action. Public Notice of October 21, 1966, Report No. 6193.

tration of control of the mass media. I am quite sure that my colleagues are not prepared thus unequivocally to make big city UHF operation exclusively a millionaires' preserve, but if they intend to give others the benefit of the precedent here established, I think this is exactly what they will accomplish by indirection.

Maybe Superior cannot build as powerful a station alone as it can in association with Kaiser—and with the latter providing nearly all the money. But when we issued our proposed rulemaking we expressly stated that the resources of the multiple owners are not needed to bring UHF service to the major markets, and in this case we have a full hearing record to establish that Superior can build and operate a station which would serve the public interest. I submit that the public in Cleveland would be better served in the long run by a locally owned and oriented station which started slowly and built as it went along, than it will be by a better financed initial operation controlled by an absentee corporation with significant other broadcast interests. Similarly, the national interest in a diversely owned broadcast system would be better served by denial of this application. Once the all-channel law achieves 100% UHF penetration, then presumably a high powered UHF station will be competitively equal to a VHF station. When that day comes, Kaiser will have—if this acquisition is approved—stations in 6 of the top 8 markets in the country, which is more than any other entity now controls. And when that comes about, it is highly unlikely that the Commission will require divestiture of such highly concentrated holdings, so that we will be faced with an irreversible centralization of control over our vital mass media. I think this is of critical importance, and that we must look ahead and consider this future before we take the easy route of approving this application on the ground that it will help UHF² or that it will provide better service quicker than would other be the case.

Furthermore, the parties argue their case in a way which makes it clear that they think what we do here will have important precedential effect. In a letter of July 3, 1967, to the Commission from counsel for WKBF, Inc., they say:

"The Commission's action on the WKBF, Inc., application will speak loudly and clearly to others who may be contemplating investment in independent UHF as to the degree to which the Commission encourages or discourages initiative of the kind displayed by Kaiser."

I am quite willing to recognize—and applaud—the commitment and the contributions which Kaiser has made to independent UHF operation. But I am not willing to give it as many stations as it may desire in the top markets, nor to issue ringing assurances to others that if only they have the money to take the initial risks, they, too, can count on a handful of stations in the largest markets available. We initiated our interim policy on December 18, 1964, because of the high degree of concentration then existing in the top 50 markets, with 111 (or 71%) of the 156 VHF stations in those markets licensed to multiple owners, while 17 of the remaining 45 were owned by local newspapers. It is clear that our principal drive was to prevent a repetition of this in UHF, yet this and our earlier waivers are taking us down that same road. I am advised that there are only 28 channels still available in the top 50 markets. It seems to me that we must act—and quickly—if we are to maintain a desirable diversity of control of our television system.

The parties' other principal argument is that approval of this transfer will improve the possibility of Kaiser's developing a fourth network. This is concededly speculative, and I do not think it can serve as a basis for our action here. Clearly we cannot select Kaiser as a chosen instrument for the creation of a new network. Therefore, if this argument has any validity we would be compelled to let all other multiple owners who indicated that they were exploring network possibilities have as many stations as Kaiser. Furthermore, this argument is not cast in terms of need for revenues from owned and operated stations, but rather in terms of obtaining clearances for network programming. This obviously applies to more than six markets, so could be made the basis for still further acquisitions. I agree that we should pursue policies which would permit the development of additional networks as they are needed and feasible. But this does not mean that we should subvert other policies on the off-chance that an applicant before us may at some indefinite time desire to form a network.

² I favor expanded UHF service life my colleagues, but I think we sometimes fall into the error of allowing almost anything in the name of UHF. We should not be emotionally predisposed to accept every argument which seeks to use UHF's cause for short range private benefit.

If such a network comes into existence, an independent station in Cleveland operated by Superior would have strong incentives to affiliate with it and clear for its programs. We do not have to permit Kaiser to control another station in a major market to achieve that result.

I have referred to the parties' contentions at some length because the majority's order doesn't even recite them. It simply announces the conclusion "that the applicants have affirmatively and compellingly shown that a grant of the application would be consistent with the *Interim Policy*," without any supporting explanation whatsoever. I think this is not a proper way to dispose of matters of this importance.

I wish to emphasize again that this action goes further than the majority has ever gone before in these waiver cases. It allows Superior to avoid the risks of implementing the permit we have granted it, and at the same time permits it to acquire a half interest in a much more substantial venture for much less money than it originally committed to this enterprise. It sanctions the acquisition by Kaiser of a franchise it probably could not otherwise obtain. It distorts our comparative hearing rules. But above all, I think it undercuts, if it does not destroy, our pending rulemaking proposal in the critical area of diversity of control of the broadcast media. Perhaps the majority will eventually abandon that proposal, but if so, that action should be taken consciously and for stated reasons after full consideration of the problem. It should not be slipped into, without explanation, in the course of disposing of particular applications on an *ad hoc* basis, thereby creating precedents which must control future actions, unless we are to be completely arbitrary and treat others differently than we treat Kaiser.

I think this matter is of great importance, far transcending the interests of these parties, the interest of the people of Cleveland in maximum service at the earliest moment, or the interest of the public generally in a strictly speculative fourth network. I do not think the majority has addressed itself to the long range problem of increasingly centralized control of the makers of American opinion. I therefore dissent.

CONCURRING STATEMENT OF COMMISSIONER LEE LOEVINGER

(In re Cleveland UHF assignment)

This proceeding involves an application for approval of a transaction that will, in effect, make the Kaiser Broadcasting Corporation a 50% owner of an UHF CP for Cleveland, Ohio. There is no question as to the qualifications of Kaiser and the transaction would probably be routinely approved but for the proposed Commission rule to prohibit acquisition of more than two VHF or three UHF television stations in the "top 50 markets" by any one licensee. I agree with the dissenting opinion that this case involves the underlying considerations and policy of our proposed multiple ownership rule. Unfortunately circumstances having no relevance to this proceeding have precluded full Commission consideration and disposition of the proposed multiple ownership rule prior to this and there is no prospect of such consideration and disposition in the immediate future.

Developments, facts and arguments coming to attention since the June 1965 proposal of the rule regarding television station ownership in the "top 50 markets" have caused me to doubt that the rule in the form proposed is the best means of achieving the objectives sought. I do not wish to commit myself to any position on this issue until we have had an opportunity for full discussion and consideration within the Commission, and therefore will not discuss the merits other than to say that for reasons indicated by Commissioner Lee's dissenting opinion in the proposed rulemaking and my own prior opinion in a similar situation it seems particularly dubious that we should impose a more restrictive rule on the expansion of UHF interests at the time that we are seeking to encourage the development of UHF.

In any event, I am unwilling to penalize the applicants here for the Commission's delay in disposition of the basic rulemaking. In view of my own doubts as to the basic policy, I am, therefore, concurring in Commission approval of the proposed transfer, without committing myself to a position on multiple ownership rule revision when that issue finally comes before the Commission for plenary consideration and disposition.

I am concurring in a grant of this assignment because I believe that the inauguration of a new television service in Cleveland at the earliest possible date is in the public interest. I express my reservations that the filing of an application, or multiple applications, by financially qualified entities, might be the vehicle for acquiring "paper CPs" for resale to entities which would not have been able to acquire them in the first place (because of lack of comparative qualifications, or otherwise), which could result in a misuse (not necessarily abuse) of the Commission's processes.

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

In re Application of

CHANNEL 2 CORP. (ASSIGNOR)

and

WGN OF COLORADO, INC. (CHICAGO, ILLINOIS) (ASSIGNEE)

For Assignment of license of Stations KCTO (TV), Remote Pickups KG-5442-3, KG-7204-5, KDJ-923-4 and TV Auxiliaries KC-8220, KG-4237, KAL-92, Denver, Colorado.

File NOS. BALCT-283, BALQ-15, BALRE-1331, BALTP-179, BALTS-179

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Hyde concurring in the action but not in the opinion; Commissioners Bartley and Wadsworth concurring and issuing statements; Commissioner Cox dissenting and issuing a statement.

We have before us: (a) the above application which seeks our consent to the assignment of the KCTO (TV) Denver licenses from the Channel 2 Corp. (J. Elroy McCaw) to WGN of Colorado Inc. (WGN) and an amendment filed November 19, 1965; (b) Our order (FCC 66-70, released January 21, 1966), scheduling an Oral Proceeding and (c) the transcript of that Proceeding held before us *en banc* on February 14, 1966.

1. WGN filed its application for the Denver station on October 29, 1965. Since the parent company of WGN is already the licensee of VHF stations in New York City and Chicago, we must decide, after reviewing the WGN application and amendment and the transcript of the Oral Proceeding that was held, whether WGN has made, in accordance with our Interim Policy on applications involving multiple ownership of television stations (5 RR 2d 271) a compelling affirmative showing to sustain a grant.

2. In our Order of January 21, 1966, scheduling an Oral Proceeding we set out in detail our reasons for the adoption of a rule making notice and an interim policy on the acquisition of television stations in the top 50 markets. We will not repeat that discussion here except to note that the proposed rule would modify the limitations imposed in our multiple ownership rules (73.636(a)(II)) to include the ownership of "more than 3 television broadcast stations or more than 2 VHF television broadcast stations in the 50 largest television markets". We also note that the interim policy that we refer to provides that absent a compelling affirmative showing, applications filed after June 21, 1965 for television stations, the grant of which would result in the common ownership of more than 3 television stations or more than 2 VHF stations in the top 50 markets will be designated for hearing.

3. In response to the interim policy, assignee urged (Exhibit L-1):

"(1) Among Denver's commercial stations, KCTO ranks as a low fourth choice of viewers in regard to news, sports program and movies, (2) When rated against its competitors as to its job of serving the community, KCTO ranks as a low 5th among all of Denver's television stations . . . (3) with respect to specific program categories in which viewers regard different stations as offering the best programing, KCTO ranks lowest in all categories. Because of the resources

available to applicants and the experience of applicants parent WGN Inc. in operating an independent station in effective competition with three network owned television stations in Chicago, applicant will be able to enhance the degree of effective competition between KCTO and its three network affiliated competitors."

4. In order to give the parties the optimum opportunity to make their most complete showing of the compelling affirmative circumstances that they allege are present in this application, we invited the principals of the applicants and their counsel to an *en banc* session with the Commission February 14, 1966. The parties were requested to address themselves to two questions:

"(1) Whether Denver television market rankings should be determined by the American Research Bureau's net weekly circulation ranking or whether other criteria should be employed. (2) Whether WGN has presented an affirmative compelling showing to allow a grant of the above assignment under the Commission's interim policy statement."

The parties and their attorneys appeared and were given a full opportunity to address themselves to these questions.¹

5. The assignor pointed out that Station KCTO had been an unsuccessful operation.² He stated that the corporation had suffered substantial and continuing losses, and that indications were that the losses would continue. Information on file with the Commission going back to 1960 confirms that these losses occurred.

6. At the oral proceeding, the assignor stated that he had attempted to sell KCTO to a local resident but that the attempt was unsuccessful. He also mentioned other instances of attempted but unsuccessful sales.

"In all cases they were either other multiple owners or they were people who were not multiple owners, or at least not in the top 50 markets, but who upon analyzing what they felt it would require to complete the job that needs to be done in order to make this sufficiently competitive, they felt the overall commitment, would be too great and they withdrew."

7. In its showing, in the application and at the oral proceeding, WGN claimed that it would measurably improve KCTO's program service. In this regard, it mentioned its facilities in Chicago and how well its Chicago unaffiliated station competed with the network owned and operated stations in that city. The Commission notes WGN's detailed efforts to ascertain the programming needs of Denver and its statements of dedication to serve those needs, as demonstrated both in the application and the oral proceeding.

8. After giving full consideration to the WGN application, to the testimony of the principals and argument of counsel at the February 14 proceeding and our interim policy statement *supra*, we conclude that a compelling affirmative showing has been made to justify a grant. Channel 2 Corporation has shown that it has sustained continued and substantial operating losses. Despite significant investment and effort, it has been unable to achieve an independent operation which is competitive with the three network outlets in the Denver market. The Denver market is one of the smallest to which our interim policy applies. In this size market, at the present state of television development, it is our conclusion that the proposed assignment of this independent television station would serve the public interest. A grant of the assignment will transfer the station to an owner who is able and explicitly committed to expanding and otherwise improving the station's operations so that it may achieve a viable and more fully competitive status in the market. We give significant weight to the fact that an unsuccessful attempt was made in the past to sell the station to other operators who are non-multiple owners. Cf. *International Shoe Company v. Federal Trade Commission*, 280 U.S. 281. We have also considered, but given less decisional weight, to WGN's experience and success as an independent operator in the much larger Chicago

¹ The American Research Bureau's net weekly circulation ranking shows Denver, Colorado, as the 45th television market. In the Notice of Oral Proceeding the Commission invited comment from all interested parties as well as from parties to this application on Issue (1). No comments were filed and WGN did not argue against using net weekly circulation as a test for determining the top 50 television markets. However, WGN sought to bolster its argument by indicating that under other rankings Denver would not be in the top 50 markets.

² J. Elroy McCaw has had an interest in Channel 2, Denver (now KCTO) since July 27, 1955. In response to a question from one of the commissioners at the oral proceeding, Mr. McCaw stated that "more than \$4,000,000 has been placed into the station in a good faith effort to make it a viable and competitive source in the Denver market. . . ." He advised that his figures show that "for example his loss the past December is twice that of what it was in December, 1964."

market, its detailed efforts to ascertain the needs and interests of Denver, and its commitment and obvious ability to serve these needs.

In view of the foregoing we find that the applicant has made a compelling showing justifying the grant of the application. Accordingly, *It is ordered*, That the above application is granted.

FEDERAL COMMUNICATIONS COMMISSION,¹
BEN F. WAPLE, *Secretary*.

Adopted: March 3, 1966. Released: March 10, 1966.

CONCURRING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I believe that, on the basis of the total showing made, a grant of the application would comport with our Interim Policy and serve the public interest.

The assignor (McCaw) shows that KCTO-TV has suffered continuing losses since 1955, with over \$4,000,000 expended in a good faith effort to make the station a viable and competitive service in the Denver market. The assignor also states that an option by local residents was not exercised and that other operators who are non-multiple owners felt the overall commitment too great and withdrew.

The assignee (WGN) shows that KCTO-TV, an independent operation, is the lowest-ranking commercial television station in Denver. WGN has made a showing of numerous consultations with community and state leaders to determine the needs of Denver from the viewpoint of the respective groups which they represent. Specific programs and series of programs are proposed by the assignee to meet those needs.

For example, Mayor Thomas Currigan and members of the Downtown Improvement Association indicated a need to keep the public informed on progress of the Denver urban renewal project; and the assignee will present periodic reports on special programs or series and give coverage on regularly scheduled newscasts and discussion programs. Mayor Currigan and Mr. Gerald Phipps, one of the owners of the Denver "Broncos", indicated a need for an enlarged Municipal Stadium, to keep the "Broncos" professional football team from moving to another city, and to fulfill its civic entertainment functions; and the assignee will present a campaign of announcements and a program "City Speaks—Denver Looks at Denver", devoted to supporting a bond issue for a new municipal stadium, as well as enlisting support of other local radio and television stations and newspapers for this project.

The business manager of the Denver Symphony Orchestra indicated a need for televising the orchestra's concerts; and the assignee states that feasibility depends on factors requiring further exploration, but broadcasts will be presented if this can be arranged. Dr. Harold Mendelson and other staff members of the University of Denver indicated a need for a traffic safety project; and the assignee will present "Stop And Go," a weekly Saturday morning program on traffic safety, as well as preparing programs, announcement campaigns and program formats for use by broadcasters throughout the United States in promoting highway safety.

Representatives of colleges and universities in Denver indicated a need for a continuing supply of young people trained for careers in broadcasting; and the assignee will implement an "Internship" program at the station in cooperation with academic programs of local schools, as well as scholarships and grants. Denver community leaders indicated a need for additional diverse dramatic television programs; and the assignee will present "Repertory Theatre," "U.S.A.," "Festival of Performing Arts," and "Play of the Week" television programs.

The Denver Convention Bureau indicated a need for promotion of Denver and Colorado as twelve-month vacation and convention centers; and the assignee will present a regular series of promotional announcements and possibly special documentary programs to stimulate local cooperation. Business, educational, religious and other leaders indicated a need for increased monetary support of the Denver educational television station; and the assignee will donate announcement campaigns and services of its key personnel to assist in fund raising drives.

WGN shows that it will bring adequate financial backing and independent programming experience at WGN TV and WPIX to carry out its programming

¹ See attached statements of Commissioners Bartley, Cox and Wadsworth.

proposals, to improve the overall operation of KCTO-TV, and strengthen its competitive position in the Denver market.

WGN shows also that operation of KCTO-TV would strengthen its position as a syndicator of independently-produced television programs throughout the country and thus add to the diversification of program sources.

On the basis of the total showing made, I believe a grant of the application comports with our Interim Policy and would serve the public interest.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX

I do not believe we should waive our interim policy and approve this transfer. I agree that the applicants have made a number of persuasive arguments which show that the public interest would be served in one way or another by the proposed change in ownership. However, I believe that a proper concern for the basic policy favoring diversity of control of the mass media still preponderates over the claims advanced here.

There can be no doubt that WGN of Colorado, Inc. has made a careful survey of the needs of the Denver audience and has proposed programs—especially in the non-entertainment fields—well designed to serve those needs. But we require this of all applicants, whether they seek to acquire existing facilities or to get authorization for a new station. I do not think that the fact that WGN has done a substantially better job in discharging these responsibilities than most applicants do is enough to outweigh our legitimate concern over the increased concentration which this transfer will involve.

Our rule making proposal, and the related interim policy, were not designed to improve programming, desirable though that would be. Rather, they were intended to block the further aggravation of an already serious condition of concentration of control over the most potent known means for reaching and influencing the minds of the people of this country. While I applaud the improvements proposed by WGN, I am not ready to concede that Denver can get this added service only at the price of further concentration.

It is clear that the transferor has suffered substantial losses. While this fact gives him valid reason for selling the station, it does not necessarily establish that an immediate sale is required to prevent the facility from going dark—with consequent loss of service to the public. Similarly, Mr. McCaw testified to the giving of one option which fell through and to a number of other inquiries which either involved multiple owners or were dropped when the prospective purchasers concluded that it would take too much money to make the station competitive. While this demonstrates good faith efforts to sell to parties who would not have posed the concentration problem now presented to us—though much of this must have transpired prior to December 18, 1964, when we first announced our interim policy—I do not think it proves such efforts to find alternatives more in accord with our policies as to constitute the affirmative compelling showing required during the pendency of our rule making. I am not sure just what would satisfy that nebulous standard—I just do not think this case does so.

I must confess that I have substantial sympathy with the problems and the hopes, respectively, of the principals of the two parties who appeared before us. Since the transfer is being approved, I hope it will result in improved service for both Denver and Seattle-Tacoma, where Mr. McCaw's remaining television station is located. If the action here taken simply means that a man who has lost as much money as Mr. McCaw can sell his station to a man who proposes as substantial improvements in service as Mr. Quaal has offered here, then perhaps no great harm is done. But if it means that our proposed—or established—multiple ownership limitations can be subverted by any kind of showing of improvement in programming, then I think the cause of diversity will have suffered a serious blow.

CONCURRING STATEMENT OF COMMISSIONER JAMES J. WADSWORTH

I would not have required WGN to make any extraordinary showing in support of its application; I do not think we need either the proposed amended multiple ownership rules or the Interim Policy. Therefore, I concur only with the result and not with the language of the Memorandum Opinion and Order which granted this application for assignment of the KCTO(TV) license.

BROADCAST ACTION

The Commission, by Commissioners Henry (Chairman), Hyde, Bartley, Lee and Cox, took the following actions on March 24:

ASSIGNMENT OF WUHF (TV), MILWAUKEE, TO WKY TELEVISION APPROVED

The Commission granted the application for assignment of license of UHF TV station WUHF, Channel 18, Milwaukee, Wis., from WXIX, Inc., to WKY Television System, Inc. (BALCT-288); consideration \$550,000 plus \$150,000 for agreement not to compete for three years within 75 miles of station's transmitter.

Commissioner Bartley dissented and stated: "I favor an en banc expedited hearing".

Commissioner Cox concurred and stated: "I concur in the authorization of the assignment of the license of WUHF to WKY Television System, Inc. While I continue to be concerned about the drift toward greater concentration of control of the television stations in our major cities, it seems to me that the only chance of making this station reasonably competitive, and therefore able to provide a significant service to the public, lies in its transfer to an entity with substantial resources and broadcast experience.

"I believe this case is distinguished from that of KCTO in Denver for the following reasons. First, we are here concerned with a UHF station which occupies a much weaker competitive position in Milwaukee than KCTO did in Denver. Its facilities, compared to those of the VHF stations in Milwaukee, are much less adequate competitively than was the case in Denver, thus necessitating immediate and substantial expenditures of funds for their improvement. This, added to the normal technical problems of UHF operation and the normal programming problems of independent operation, makes the present and prospective situation much more serious than was true of KCTO.

"In the second place, it seems clearer here than in the case of KCTO that sale to a party other than a substantial multiple owner is unlikely and that continued operation by the present owners, in the face of substantial losses, is questionable—at least on anything but a nominal basis. We are therefore faced with a choice between a transfer to WKY or some other multiple owner firmly based in the top 50 markets or continued diminution or loss of the service. The price to be paid the transferee here is less than its accumulated losses from the operation of the station.

"Finally, with the approval of this transfer WKY will control stations in markets having combined net weekly circulation—without adjustment for the fact that two of its stations are UHF—slightly less than one half the circulation of but one of the markets in which the Denver transferee operates, and less than one third of the total of all its markets. Thus the degree of concentration which results here is much less substantial.

"I therefore concur in this action."

Other TV stations owned by WKY Television System are KTVT, Channel 11, Fort Worth-Dallas (15th market); WTVT, Channel 13, Tampa (32nd market), and WKY-TV, Channel 4, Oklahoma City (51st market). Assignee also controls Houston Television Co., permittee of KHTV, Channel 39, Houston (25th market).

FURTHER EXTENSION OF FILING TIME IN DOCKET 16068

By Order, the Commission further extended the time for filing comments and reply comments in Docket 16068, concerning proposed amendment of Section 73.636(a) of its rules in the matter of multiple ownership of TV stations in the top 50 markets, to and including October 3 and December 1, 1966, respectively. This was done on petition of the Council for Television Development (a group of TV station licensees) which wants more time for a research organization to complete economic and other studies for the council. Commissioner Cox concurred and issued a statement.

BROADCAST ACTION

The Commission en banc, by Commissioners Hyde (Chairman), Lee and Wadsworth, with Commissioners Bartley and Cox dissenting and latter issuing statement, and Commissioners Loevinger and Johnson not participating, took the following action on July 27:

TRANSFER OF CONTROL OF WIHS-TV, BOSTON, TO STORER APPROVED

—The Commission waived Sect. 1.597 of the three-year holding rule and granted the application for transfer of control of New Boston Television, Inc., licensee of station WIHS-TV, Channel 38, and adjuncts, Boston, Mass., from Boston Catholic Television Center to Storer B/cg Co. (BTC-5101, BRTP-664, BRTS-597); consideration \$2,276,513 for Center's 6,000 shares. Storer also has contract to purchase remaining 1,000 shares from Austin Harrison for \$365,000.

The transfer of WIHS-TV gives Storer the permitted maximum of seven TV stations. Its other TV outlets are WJBK-TV, Channel 2, Detroit, Mich.; WJW-TV, Channel 8, Cleveland, Ohio; WAGA-TV, Channel 5, Atlanta, Ga.; WGBS-TV, Channel 23, Miami, Fla.; WITI-TV, Channel 6, Milwaukee, Wis., and WSPD-TV, Channel 13, Toledo, Ohio. It also operates seven (maximum number) AM and five FM stations—WJBK AM-FM, Detroit; WJW AM-FM, Cleveland; WGBS AM-FM, Miami; WSPD AM-FM, Toledo; WIBG AM-FM, Philadelphia, Pa.; WHN, New York City, and KGBS, Los Angeles, Calif.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX

"I dissent. While I am sympathetic with the transferor because of the difficulties it has encountered in operating the station, I do not think such considerations of private interest should weigh as heavily in the decision of these matters as has been the case here. No one compelled the transferor to apply for this channel or to engage in the peculiar form of operation which it adopted, and which has undoubtedly caused at least part of its difficulty. It pressed its application with great vigor, even though the Commission had proposed the 2500 mc educational fixed service, which it now regards as much more attractive, nearly seven months before that application was filed and the rules establishing the system were adopted just two and a half months after the construction permit was granted and long before the station was constructed.

Putting the private interests of the transferor aside, I think the public interest in diversification of control of television service has been completely ignored here. The Commission has proposed a rule which would bar grant of application like this one. Pending consideration of the matter, we have adopted an interim policy which provides that, absent a compelling affirmative showing sufficient to justify an exception, no one will be permitted to acquire more than one UHF and two VHF stations in the top fifty markets. Grant of this application gives Storer seven television stations—five VHF and two UHF, of which one is in permit status—in the top *twenty-six* markets. A more glaring violation of the interim policy would be difficult to imagine.

Boston is the fifth largest television market in the country. If an independent UHF station cannot succeed there in competition with three VHF stations, I don't see how such operation can be looked for anywhere. We stated specifically in our Notice of Proposed Rulemaking announcing the interim policy that we did not believe it was necessary to rely upon multiple owners to bring independent UHF operations to the major markets. I still believe this to be true, despite the rather sketchy showing made by the transferor that it was not able to interest others in buying this station. I would note in this connection that transferor apparently consulted other multiple owners primarily, and presumably price may have been a factor in discouraging other possible purchasers.

I am still persuaded that the Commission should pursue policies designed to halt—even at this admittedly late date—the continuing trend toward increased

concentration of control of our broadcast outlets, particularly in the major markets. It seems to me that the arguments advanced by the parties here, and apparently tacitly accepted by the majority, would be equally applicable to any situation in which a UHF station in one of the top markets, having suffered losses in the face of competition from three VHF stations, applied for approval of a transfer to a multiple owner with holdings already exceeding those permitted under our interim policy. In fact, it seems to me that the criteria urged by Storer would permit all major multiple owners to have seven stations in the top fifty markets so long as the supply of frequencies lasts. I think this is contrary to the public interest and represents a development having extremely serious implications for the future of our society. It is not enough to adhere to a policy of diversity in the abstract. Such a policy has to be applied in specific cases, and these can often be very difficult in terms of the interests of the individuals concerned. However, I simply cannot condone this further erosion of our interim policy which goes far beyond anything contemplated in the two waivers heretofore granted.

FEDERAL COMMUNICATIONS COMMISSION

[90764—Public Notice B, Report No. 6193, Oct. 21, 1966]

BROADCAST ACTION

The Commission en banc, by Commissioners Hyde (Chairman), Bartley, Lee, Cox, Loevinger, Wadsworth and Johnson, took the following action on October 20:

LICENSES OF WXHR (AM), CAMBRIDGE, WXHR-FM, BOSTON, AND CP FOR WXHR-TV, CHANNEL 56, CAMBRIDGE, MASS., TO WKBG, INC.

WXHR AM-TV, Channel 56, Cambridge, Mass.; WXHR-FM, Boston, Mass., Harvey Radio Laboratories, Inc.: Granted assignment of licenses of AM-FM stations and CP for TV station to WKBG, Inc. (BAL-5831, BALH-910, BAPCT-383); consideration \$1,750,000 and agreement not to compete in radio or TV broadcasting within 25 miles of Boston State House for 10 years. WKBG, Inc., is 50% owned by Globe Newspaper Co., which has no other broadcast interests, and 50% by Kaiser B/cg Corp., which controls 4 UHF TV stations and 1 FM station. WXHR-TV is now off the air.

Attached are the concurring statements of Chairman Hyde, Commissioner Loevinger joined by Commissioner Lee, and Commissioner Wadsworth; and the dissenting statements of Commissioners Bartley, Cox and Johnson.

Attachments.

CONCURRING STATEMENTS

CONCURRING STATEMENT OF CHAIRMAN HYDE

I am satisfied that the applicant has made a compelling showing justifying a grant of the application without hearing under our Interim Policy. I do not construe this action as a reproach to that Policy nor as being determinative of any issues pending in the "Top Fifty" proceeding. However, in applying the Interim Policy I do not believe that the hard realities and substantial hazards which have attended major market UHF efforts may be overlooked. Successful operation of an independent UHF-TV station in a major market already served by four VHF-TV stations is indeed enhanced when the applicant possesses the requisite background and financial resources, as in the case at present. At the present state of UHF television development, it is my opinion that the proposed assignment presents the opportunity to make the station reasonably competitive and therefore able to provide a significant service to the public.

A grant of the assignment will transfer the station to an experienced television broadcaster (all of whose television interests are in UHF) who has joined forces with a local group with deep community roots. Together they present a substantial plan for restoring the UHF station to the air and diversifying further the program choices available to the Boston metropolitan area in a manner

responsive to ascertained community needs. This is the second case in recent months in which the Commission has found it appropriate to permit acquisition of a Boston UHF station by a group with ownership in other large markets. Cf. *New Boston Television, Inc.*, 7 Pike & Fischer R.R. 2d 857 (1966). In both cases I believe that we are making possible a substantial contribution to the establishment of UHF on a viable and competitive basis. For the foregoing reasons I concur in the Commission's order.

CONCURRING STATEMENT OF COMMISSIONER LOEVINGER, JOINED IN BY COMMISSIONER LEE

The policy which the Commission should—and does—try to follow is that diversity of program sources in broadcasting should be encouraged and that the Commission should, within its jurisdiction, forbid transactions which tend to lessen competition unduly or to create monopolistic control in any market or economic area. Establishment of a numerical limit on the number of broadcasting licenses that may be controlled by a single enterprise undoubtedly serves this policy but is necessarily arbitrary, as any quantitative limit is arbitrary. The advantages of effectiveness and specificity justify such an arbitrary limitation so long as the limit—even though arbitrary in its numerical nature—is within the range of reasonableness. Further, the differentiation between large and small markets for the purposes of such a limitation is more reasonable than the establishment of a single numerical limitation applicable to all markets. Consequently the attempt to formulate a policy or rule applicable to the "top fifty" markets is an improvement on the multiple ownership rules that make no differentiation among markets.

Similarly, however, it seems to me that a rule or policy on this subject should differentiate between kinds of stations—particularly between VHF and UHF television stations. Realistically VHF stations are more profitable and prosperous at the present time than UHF stations. Realistically, also, there is need for enterprises that are relatively strong financially to help develop UHF, and there is no evidence of any present tendency toward undue concentration of control of UHF stations. Consequently I am satisfied that there is no danger to the public interest in maintenance of a healthy competition within the field of broadcasting by allowing a single enterprise to have as many as five UHF stations in the "top fifty" markets. Accordingly I concur in the Commission order.

CONCURRING STATEMENT OF COMMISSIONER WADSWORTH

I agree with the result reached in this case, which is to grant Commission consent to the assignment of licenses of Stations WXHR and WXHR-FM, and the construction permit for WXHR-TV to WKBG, Inc. However, since I dissented to the original adoption of the Commission's so-called "Interim Policy" relating to assignments of television authorizations in the top fifty markets, I would not have applied that requirement of any special showing or justification in this case. Therefore, I would not have to reach the question of the adequacy of the showing advanced by the proposed assignee.

DISSENTING STATEMENTS

DISSENTING STATEMENT OF COMMISSIONER BARTLEY

I dissent because in my opinion the information submitted in support of a grant without hearing is inadequate to meet the compelling showing requirement of our Interim Policy on acquisition of TV stations in the top 50 markets.

DISSENTING STATEMENT OF COMMISSIONER COX

I must dissent, as I did to the authorization of the transfer of another UHF station in Boston a short time ago. *New Boston Television, Inc.*, 7 RR 2d 857 (1966). The majority continues to flout our interim policy limiting acquisition of television stations in the top 50 markets, while indicating that it still favors the objectives of that policy.

Chairman Hyde is satisfied that applicant has made a compelling showing justifying a grant here, but he does not in any way indicate what that showing consists of. His further comments are simply general observations about the financial hazards of major market UHF operations. There is no showing that the added service of this station is critically needed in Boston, which now has 3 commercial VHF, 1 commercial UHF and 1 educational VHF stations in operation. The station here involved has been off the air for many years, and while I suppose it is always in the public interest to provide an added broadcast service if this can be accomplished in accordance with our policies, if that's all the Chairman has in mind, then obviously every transfer would be granted without regard to the issue of concentration.

The Chairman further notes that the transfer here is to an experienced television broadcaster. But here, as in so many cases, we can substitute the words "multiple owner." It is possible to find people experienced in broadcasting in capacities other than ownership, but such people can never successfully bid for stations offered for sale if the Commission is willing to give the inside track to multiple owners who already have a substantial advantage in terms of their ability to raise funds with which to bid up the price. The Chairman also refers to the fact that Kaiser "has joined forces with a local group with deep community roots." Nothing is said, however, to indicate that this local group consists of the owners of one of the two principal newspapers in Boston, thus posing another form of the media concentration problem. While Chairman Hyde says that this action should not be regarded as determining any of the issues pending in our top 50 market proceeding, it seems to me that each additional waiver grant on a slender showing, or no showing at all, seriously undercuts the consideration the Commission is supposed to be giving to the matter now out for rule making.

Commissioner Loevinger regards the protection of diversity of program sources as desirable, and agrees that the use of a numerical limitation undoubtedly serves this Commission policy. He recognizes, as we all must, that the use of such a limit is necessarily arbitrary, but points to the advantages of effectiveness and specificity which can be obtained in this way, saying only that the number selected must be in the range of reasonableness. Further, he agrees that some differentiation must be made between large and small markets for the purpose of such limits and concedes that our attempt to formulate a policy applicable to the top 50 markets is an improvement over the multiple ownership rules now in effect, which take no cognizance of market size.

However, Commissioner Loevinger says that our policy should differentiate between VHF and UHF television stations, on the ground that the former are more profitable. He therefore suggests that we need relatively stronger enterprises to help develop UHF, although the Commission, with Commissioner Loevinger concurring, specifically stated that it had decided to use the 50 market concept, among other reasons, because of "the availability of ample economic support for individual local ownership of both VHF and UHF stations in these markets." I know of no evidence to rebut this judgment; all we have had are indications that multiple owners are paying higher prices for permits of off the air stations, or for the acquisition of faltering operating stations, than others can afford. While the obtaining of the highest possible price is undoubtedly in the private interest of the sellers concerned, it is the essence of our entire proposal in this area that the public interest is not served in this process if it results in the aggregation of more and more stations in the major markets into fewer and fewer hands.

Commissioner Loevinger says that there is no evidence of any present tendency toward undue concentration of control of UHF stations. If he thinks the present limitation of 5 VHF stations is reasonable—and apparently he does—then I think he should find some reason for concern in the list of permits held by the Overmyer Broadcasting Company and the apparent plans of Kaiser to acquire 5 or more UHF stations in major markets. There is substantial evidence that it may be too late to deal effectively with concentration of VHF ownership in the major cities, unless we can require splitting up of holdings in connection with future transfers. Clearly, one of the main objectives of our proposed rule, and the interim policy which supports it, is to prevent the development of the same degree of concentration in UHF as presently exists in VHF. If we are right in our hope that, whatever their difficulties in the near future, UHF stations in the

major markets will eventually be successful, then Commissioner Loevinger's willingness to accept the proposition that everyone should be allowed to own 5 stations in the top 50 markets means that he is willing to accept the same order of concentration in this newly developing segment of broadcasting as now exists in VHF television. I suppose one could even argue that his suggested limit of 5 UHF stations is discriminatory because the existing rule would permit one entity to own 5 VHF's plus 2 UHF's in the top markets. No one in fact does so, at the present time, and the proposed tightening of the rules would prevent this from coming about. However, if we continue to disregard the proposed rule, and eventually abandon it, then it would seem to me that we would have a double standard permitting more extensive holdings for those multiple owners already entrenched in major market VHF.

I concur in Commissioner Johnson's statement that we should hold the line until we have made up our mind as to proper direction to be taken, as a matter of policy, with respect to multiple ownership in the major markets. That was the whole purpose of the interim policy. We adopted that policy because of a conviction that the handling of transfers on an individual basis under the existing numerical limit was aggravating the concentration problem. We recognized, quite properly, that it might be shown in a special case that there was a compelling reason for a grant despite the interim policy. I simply cannot begin to find that kind of a showing here. In particular, the majority cannot find here, as it did in *Channel 2 Corp.*, 6 RR 2d 855, that the transferor had made substantial but unsuccessful efforts to sell the station to a non-multiple owner, or to a multiple owner whose interests would not conflict with the proposed rule. It seems clear here that the transferor initially attempted to effectuate a merger transaction, and when his efforts were unsuccessful, did not attempt an outright sale of the stations to anyone other than Kaiser. So even this ground for earlier action, which I find generally unpersuasive, is not available to the majority here.

I think it all boils down to the fact that the transferor wants to get the most money possible out of its rather tenuous hold on a UHF channel in Boston, and quite logically decided it could do better in this regard if it sold to a well financed multiple owner. Kaiser simply wants to get as many UHF stations as it can in the top markets before the Commission adopts an effective limit, if it ever does so. Being an experienced and hard-headed business corporation, it obviously expects these stations to become profitable, and while they may never equal VHF stations in profitability, I think they will eventually become very substantial and influential mass media, held in a concentrated form which the Commission will be unable to reduce if it is ever permitted to come about. Additionally, Kaiser wants this transfer approved as quickly as possible to improve its competitive posture in relation to Storer Broadcasting Company, which the majority just recently permitted to buy the other commercial UHF station in Boston.

Where is the public interest in all of this? In the short run, the people of Boston will have the benefit of an added program service. In the long run, however, they will have lost the opportunity to have that service provided by local citizens without other media interests, and the people of all our other major markets will have similarly lost the protection against concentration of control sought in our proposed rule. The majority, in effect, says it does not see how it can deny Kaiser since it granted Storer. I think the answer is that it should not have granted Storer in reliance on its earlier grant of Channel 2 in Denver. I simply cannot agree that two wrongs make a right, or that the continued dilution of the objective of our multiple ownership rules in anything other than a serious blow to the public interest.

DISSENTING STATEMENT OF COMMISSIONER JOHNSON

I dissent.

This is a classic instance of the kind of issue that ought not be decided on a case-by-case basis.

Indeed, in this instance, the Commission is already on record with its realization of this truth. That, presumably, is why development of the Top-50 policy was undertaken.

Now that policy is under review. We have the benefit of probing Congressional hearings. The Commission has before it a thorough and thoughtful analysis by United Research, Inc. Other comments are worth consideration. There is much validity in the arguments of Commissioner Loevinger, concurring in this case. The Commission's original thinking in proposing the policy is worthy of great respect.

I take no position on the substance of our present proposed policy. I will when it has been given the thorough review and analysis it deserves. I certainly have serious questions about both the underlying conception of the problem and the precise formula offered as a solution.

Nevertheless, until the matter is finally resolved, I believe the most rational and administratively workable course for the Commission is to hold to its proposed policy as now drafted. Such a holding action seems to me a more just and responsible course. It would also provide more guidance for those in the industry who must be somewhat unsettled at best by the quantity of conflicting opinions produced by us today on this issue.

ITEM 4

FCC STATEMENT ON COLLATERAL FOR AVC-OVERMYER LOAN

AVC's obligation to lend Overmyer funds and the collateral to be furnished for such loans are governed by the Loan Agreement. Article II of that Agreement governs the First Loan of \$1,500,000 (which has already been made). Article III sets forth security requirements for the Second Loan, which is to be made after closing.

While the Overmyer applications were pending before the Commission, the Commission's staff questioned Overmyer's counsel with respect to the Loan Agreement. To settle any questions regarding the *bona fides* of the loans, Overmyer's counsel furnished supplemental data in a letter of November 21, 1967, directed to the Commission's Secretary. That letter (which was filed in the KEMO-TV application, BTC-5376) emphasized that the AVC loans were secured in four ways: (a) by second mortgages on 23 specific Overmyer warehouse properties selected by AVC, which had a total appraised equity value of \$6,000,000, thus giving AVC two dollars of security for each dollar of debt; (b) by guarantees of the loans from the parent Overmyer company (Daniel H. Overmyer, Inc. (Ohio)), and each subsidiary company; (c) by a personal guarantee of the loans by Overmyer; and (d) by a pledge of Overmyer's stock in the permittees, and escrow thereof, as security for the loans.

Attached hereto is a list of the 23 warehouse properties which secure the loans. The list has been furnished by counsel for Overmyer. It should be explained that the Overmyer warehouses are incorporated separately in each state. Thus, "State Equity" in the attached list refers to the total equity in warehouses in a particular state, such as the \$1,773,328 in equity held in the various Texas warehouses owned by D. H. Overmyer Company, Inc. (Texas). "Site Equity" refers to the equity in a given warehouse, such as the \$285,122 equity in Warehouse #4 in Jacksonville, Florida. "State Loan Amount" refers to the total loans drawn down against warehouses in a given state (e.g., \$138,400 against two properties owned by the Virginia warehouse corporation.) "Site Loan Amount" refers to the loan against a particular warehouse, such as a \$28,400 loan against Warehouse #5 in Richmond.

It should also be observed that while total "State" and "Site" equities are appraised at \$6,129,902, the total loans presently outstanding are \$1,500,000. This sum represents the First Loan. On closing and making of the Second Loan, outstanding loans will total \$3,000,000.

AVC-U.S. COMMUNICATIONS CORP. LOAN

Corporation and Site	State equity	State loan amount	Site equity	Site loan amount
Alabama: Birmingham No. 1	\$247,456	\$62,000	\$247,456	\$62,000
California: San Diego No. 1	227,222	56,350	227,222	56,350
Florida:				
Jacksonville No. 4	797,909	200,000	285,132	71,500
Jacksonville No. 5			257,783	64,500
Orlando No. 4			254,994	64,000
Nevada: Las Vegas No. 1	280,838	70,000	280,838	70,000
North Carolina: Charlotte No. 2	246,267	62,000	246,267	62,000
Ohio: Atlanta No. 1	422,999	105,600	422,999	105,600
Oklahoma:				
Oklahoma City No. 1	615,004	154,000	308,664	77,300
Oklahoma City No. 2			306,340	76,700
Oregon:				
Portland No. 1	455,217	114,000	115,803	29,000
Portland No. 2			146,914	36,800
Portland No. 3			192,500	48,200
Pennsylvania: Pittsburgh No. 1	383,181	96,000	383,181	96,000
Texas:				
Dallas No. 1	1,773,328	441,650	292,236	74,200
Dallas No. 6			1,257,176	56,150
Dallas No. 8			194,525	49,700
El Paso No. 1			263,946	67,100
El Paso No. 2			248,296	63,100
San Antonio No. 3			259,238	65,900
San Antonio No. 4			257,911	65,500
Virginia:				
Richmond No. 1	680,481	138,400	433,469	110,000
Richmond No. 5			237,012	28,400
Total	6,129,902	1,500,000	6,129,902	1,500,000

¹ Per appraisal dated Jan. 10, 1967.

² Per appraisal dated Dec. 9, 1966.

ITEM 5

FCC BREAKDOWN OF SALES PRICE AND OUT-OF-POCKET EXPENSES

A breakdown of the sales price and out-of-pocket expenses for Overmyer's 80% interest in the five permittees is set forth in a document filed in the WBMO-TV transfer application (BTC-5379). That document, which is appended to the Exhibit entitled "Reasons for Proposed Transfer", is the Affidavit of Mr. Thomas J. Byrnes. Until March, 1966, Mr. Byrnes served as Treasurer and Controller of all the Overmyer companies. Since that date, Mr. Byrnes has been Executive Vice President of the various Overmyer companies (except the Overmyer Communications Companies, of which he is Vice President). Mr. Byrnes is also a Director of all the Overmyer companies.

The Byrnes' affidavit has been previously furnished to members of the Subcommittee staff. As that document shows, the facts pertaining to out-of-pocket expenses and Overmyer's investment are extremely detailed, and do not readily lend themselves to abbreviation. In short, the Byrnes' affidavit, with its supporting exhibits and balance sheets, is the "best evidence" of what the Commission had before it in considering Overmyer's investment in the permittees. In the interest of avoiding unnecessary duplication in the record of these hearings, it was agreed after consultation between members of the Subcommittee's staff and the Commission's staff that the Commission's response regarding out-of-pocket expenses and a breakdown of the sales price could be based on the

Byrnes' affidavit. The discussion which follows presents in short form facts pertaining to these matters and is keyed to the Byrnes' affidavit. References below are to the page numbers of the various exhibits and schedules appended to the Byrnes' affidavit.

Breakdown of sales price

Overmyer has set his total investment in the five permittees at \$1,331,900. (Exhibit III, Schedule A). The \$1,000,000 which he received on sale of his 80% stock interest represents slightly less than 80% of this total investment. On the basis of these figures, it is thus apparent that Overmyer presently values the 20% interest he has retained in the permittees at \$332,000, in round numbers. Overmyer's capital investment in the individual permittees as of March 31, 1967, is set forth in the combined balance sheet of the companies. See Exhibit III, Schedule B.

Breakdown of out-of-pocket expenses

Since the 80% stock interest is being sold for out-of-pocket expenses, Overmyer's investment in the permittees and out-of-pockets are substantially the same. In fact, they are so treated in the Byrnes Affidavit.

As explained at page 3 of that Affidavit, Overmyer's total investment falls into two categories: (a) money spent directly by or for the permittees, and (b) the cost of unreimbursed services rendered and facilities furnished by other Overmyer companies to the permittees.

Expenses in the first category total \$665,386. (Exhibit III, Schedule A). As explained at page 4 of the Byrnes Affidavit, this "direct" investment consists of items such as paid-in capital (\$53,500); cancellation of intercompany accounts (\$253,046) and assets to be donated to the permittees (\$358,840). A narrative discussion of this "direct" investment appears at page 4 of the Byrnes Affidavit, which is keyed over to the appropriate schedules covering these items.

Overmyer's "indirect" investment in the permittees totals \$666,514. (Exhibit III, Schedule A). This category of expenses consists mainly of unreimbursed services (particularly staff services, such as legal, accounting, payroll, etc.) rendered by other Overmyer companies to the permittees. As noted in the Byrnes affidavit (p. 5), prior to September, 1966, intercompany services were never "separated out", but were buried within total expenses of the Overmyer company. For this reason, the cost of such services prior to September, 1966 has been derived through application of a formula discussed at length in the Byrnes Affidavit (pp. 5 to 7). The affidavit further discusses the method by which staff costs occurring after September, 1966 (at which time staff services were centralized in a headquarters company) were determined.

The method used to determine unreimbursed expenses is exceedingly complex and does not readily yield to compression. The precise steps and calculations are set out at pp. 5 to 7 of the Byrnes Affidavit, which in turn is supported by the affidavits of various department heads. Essentially, the formula rests on judgments of department heads as to what percentage of their activities could fairly be allocated to the permittees. The formula also takes into account costs attributable to the Toledo station (which Overmyer retains) and the Dallas permit. See subparagraph (f), p. 7 of the Byrnes Affidavit. Costs for the Toledo station and prosecution of the Dallas application (later dismissed) have been excluded.

A summary of unreimbursed expenses allocable to the permittees is set out as Exhibit III, Schedule F. Listed below are pertinent figures in Schedule F, which have been keyed over to the Byrnes affidavit, which explains the steps in deriving these figures:

Figures from "Summary of Charges"—Schedule F

- \$790,320: Total charges for unreimbursed expenses from July, 1964 through Sept. 31, 1967. See Byrnes Affidavit, pp. 5 to 7, subparagraphs (a) through (e), inclusive.
- \$158,046: Deductions for Toledo and Dallas costs. See Byrnes Affidavit, p. 7, subparagraph (f)
- \$34,330: Addition for costs of Overmyer Leasing Co. attributable to permittees. See Byrnes Affidavit, p. 7, subparagraph (g).

DATA WHICH THE COMMISSION CONSIDERED IN GRANTING CONSTRUCTION PERMITS TO D. H. OVERMYER

Financial information the Commission considered in determining that Overmyer was financially qualified to build the stations is set out in the applications for the permits. Two of the permits (for the Toledo and Rosenberg-Houston stations) were obtained as original grants. Permits for the remaining four stations were obtained through assignment from existing permittees. Summarized below, on a permit-by-permit basis, is the financial data which appeared in the various applications.

WDHO-TV, TOLEDO, OHIO (BPCT-3173)

This was Overmyer's first application and was filed April 10, 1963. The Toledo station (WDHO-TV) was not included in the sale to AVC's subsidiary. But inasmuch as the proposal to build the station was material to Overmyer's acquisition of other permits later on, information respecting WDHO-TV is included here.

The financial proposal contained in the application as originally filed estimated that it would take \$1,003,078 to construct the station and \$137,500 to operate the station for the first three months. Thus, Overmyer estimated a total of \$1,140,578 was needed to build the station and get it on the air. Overmyer proposed to meet these costs by purchasing equipment valued at \$625,729 on credit from RCA and under a \$5,000,000 bank loan. Overmyer further stated in his financial proposal that he would "... underwrite any other financial requirements in connection with the proposed station." A balance sheet filed as an exhibit to the financial proposal set Overmyer's net worth as of September 1, 1962 at \$3,345,050. This net worth stemmed almost entirely from Overmyer's ownership of capital stock in wholly and partially owned corporations.

The application was amended on September 23, 1963 to show Overmyer had available a loan of \$300,000 from D. H. Overmyer Warehouse Co., and credit of \$500,000/\$600,000 from two banks. The amendment was supported by balance sheets of the warehouse companies, and by a new personal balance sheet for Overmyer (dated August 1, 1963), showing a new worth of \$3,396,295. The application was further amended on October 4, 1963 to increase the loan available from Overmyer Warehouses to \$325,000, and to make minor corrections in Overmyer's personal balance sheet as of August 1, 1963. The corrected balance sheet set his net worth at \$3,381,493.

On January 14, 1964, Overmyer again amended his financial proposal to increase estimated construction costs from the \$1,003,078 originally proposed to \$1,098,078. The applicant's financial ability to meet these increased costs was supported by a letter showing an increase in the deferred equipment credit available from RCA, and by an increased loan commitment (\$340,000) from Overmyer Warehouses.

On the basis of the amended financial showing, the staff concluded that Overmyer was financially qualified. However, since two other Toledo applicants had applied for the same UHF channel, it was necessary to designate the applications for a comparative hearing. The Order of designation (in which the Commission found that Overmyer was financially qualified) was released February 12, 1964. Shortly after release of the Hearing Order, Springfield Television, one of the competing applicants, filed a petition to add an issue respecting Overmyer's financial qualifications. (Petition to Add Issue, filed March 2, 1964 in Docket 15,327.) Springfield attacked Overmyer's financial showing in two respects: it questioned the firmness of the bank loans Overmyer relied on, and the ability of Overmyer Warehouses to lend \$340,000 to Overmyer.

This petition to add a financial issue as to Overmyer was opposed on the record by both Overmyer and the Commission's Broadcast Bureau. The Broadcast Bureau took the position Overmyer had sufficiently established his financial qualification. This position was based on an analysis of the cash Overmyer would need (\$558,487.) for down payments on equipment, for land, buildings and other items, and for initial three-months working capital. The Bureau felt that Overmyer's bank commitments of \$600,000 sufficed, and that Overmyer

Warehouses had sufficient resources in cash and borrowing potential to lend \$340,000 to Overmyer. ("Broadcast Bureau's Comments on Petition to Add Issue", filed March 23, 1964, Docket 15,327). Overmyer's "Opposition to Petition to Enlarge Issues" denied the bank loans were not firm, and denied that Overmyer Warehouses lacked sufficient cash to make its loan commitment. The Overmyer Opposition was supported by several documents. First, a certification by Overmyer that his net worth exceeded \$4,000,000; that his current assets exceeded current liabilities by \$500,000; and that he stood ready to "... provide whatever funds are needed for, construction and operation of the station."

Next, a certification by the Treasurer of Overmyer Warehouses reaffirming the commitment to lend Overmyer \$340,000 (and up to \$600,000), with the first payment not due until 18 months after the station had gone on the air; and a further certification that Overmyer Warehouses had cash on hand and deposit of over \$800,000, with current assets exceeding current liabilities by more than \$700,000. Finally, Overmyer's Opposition was supported by current letters from the Lucas County State Bank and Franklin National Bank reaffirming their loan commitments.

In its reply to Overmyer's Opposition, Springfield reiterated its claim Overmyer was financially unqualified. Springfield additionally alleged that Overmyer's proposal to become an incorporator of a new bank required him to show what impact, if any, his participation in the bank venture had on his financial position. This latter allegation was the subject of a Motion to Strike on procedural grounds. The allegation was later withdrawn by Springfield but retendered in a "Supplement to Petition to Add Issue" filed by Springfield on April 16, 1964.

In ruling on the Petition to Add Issue, the Commission's Review Board dismissed the "Supplement to Petition to Add Issue" on procedural grounds. However, the Review Board fully explored the matter of Overmyer's financial qualifications and ruled that the specification of a financial issue was not needed. In view of the importance of this decision (FCC 64R-243), a copy is attached hereto as Exhibit 1.

Subsequently, Springfield filed an Application for Review. However, Springfield withdrew from the comparative proceeding and withdrew its Application for Review (Letter, June 24, 1964). The Overmyer application was later granted, and the station has been on the air since 1966.

WBMO-TV, ATLANTA, GA. (BAPCT-351)

Overmyer's application for the Atlanta station (which then went under the call letters WATL-TV) was filed August 13, 1964. The application was for assignment of a construction permit held by Robert Rounsaville. The financing proposal contained in the application as originally filed indicated that total estimated costs for constructing the station and operating it for the first three months were approximately \$630,000. To meet these requirements, Overmyer had available \$700,000 in loan commitments, consisting of a \$300,000 equipment credit from RCA, and a \$400,000 loan from Girard Trust Bank (Philadelphia.). Overmyer also stated he had a net worth of \$5,000,000, and in addition to guaranty of the Girard Trust loan, Overmyer stood ready to "... provide whatever temporary financing may be required."

While the application was being processed, the Broadcast Bureau requested Overmyer to furnish balance sheets for himself and Overmyer Warehouses. Balance sheets as of August 31, 1964 were furnished, which showed a total shareholders equity of \$5,224,194 in Overmyer Warehouses, and a personal net worth of \$5,905,698, for Overmyer. In the letter of transmittal which accompanied these balance sheets, Overmyer stated that both his personal resources and those of the Warehouse company were available to the extent needed to build the station and get it on the air.

The financial proposal was subsequently amended on March 9, 1965 to indicate RCA had reduced the cash down payment on equipment from 25 percent to 15 percent, and had extended the time for payment from 4 years to 5 years.

The staff memorandum to the Commission respecting this assignment listed the various applications Overmyer had pending for UHF stations. The assignment application for the Atlanta permit was approved May 12, 1965. At that time, Overmyer had obtained permits for two other stations.

WSCO-TV, NEWPORT, KY. (CINCINNATI MARKET) (BAPCT-352)

The assignment application for the Cincinnati station was filed August 28, 1964, two weeks after the application for the Atlanta station. The financial proposal indicated \$750,000 would be needed to build the station and operate it for one year. Costs of construction were listed at \$675,928, with estimated operating costs of \$750,000 for the first three months. To meet these needs, Overmyer had \$356,000 equipment credit for RCA and a \$400,000 loan commitment from the First National Bank of Cincinnati. The financial proposal gave the same net worth for Overmyer as that listed in the Atlanta application (\$5,000,000) and further indicated Overmyer's willingness "... to provide whatever interim financing may be necessary."

As had been done with the Atlanta application, the staff requested balance sheets from Overmyer and Overmyer Warehouses. The same balance sheets mentioned in the previous item were furnished. And as with the Atlanta application, the Cincinnati application was amended by furnishing a letter from RCA which cut the down payment on equipment from 25 percent to 15 percent, and extended the schedule for repayment from 4 to 5 years.

The staff memorandum to the Commission listed the various applications which Overmyer had pending. The Cincinnati assignment application was approved on March 10, 1965.

KEMO-TV, SAN FRANCISCO, CALIF. (BAPCT-354)

Overmyer's application for the San Francisco station—which then went under the call letter KBAY-TV—was filed November 10, 1964. Since the financing originally proposed was altered radically in 1965, the original proposal will not be discussed here.

It might be noted, however, that while the application was being processed, the Commission wrote to Overmyer on January 6, 1965 for additional financial information. In its letter, the Commission noted that the six applications Overmyer then had pending involved "... financial obligations in excess of \$3,000,000". In view of this, the Commission requested additional assurances that Overmyer's financial condition was such that he could obtain a bank loan to finance construction of KBAY-TV. In a response filed February 6, 1965 in the KBAY-TV application, Overmyer stated that the various Overmyer corporate applicants for permits were being financed separately, "... largely through bank credit, to be extended in part on the guarantee of" Overmyer. Overmyer again stated his net worth exceeded \$5,000,000. He further noted the Warehouse companies had cash exceeding \$1,500,000, and that the resources of both Overmyer and the Warehouse companies were available to finance construction, if needed.

On August 5, 1965, the application was amended substantially by the assignor's taking a 20% equity interest in the San Francisco permittee. The amendment came about largely as the result of earlier questions the Commission had directed to the assignor (Mr. Corwin) on the question of whether the initial proposals of the applicants would give Corwin sums in excess of out-of-pocket expenses.

Since the amended application was subject to the newly-adopted "Ultravision" standard on financial qualification, Overmyer had to show he had sufficient funds to construct the station and operate it for one year without income, or, if station income was relied upon, to prove the basis for estimated revenues.¹ The amended financial proposal of August 5, 1965 set construction and first year operating costs at a total of \$1,126,000. To meet these requirements, the corporate applicant had \$945,000 available in cash (payment for capital stock); loan commitments (from the assignor and Bank of America); and equipment credit (extended by RCA). Overmyer estimated that the balance of \$181,000 needed for the first year could be derived from station revenues, which were estimated at twice this sum.

¹ The "Ultravision" test was adopted in June, 1965. See 5 RR 2d 343. Essentially, the test is designed to lend assurance a permittee can construct the station and operate it for the first year without relying on station revenues. The premise of the "Ultravision" standard is that if an applicant can build his station and get through the first year, it is probable that through business acumen he can survive beyond that time. 5 RR 2d, at 347-8.

The substance of this revised financial plan was discussed in the Bureau's memorandum to the Commission. In recommending a grant, the Bureau relied on this financial showing, as well as repeated representations Overmyer had made earlier committing his personal resources and those of his Warehouse companies to the Overmyer permittees. It was further noted that any problems which might arise in connection with Overmyer's application for a seventh station (the Dallas permit) could be studied when that application was considered.

The assignment application for KBAY-TV was approved October 20, 1965.

KJDO-TV, ROSENBERG, TEX. (HOUSTON) (BPCT-3518)

Overmyer's application for a UHF station in the Houston market was for a new facility. The application was filed February 8, 1965. Inasmuch as the original financial proposal predated the "Ultravision" test, the discussion of financial plans will be limited to the amended proposal.

Under the amended proposal, construction and first-year operations were to be financed through an equipment loan from RCA and loans from a bank (\$550,000) and from the Warehouse companies (\$250,000). In the Bureau's memorandum to the Commission, it was noted Overmyer would need approximately \$660,000 for construction and first-year's operation. It was further noted that Overmyer estimated first-year's revenues at \$350,000, an estimate supported by a statement (filed in the application) which analyzed the revenue potential of the Houston market. On the basis of (a) this information, (b) an analysis of Overmyer's financial position with respect to the needs of the other permittees, and (c) Overmyer's earlier representations he would commit his resources and those of his warehouses to the permittees, a grant of the application was recommended. That grant was made on August 12, 1965.

WECO-TV, PITTSBURGH, PA. (BAPCT-364)

The assignment application for the Pittsburgh permit was first filed in February, 1965, but rejected as inconsistent with the Commission's rules. The application was refiled in May, 1965. Although the financial showing was presented in terms of the old qualifications standard, the Bureau's memorandum to the Commission discussed Overmyer's Pittsburgh application in terms of the *Ultravision* test. The Memorandum to the Commission indicated Overmyer had first-year needs of \$1,031,150 for construction and operation, and available credits (bank loan and equipment credit) of \$665,000. In determining whether Overmyer could make up the \$366,150 differential between needs and resources, the Bureau did not consider estimated revenues of \$450,000 for the first year because Overmyer had not proven the basis for his estimate. However, the Bureau looked to other assets the Overmyer warehouses and the latest personal net worth shown for Overmyer—\$5,900,000. On the basis of an analysis of Overmyer's total resources (as balanced against his commitments to the Toledo, Atlanta and Cincinnati permittees, which at the time had already been granted), the Bureau concluded Overmyer was financially qualified to build the Pittsburgh station. The application was granted July 28, 1965.

APPLICATION FOR A NEW STATION, DALLAS, TEX. (BPCT-3463)

It should be noted Overmyer filed an application for a new UHF station in Dallas, Texas on November 11, 1964. That application was pending at the time Overmyer filed the applications for transfer of control of the five permittees to AVC Corporation. After the transfer applications were filed, the Commission's staff informally queried Overmyer on whether, in light of representations made in the transfer applications regarding his financial condition, he intended to continue prosecution of his Dallas application. By a reply letter dated September 21, 1967, Overmyer informed the Commission that while he believed in the future of UHF broadcasting and intended to retain ownership of the Toledo station, the Dallas application would be dismissed. Dismissal was requested on September 28, 1967, and granted October 17, 1967.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In re Applications of

SPRINGFIELD TELEVISION BROADCASTING CORPORATION, TOLEDO, OHIO

Docket No. 15326, File No. BPCT-3157

D. H. OVERMYER, TOLEDO, OHIO

Docket No. 15327, File No. BPCT-3173

PRODUCERS, INC., TOLEDO, OHIO

Docket No. 15328, File No. BPCT-3178

For Construction Permits for New Television Broadcast Stations

MEMORANDUM OPINION AND ORDER

By the Review Board: Board Member Nelson not participating.

1. The Review Board has before it a Petition to Add Issue in the above-captioned proceeding,¹ wherein Springfield Television Broadcasting Corporation (Springfield) requests the addition of the following issue:

"To determine whether D. H. Overmyer is financially qualified to construct, own and operate the proposed television station."

2. This proceeding involves three applications for a construction permit for a new television broadcast station to operate on Channel 79, Toledo, Ohio. In its designation Order (FOC 64-97) released February 12, 1964, the Commission found one of the applicants, D. H. Overmyer (Overmyer), to be financially qualified.

3. Overmyer's amended application shows that he will require \$1,008,859 for equipment, \$45,000 for land, \$65,000 for buildings, \$57,000 for miscellaneous expenses, and \$137,500 to operate for three months, for a total of \$1,313,359; and that Overmyer would meet this requirement as follows: (1) a deferred equipment credit of approximately \$756,644; (2) a joint bank loan of between \$500,000 and \$600,000 from the Lucas County State Bank, Toledo, Ohio, and the Franklin National Bank, New York, N.Y.; (3) a loan from the D. H. Overmyer Warehouse Company (Overmyer Company) of \$340,000; and (4) a commitment by the applicant to "underwrite any other financial requirements."

4. In support of its petition, Springfield first alleges that the letters of the two banks do not constitute binding commitments to provide specific sums of money. Springfield points out that the commitment letter of the Lucas County State Bank dated October 10, 1963, is predicated "upon their (sic) being no substantial change in the conditions" upon which the loan was made, and contends that the bank's failure to set forth these "conditions" makes it impossible to conclude that there is any assurance of the availability of this loan. With respect to the letter dated July 8, 1963, from the Franklin National Bank, Springfield contends that provisions stating that the commitment is based "upon the financial information thus far exhibited"; "a satisfactory projection of the operations of the contemplated station over the first several years"; and "all terms, conditions and covenants of the proposed loan would be satisfactory to both your counsel and the counsel for the two banking institutions" require a conclusion that there is no

¹ The Review Board has the following pleadings under consideration: Petition to Add Issue, filed March 2, 1964, by Springfield Television Broadcasting Corporation; and pleadings properly and timely filed in response thereto. On April 16, 1964, Springfield filed a Supplement to its Petition To Add Issue. This additional pleading was neither requested nor authorized by the Commission (Section 1.45(c) of the Rules), and it does not contain the specific allegations of fact required by Section 1.229(c) of the Rules. Therefore, the Supplement will be dismissed.

certainly that the Franklin National Bank would ever be willing to advance the funds for the proposed station.

5. Springfield also questions the ability of the Overmyer Company to lend \$340,000, in view of the fact that its balance sheet shows current assets over liabilities in the amount of only \$252,247.39 and no showing was made of the manner in which the company would raise the \$340,000 or that the company has the ability to raise this sum. Finally, Springfield contends that Overmyer personally is not in a position to provide substantial funds to the applicant because his personal balance sheet shows cash of only \$82,649.06 as against current liabilities of \$175,507.59, and there is no showing of the basis for the amounts listed as "other current assets" and no showing of the exact nature of these assets.²

6. Overmyer, in his opposition, points out that all of the information contained in Springfield's petition was before the Commission when it found Overmyer to be financially qualified. Moreover, Overmyer contends, Springfield's allegations are insufficient to warrant the requested issue. Attached to the opposition are statements from Overmyer himself; the treasurer of the Overmyer Company; and officials of the two banks. Overmyer states that he has a net worth in excess of \$4,000,000 and that his current assets exceed current liabilities by an amount in excess of \$500,000; Overmyer Company's treasurer reaffirms the Company's commitment, and states that the loan will be increased to \$600,000 should Overmyer desire it and that the company's current assets exceed its current liabilities by more than \$700,000; an official of the Lucas County State Bank, in a letter dated March 18, 1964, states that the conditions for its proposed loan are intended to be only those which are customary; and an official of the Franklin National Bank in a letter dated March 16, 1964, states that the material conditions of its proposed loan were, and are, the participation of the other bank, the contribution of funds as specified by the applicant, and the absence of material change in the applicant's financial condition. Finally, the bank official indicates that Franklin National Bank would be willing to lend an amount up to \$250,000 subject only to there being no material change in Overmyer's financial condition.

7. As previously indicated, Overmyer will require cash in the amount of \$556,715 (the \$1,313,359 total requirement minus the 756,644 equipment credit) for construction and initial operation of his proposed station. In addition to the bank loan and Overmyer's personal commitment, the Overmyer Company has agreed to lend up to \$600,000 to Overmyer. We cannot accept the statement of the Overmyer Company treasurer, attached to the reply, that the Company has cash of over \$800,000 and its current assets exceed current liabilities by over \$700,000, when Overmyer Company's balance sheet, submitted with the application, shows cash of only \$339,868 and current assets over liabilities of only \$252,247. However, the balance sheet also indicates total assets of \$5,467,893; total assets over liabilities of \$2,423,698; and fixed assets of \$4,922,935, including such items as \$1,052,546 for land and \$3,583,119 for buildings. In view of the considerable amount of assets shown to belong to Overmyer Company and the sizeable net worth of that corporation, we believe it would be unrealistic to question the Company's ability to lend up to \$600,000 to Overmyer. Moreover, Overmyer's net worth of more than \$3,000,000 provides additional assurance that the applicant will have sufficient funds to construct and operate its proposed station for a reasonable period of time without revenue. See *Massillon Broadcasting Co., Inc.*, FCC 61-1164, 22 RR 218 (1961).

Accordingly, It Is Ordered, This 27th day of April, 1964, That in Springfield's Reply, filed March 26, 1964, the material commencing at line 12 of page 4 and ending at the last line of page 5 Is Stricken; and

It is further ordered, That the Motion to Strike, filed April 2, 1964, by D. H. Overmyer, and the Supplement to Petition to Add Issue, filed April 16, 1964, by Springfield Television Broadcasting Corporation are dismissed; and

It is further ordered, That the Petition to Add Issue, filed March 2, 1964, by Springfield Television Broadcasting Corporation is denied.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

Released : April 29, 1964.

² In its reply, commencing in the middle of page 4 and ending at the bottom of page 5, Springfield raises certain new factual matters which, it contends, affect Overmyer's financial showing. However, the Board cannot consider these newly alleged facts because they are contained in a reply pleading, see Section 1.229(h) of the Commission's Rules, and they are not supported by affidavits of persons with personal knowledge of the facts, see Section 1.229(c) of the Rules. Therefore, the Board will strike this material. On April 2, 1964, Overmyer filed a motion to strike the same material. In view of the Board's action in striking the material, Overmyer's motion will be dismissed as moot.

ITEM 7

ILLUSTRATIVE CASES INVOLVING FCC OUT-OF-POCKET EXPENSES POLICY

(Submitted herewith are cases which involve the doctrine that only out-of-pocket expenses are recoverable when a bare permit is assigned.)

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

File No. BMPCT-5818; File No. BAPCT-393

In the Matter of

BERNARD RAPPAPORT for additional time to construct Television Station
WGTI(TV) Channel 23, Philadelphia, Pennsylvania.

BERNARD RAPPAPORT (ASSIGNOR)

and

SEVEN ARTS BROADCASTING Co., INC. (ASSIGNEE)

For voluntary assignment of construction permit of Station WGTI(TV),
Philadelphia, Pennsylvania.

MEMORANDUM OPINION AND ORDER

(Adopted July 5, 1967 Released July 17, 1967)

By the Commission: Commissioners BARTLEY and Cox dissenting; Commissioner LEE not participating; Commissioner JOHNSON concurring in the result.

We have before us for consideration: (a) the above captioned applications; (b) two Petitions to Deny the assignment application, one filed by New Jersey Television Broadcasting Corp., licensee of Television Broadcast Station WNJU-TV, Channel 47, Linden-Newark, New Jersey and the other by WIBF Broadcasting Company, permittee of Television Station WIBF-TV, Philadelphia, Pennsylvania, and opposition pleadings in each instance; (c) motion to dismiss the pending application of Bernard Rappaport (BMPCT-5818) for extension of time within which to complete construction of Television Broadcast Station WGTI(TV), Channel 23, Philadelphia, Pennsylvania and opposition pleadings thereto; and (d) a tendered, but unaccepted, application for a new construction permit for Channel 23, Philadelphia, Pennsylvania by MG-TV Broadcasting Company, with a Petition that asks for dismissal of Rappaport's application for extension of time to construct, and for comparative consideration of its tendered application with any other application for Channel 23, and opposition pleadings.

1. The Petitioners neither demonstrate that they are parties in interest to any pending application, nor raise substantial and material questions of fact to prevent a grant of the applications without hearing. Therefore after discussion the Commission will dismiss the various petitions and grant both applications. Since the assignment application will be granted, MG-TV Broadcasting Company's tendered application for a new construction permit for Channel 23 Philadelphia will be returned, and its Petition dismissed.

2. Commission records indicate that the construction permit for Channel 23 (BMPCT-2913) was granted to Bernard Rappaport on November 30, 1961. The station has not been built. On January 28, 1963 Rappaport filed an application (BAPCT-327) for the voluntary assignment of the construction permit to New Jersey Television Broadcasting Cor. (New Jersey), licensee of Station WNJU-TV (channel 47) Linden-Newark, New Jersey. Rappaport's application for extension of time to construct was also pending.

3. Rappaport's application for assignment to New Jersey was hotly contested in Petitions to Deny. Questions were raised concerning the assignee's financial

qualifications to simultaneously operate Stations WNJU-TV and the subject WGTI(TV); possible violation of the Commission's multiple ownership rules, whether New Jersey's plan to originate 8 hours of local programming per week at WGTI(TV) was a plan to use WGTI(TV) as primarily a satellite within the aforementioned rules and if so, whether such an operation for Channel 23 Philadelphia was an efficient use of the channel within the meaning of Section 307(b) of the Communications Act.

4. New Jersey filed a number of amendments to resolve the problems. On September 8, 1966, Mr. Rappaport advised New Jersey that he would not renew the buy-sell agreement. The Rappaport-New Jersey agreement having expired, at the request of counsel for Rappaport, the Commission dismissed the assignment application on November 1, 1966.

5. On November 25, 1966, Rappaport filed the captioned assignment application (BAPCT-393) which seeks Commission authorization for the assignment of the WGTI(TV) construction permit to Seven Arts Broadcasting Co., Inc. (Seven Arts). The various Petitions followed.

6. Neither New Jersey Television Broadcasting Corp., nor WIBF Broadcasting Company, licensee of Station WIBF (Channel 29) Philadelphia has demonstrated that it is a party in interest to any pending application. New Jersey posits standing on the fact that it previously sought the assignment of the WGTI(TV) construction permit, and that therefore it somehow has an equitable interest in the presently pending application sufficient to Petition to Deny. This contention is contrary to the cases which require that the potential injury complained of occur specifically as a result of the Commission action. Here under Section 310(b) of the Communications Act the Commission would be precluded from making a grant to New Jersey. New Jersey has no present interest in Channel 23 Philadelphia which the Commission can recognize. It had an agreement with Rappaport for the assignment of the Channel 23 Philadelphia construction permit. Most contracts which form the basis of assignment applications either automatically expire at a certain date or are voidable at the discretion of either party. The parties are well aware of this hazard if such it be, when they enter such agreements. New Jersey was well aware of the existence of voidability in this case. Here the contract was voidable after the expiration date. Rappaport exercised his right to terminate the agreement, and accordingly the application was dismissed. Therefore, New Jersey cannot be held to assert good faith and fair dealing as a basis for standing. Cf. *Granik & Cook v. FCC* 234 F 2d 682. New Jersey's Petition to Deny will therefore be dismissed.¹

7. WIBF Broadcasting Company, permittee of Television Station WIBF-TV, Philadelphia, Pennsylvania (Channel 29) claims standing as a party in interest principally because Seven Arts "is a prime supplier of films and programming to independent television stations", and a grant of the application "would serve to cut off as a practical matter, WIBF-TV's access to film and television properties produced and distributed by" Seven Arts and associate companies. By way of answer, Seven Arts pointed out in part:

"Throughout the history of its operation WIBF-TV has never sought any product of Seven Arts although it has been solicited and although such products have been and are available in the Philadelphia market. Moreover, Seven Arts is mainly a distributor of film products which are either produced by others or are produced in conjunction with Seven Arts. Well established and accepted sound business policies and fair business practices would preclude Seven Arts from

¹ New Jersey Television also filed a Motion to Dismiss Rappaport's application for extension of time to construct. It has no standing against this application. *Deseret Telecasting Co.* 1 RR 2d 133. Therefore that Petition will also be dismissed.

favoring itself to the detriment of a competitor and requires that the same treatment be accorded competitors as accorded itself. Likewise, it is a fundamental concept of fair dealing that one who conducts business with oneself must do so at arms length."

Here according to the Seven Arts pleading, WIBF has never used Seven Arts products in the past and in view of the assignee's statement regarding its future course of conduct, it has not been demonstrated how Station WIBF will suffer the direct and immediate injury by a grant of the application requisite to support standing as a party in interest. *FCC v. Sanders Bros.*, 309 W.S. 470 (1940). We therefore find that Station WIBF is not a party in interest.

8. In spite of our finding that neither Petitioner is a party in interest, we have carefully reviewed the applications and the objections and find no substantial and material questions of fact to prevent grants. In the main, the objection are addressed to the assignor—Rappaport. One questions his current financial qualifications to construct and operate WGTI(TV). The short answer to this allegation is that *the assignee* is financially qualified, and its financial stability is the relevant consideration at this time.

9. Rappaport is also charged with failure, under Section 1.65 of the Commission's Rules, to keep his application up to date. The allegation is that Rappaport failed to inform the Commission of a change in his net worth. At the time of the New Jersey assignment application, Rappaport's net worth was shown as \$483,000 and at time of the Seven Arts application his balance sheet shows no assets and liabilities of \$50,000.

10. Section 1.65 of the Rules requires an applicant to keep his application up to date. As we have said on numerous occasions, compliance by applicants with this Section is crucial to the adequate administration of the Commission's functions. Because of the close proximity in time between the dismissal of the Rappaport-New Jersey application and the filing of the Rappaport Seven Arts application, it is obvious that Rappaport technically failed to comply with the requirements of Section 1.65 of the Rules by not informing the Commission of the change in his financial fortunes. Moreover, his application for extension of time to construct (BMPCT-5818) has been on file continuously since 1963. However, the fact is that since 1963, Rappaport has been relying on first the assignment application with New Jersey and lately the application with Seven Arts. While this fact would not relieve Rappaport from keeping the Commission informed of his financial condition, it indicates his lack of intention to deceive the Commission. Therefore in the context of the facts of this case, we do not consider his failure of decisional significance.

11. The Commission has a long standing policy which permits the recovery of out of pocket expenses only by the assignor when a construction permit is assigned. The agreement between Bernard Rappaport and Seven Arts provides in part:

"The sole consideration for the assignment . . . shall be the total of the verifiable out of pocket expenses . . . incurred by assignor . . . assignor understands said total to approximate twelve thousand dollars (\$12,000) . . . in no event shall said total exceed twenty thousand dollars (\$20,000)."

In the application the assignor has shown out of pocket expenses in the sum of \$14,202.66. Pursuant to the long standing Commission policy *supra* and in accordance with the agreement by the parties, the consideration is understood to be \$14,202.66, and is limited to that amount.

12. The final question concerns Station WIBF's contention that if Seven Arts becomes the permittee of Station WGTI(TV), it will not be able to obtain any Seven Arts production. Seven Arts states that WIBF has never been its customer. Thus Station WIBF's allegations are most speculative. Such a course of action by Seven Arts could possibly jeopardize its broadcast interests. We have no basis to conclude that the assignee will favor itself over the petitioner or other competitors in such a manner. There are no remaining substantial and material questions of fact to prevent grants without hearing.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

File No. BAPCT-378

In re Application of

SAM H. BENNION (ASSIGNOR)

and

BOISE VALLEY BROADCASTERS, INC. (ASSIGNEE)

For assignment of the construction permit of Station KBYN (TV),
Twin Falls, Idaho

File No. BMPCT-5753

Application for extension of time to complete construction of KBYN

File No. BMPCT-6368

Application for modification of construction permit for KBYN

MEMORANDUM OPINION AND ORDER

(Adopted May 17, 1967; Released May 19, 1967)

By the Commission: Commissioners BARTLEY and LOEVINGER absent; Commissioner Cox abstaining from voting; Commissioner JOHNSON concurring in the result.

We have before us (a), the above application for consent to the assignment of the construction permit for Station KBYN, Channel 13, Twin Falls, Idaho, from Sam H. Bennion to Boise Valley Broadcasters, Inc., and associate applications involving modification of the KBYN authorized facilities, and extension of time to construct; and (b) Petition to Deny, filed by KLIX Corporation, licensee of Station KMVT, Channel 11, Twin Falls, Idaho (sometimes KMVT), and responsive pleadings thereto.

1. KMVT alleges (a) that Bennion trafficking; (b) the assignee's programming and staffing proposals are inadequate; (c) the assignee is not financially qualified and (d) that a grant of the applications might result in prohibited overlap of the Grade B contours of the assignee's existing Station KBOI, Boise, Idaho, and of KBYN. The Commission has carefully examined the application, as amended, and the pleadings, and concludes that KMVT has not raised substantial and material questions of fact to prevent a grant, and finds that it would be in the public interest to grant the above applications.

2. The Petition alleges that Bennion is trafficking. Bennion, by the way of opposition, pointed out that he has had over \$13,000 in out of pocket expenses at KBYN and that he will receive only \$3,000 from the assignee, if this application is granted. Bennion's expenses as alleged, when compared with the nominal amount that he will receive as consideration is persuasive of his lack of intent to use the KBYN permit for gain. We conclude that the Petitioner has failed to make a prima facie showing of trafficking against Bennion.

3. KMVT also questions the assignee's financial qualifications. The assignee's estimated cost of construction is \$137,500 and the estimated cost of operation for the first year is \$107,200 or a total of \$244,700. To meet these expenses, the Idaho First National Bank of Boise has agreed to lend the assignee \$200,000. The assignee's latest balance sheet shows current assets of \$398,136 and current liabilities of \$147,827.02. Without discussing potential revenue at KBYN, on the basis of the bank loan and its current assets, we find the assignee to be financially qualified.

4. The adequacy of the assignee's programming and staffing proposals are also contested. Boise Valley in turn states that it will not operate KBYN-TV as a satellite of its Boise, Idaho station, and, in fact, asserts that 12.8% of the KBYN-TV programming will be local live. It is also hopeful of obtaining a network affiliation. We see no merit in KMVT's contention concerning KBYN-TV's proposed programming.

5. In response to the challenge on the adequacy of its staffing proposal, the assignee states that it will have seven full-time employees on its staff, and that it will also make use of its Boise staff on a part-time basis. In addition, Boise Valley states that it will increase its staff when "necessary because of expanded

local programming and justified from a business standpoint." We do not believe KMVT has demonstrated that Boise Valley's staffing proposal is inadequate to meet its programming proposals as indicated.

6. The remaining question is whether a grant of the application would result in overlap of the Grade B contours of Stations KBOI and KBYN-TV, in violation of Section 73.636 of the Commission's Rules. On September 23, 1966, following the filing of the assignment application, KBYN-TV filed a modification application (BMPCT-6368) in which the assignee joined. The application seeks to increase KBYN-TV's power from Visual ERP .562kw to 3.06kw, and to increase antenna height from 30 feet above average terrain to 41 feet. An overlap study of the Grade B contours of KBYN-TV as proposed, and of KBOI indicates that while the contours are practically contiguous, they do not overlap.

Accordingly, it is ORDERED, That the Petition to Deny filed by KLIX Corporation, licensee of Station KMVT, Twin Falls, Idaho, is denied, and the above-entitled KBYN-TV applications are GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, Secretary.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Docket No. 14714, File No. BMPH-6746

In re Applications of

DESERT BROADCASTING COMPANY, INC.

For additional time to construct Radio Station KANT-FM,
Lancaster, California

DESERT BROADCASTING COMPANY, INC. (ASSIGNOR)

and

MANUEL MARTINEZ (ASSIGNEE)

Docket No. 14715, File No. BAPH-271

For assignment of construction permit for Radio Station KANT-FM,
Lancaster, California

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of July, 1962;

The Commission having under consideration the above-entitled applications; and

It Appearing, That, the above-entitled application for additional time to construct Station KANT-FM constitutes the seventh such request submitted to the Commission since the permit was granted and raises a question as to whether Desert Broadcasting Company, Inc., has made a diligent effort to complete construction of Radio Station KANT-FM; that the Commission is unable to find that a grant of said application would serve the public interest; and that said application must be designated for hearing; and

It Further Appearing, That, the consideration for the assignment of the construction permit is \$19,937.12, which sum is alleged to represent the assignor's out-of-pocket expenses incurred in securing the construction permit; that the assignor was requested to explain and document certain items of the alleged expenditures; and that the assignor has failed to comply with said request; and

It Further Appearing, That, in view of the fact that insufficient evidence has been furnished the Commission to substantiate the representation made by Desert Broadcasting Company, Inc., as to the actual out-of-pocket expenses incurred by it in securing the construction permit for Station KANT-TV, the Commission is unable to find that a grant of the above-entitled assignment application would serve the public interest, convenience and necessity; and that the application must, therefore, be designated for hearing on the issues specified below;

It Is Ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-entitled application Are Designated For Consolidated Hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the reasons offered by Desert Broadcasting Company, Inc., in support of its request for a seventh extension of completion date constitute a showing that failure to complete construction was due to causes beyond its control, or constitute a showing of other matters sufficient to warrant further extension within the meaning of Section 319(b) of the Communications Act of 1934, as amended, and Section 1.323(a) of the Commission's Rules.

2. To determine whether a grant of the above-captioned assignment application would be consistent with the Commission's policy against "trafficking" in construction permits.

3. To determine the circumstances under which conflicting information was supplied to the Commission by the Desert Broadcasting Company, Inc., in the above-entitled applications or in amendments hereto concerning items of alleged out-of-pocket expenses and the reasons for the discrepancies.

4. To determine whether Desert Broadcasting Company, Inc., has willfully failed to supply or misrepresented facts or information to the Commission with respect to the above entitled applications or has been lacking in candor in connection therewith.

5. To determine whether, on the basis of the evidence adduced under the foregoing issues, a grant of the above-entitled applications would serve the public interest, convenience and necessity.

It Is Further Ordered, That, to avail themselves of the opportunity to be heard, the applicant herein, pursuant to Section 1.140 of the Commission's Rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It Is Further Ordered, That, the applicants herein shall, pursuant to Section 311(a) (2) of the Communications Act of 1934, as amended, and Section 1.362(a) of the Commission's Rules, give notice of the hearing, within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 1.362(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Acting Secretary.*

Released: July 24, 1962.

ITEM 8

TELEVISION STATIONS IN MAJOR MARKETS PRESENTLY UNDER MULTIPLE OWNERSHIP

As observed by Chairman Hyde at the Overmyer hearings of December 15th, there have been eight transfers where the Commission's "Top Fifty Interim Policy" has been waived. Call letters, television markets, and multiple owners involved are listed below:

Call letters	Market	Multiple owner acquiring interest
KCTO-TV	Denver	WGN Continental Broadcasting.
KHBC-TV	do.	Newhouse newspapers (minority interest involved).
WHHS-TV	Boston	Storer Broadcasting.
WXHR-TV	do.	Kaiser Broadcasting (50 percent) interest.
KTRK-TV	Houston	Capital Cities Broadcasting.
WAFT-TV	Cleveland	Kaiser Broadcasting (50 percent interest).
WUHF-TV	Milwaukee	WKY Television Systems.
WGTV-TV	Minneapolis	
KCOP-TV	Los Angeles	Chris Craft (Baldwin Montrose Chemical).
KPTV-TV	Portland	

At page 69, Chairman Hyde was also asked to furnish data on the percentage of ownership of stations which contravened the limits specified in the Interim Policy. That data is listed below:

STATIONS AND CP'S AS OF—

	June 21, 1965	Jan. 1, 1968
1. Number of owners with stations in excess of the number specified by interim rule.....	18	21
2. Number of stations owned by these owners in top 50 television markets:		
VHF.....	74	77
UHF.....	3	17
Total.....	77	94
3. Number of stations in top 50 markets in excess of number specified in interim rule:		
VHF.....	38	39
UHF.....	0	7
Total.....	38	46
4. Total number of CP's on air and not yet on air:		
VHF.....	(0)	158
UHF.....	(0)	106
Total.....		264

¹ Not available.

Thus, as of January 1, 1968, about 17% of all outstanding permits were held in contravention of the limits specified in the interim rule.

ITEM 9

LIST OF BROADCAST LICENSES REVOKED BY THE COMMISSION

Station	Location	Station	Location
KUMA	Yuma, Ariz.	WIOS	Tawas City-East Tawas, Mich.
WSAL	Salisbury, Md.	KLFT	Golden Meadow, La.
WWPN	Middleboro, Ky.	KCPA (FM)	Dallas, Tex.
KGAR and KGAR-FM.	Garden City, Kans.	WGRC	Green Cove Springs, Fla.
WPBP	Mayaguez, P.R.	KPSR (FM)	Palm Springs, Calif.
KWIK	Burbank, Calif.	KBOM	Bismarck-Mandan, N. Dak.
KPAB	Laredo, Tex.	WLOV (FM)	Cranston, R.I.
WXLT	Ely, Minn.	KWK	St. Louis, Mo.
KFMA	Davenport, Iowa	WBMT	Black Mountain, N.C.
KALA	Sitka, Alaska	WPFA	Pensacola, Fla.
WSHA (TV)	Sharon, Pa.	WELF-FM	Glen Ellyn, Ill.
KCRO	Englewood, Colo.	WCLM (FM)	Chicago, Ill.
KOTO	Albuquerque, N. Mex.	WWHL	Holly Hill, S.C.
WGAV	Amsterdam, N.Y.	WSRA	Milton, Fla.
KHCD	Clifton, Ariz.		
KAKJ	Reno, Nev.		

ITEM 10(a)
(FCC Form 314)

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section 111	
FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT		Name of Applicant			
The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.					
1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as in the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below.					
Transmitter proper including tubes		Antenna system, including antenna-ground system, coupling equipment, transmission line		Frequency and modulation meters	
Studio technical equipment, microphones, transcription equipment, etc.					
\$		\$		\$	
Acquiring land	Acquiring, remodeling, or constructing buildings	Other items (specify)	Total	Give estimated cost of operation for first year	Give estimated revenues for first year
\$	\$	\$	\$	\$	\$
b. State the basis of the estimates in (a) above.					
c. The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be met and paid for from each source.) The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:					
Existing Capital	New Capital	Loans from banks or others	Profits from existing operations	Donations	Credit, deferred payments, etc.
\$	\$	\$	\$	\$	\$
2. a. Attach as Exhibit No. _____ a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. _____ schedules which give a complete analysis of such items.					
b. Attach as Exhibit No. _____ a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.					
3. Furnish the following information with respect to the applicant only. If the answer is "none" to any or all items, specifically so state:					
a. Amount of funds on deposit in bank or other depository			b. Name and address of the bank in which deposited		
c. Name and address of the party in whose name the money is deposited					
d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition)					
e. Whether the funds were deposited for the specific purpose of constructing and operating the station					

Broadcast Application	FINANCIAL QUALIFICATIONS	Section 111, Page 2
FUNDS, PROPERTY, ETC., TO BE FURNISHED BY PARTIES CONNECTED WITH APPLICANT OR BY OTHERS		
4. Submit as Exhibit No. _____ a statement setting forth the full name and address of each person (whether or not connected with applicant, but including partners, shareholders, or subscribers to capital stock of the applicant) who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value, or will assist in any other manner in financing station. For each person (other than financial institutions or equipment manufacturers) who has furnished or will furnish one percent or more of the total of things of value excluding loans from financial institutions and equipment credit supply the additional information requested in a to g below. For financial institutions or equipment manufacturers, supply the additional information requested in b below. ("Furnish" or "furnished" as herein used includes payments for capital stock or other securities, loans and other credits, gifts and any other contributions.)		
a. A description of that which has been or will be furnished by each person showing the value thereof and any encumbrances thereon.		
b. If the funds or other things of value proposed to be used for the purchase or construction of the station have been acquired for that specific purpose, indicate the source or sources thereof.		
c. 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.		
d. For each person (except financial institutions) who has agreed to furnish funds or purchase stock, but who has not already done so, submit a balance sheet or, in lieu thereof, a financial statement showing all liabilities and containing current and liquid assets sufficient in amount to meet current liabilities (including amounts payable during the next year on long term liabilities) and, in addition, to indicate financial ability to comply with the terms of the agreement. The balance sheets submitted should segregate receivables and payables to show the amounts due within one year and those due after one year. The term current and liquid assets refers to items such as cash, or loan value of insurance, government bonds, stocks listed on major exchanges etc., or other assets which may be readily used or converted to provide funds to meet the proposed commitments. Assets such as accounts receivable, which result from normal operation of a business, stocks of close corporations, timberland, building lots, etc., are not considered as a readily available source of funds without a specific showing that such assets will provide funds to meet proposed commitments. If a balance sheet does not clearly indicate liquid assets sufficient in amount to meet current liabilities and in addition, proposed commitments, it should be supplemented by a statement showing the manner in which non-liquid assets will provide such funds. Any financial statement furnished in lieu of a balance sheet should, likewise, describe assets relied on to provide funds, in sufficient detail to permit a determination of current position and should be more than a mere statement of total assets and total liabilities or a statement of net worth.		
e. As to each person who has or has had in the past 5 years an interest of 25% or more in any business or financial enterprise or any official relationship to any business or financial enterprise, give full and complete disclosure of the enterprise, the name and principal place of business, the character of business engaged in, and the nature and extent of the interest in or relationship to such business.		
f. Net income after Federal income tax, received for the past two years by each person who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value. (A statement that income for the required periods was in excess of a certain specified amount will be sufficient.)		
g. If applicant or any person named in the exhibit has pledged, hypothecated or otherwise encumbered any stocks or other securities for the purpose of providing applicant with funds for construction of the station herein requested, submit a statement explaining each such transaction.		
h. For financial institutions or equipment manufacturers who have agreed to make a loan or extend credit, submit a verified copy of the agreement by which the institution or manufacturer is so obligated, showing the amount of loan or credit, terms of payment, if any, and security, if any.		

D. H. OVERMYER BROADCASTING Co.

FINANCING PROPOSAL

(Cincinnati)

The estimated costs of construction, including the land and permit under the contract of sale, are \$675,928. Estimated operating costs for three months are \$75,000, making total requirements of approximately \$750,000.

To meet these requirements applicant has the usual RCA equipment credit in the amount of \$356,000 (see attached letter) and bank credit of \$400,000 (see attached letter), making a total of over \$750,000. Applicant has no present assets or liabilities other than \$1,000 paid-in capital and a temporary loan of \$10,000 from D. H. Overmyer Warehouse Co. (of Ohio), which has been used as the escrow deposit under the sales agreement. Applicant has had no income, since it is a new corporation. Attached is a projected balance sheet.

Applicant's sole stockholder, D. H. Overmyer, has a net worth in excess of \$5,000,000 and will provide whatever interim financing may be necessary.

(Atlanta)

Applicant will lease all its equipment from D. H. Overmyer Leasing Co. Its construction costs are estimated at \$111,000, of which an estimated \$21,000 has already been spent (\$1,000 equity and \$20,000 advanced by D. H. Overmyer Warehouse Co.)—leaving a balance to be expended of \$90,000. This amount plus \$425,000 operating costs, or a total of \$515,000, represents the Applicant's cash requirements to build and operate the station during the first year.

Attached hereto is the letter of D. H. Overmyer Leasing Co. covering the lease of equipment and the rental payments. The Leasing Company has equipment credit commitments from RCA, GE and Visual Electronics; they are attached. Under these commitments, the Leasing Co. will be required to pay \$157,000 for down payment and amortization and interest prior to the end of the first year. This represents \$80,000 in excess of the rent payable by the Applicant to D. H. Overmyer Leasing Co. during the first year. Adding this \$80,000 to the \$515,000 above, produces a total of \$595,000 which the Overmyer Companies will be required to meet before the end of the first year.

These funds will be produced from (1) the \$400,000 bank loan—see commitment in original application; (2) \$100,000 in revenues—representing less than three months' estimated revenues, and a conservative estimate (see attached); and (3) \$100,000 to be furnished by D. H. Overmyer's as set forth in the attached commitment.

D. H. OVERMYER COMMUNICATIONS Co.

FINANCING PROPOSAL

\$100,000 is payable to Assignor on the closing. The estimated costs to construct the station outlined by the permit being assigned total approximately \$445,000, including approximately \$400,000 for equipment. Estimated operating costs for three months are \$75,000. Accordingly, total financial requirements are approximately \$630,000.

To meet these requirements Assignee has available to it approximately \$300,000 on the usual equipment credit (see RCA letter attached) and \$400,000 by way of loan from the Girard Trust Bank (see letter attached), or a total of \$700,000, which is substantially in excess of requirements.

The Assignee has no present assets or liabilities other than the \$1,000 paid in capital and a temporary loan of \$10,000 from the D. H. Overmyer Warehouse Company (of Georgia) for the deposit in escrow under the purchase and sale agreement. It is a new corporation and accordingly has had no income. Attached is a projected balance sheet of Assignee as of Closing.

Assignee's sole stockholder, D. H. Overmyer, has a net worth in excess of \$5,000,000 and in addition to guaranteeing the loan from the Girard Trust Bank will provide whatever temporary financing may be required.

Assignee's plans are to install a station with substantially greater facilities than presently authorized; necessary investigations of sites, equipment, and building, and their costs is now going forward. When plans have matured, and after consent to the assignment of the permit to Assignee, Assignee will file the appropriate application to modify the present authorization.

Applicant will lease all the proposed shipment (see below). Its construction costs will total \$122,000, representing the cost of land, buildings and miscellaneous. (A good antenna site has finally been obtained, after an extensive search and negotiations.) Operating costs are estimated at \$692,000 for the first year of operation, including \$76,424 in lease payments to the lessor of the equipment (see letter of D. H. Overmyer Leasing Co., attached), \$594,000 in operating expense and \$21,000 interest on the bank loan. Thus the total cash requirements through the end of the first year of operation are approximately \$814,000.

TV time sales in Pittsburgh in 1964 were \$21,200,000 (\$15,900,000, national; and \$5,280,000, local). It is estimated that sales will be \$25,400,000 in 1966-67 (\$19,100,000, national, \$6,300,000, local). With UHF conversion at 21% in August 1965 and increasing at the rate of 1.25% per month, it is estimated that in excess of 40% of the sets will be converted to UHF in 1966-67. Giving WECC-TV only 3% of sales (\$25,400,000), it will have first year revenues in excess of \$700,000. Applicant is relying upon only slightly over \$100,000 in determining its financial requirements.

The equipment will be leased from D. H. Overmyer Leasing Co. (see attached letter, dated February 14, 1966). The Leasing Company has equipment credits from RCA, GE and Visual Electronics (see Exhibit I to 301 application re WSCO-TV, Newport, Kentucky dated January 24, 1966). Under these commitments, the Leasing Co. will be required to pay \$158,000 for down payment and amortization and interest payments to these companies prior to the end of the first year of operation. In addition to the rent payments during the first year from the Communications Co. of \$76,000, the Leasing Co. has lines of credit of over \$300,000 with which to finance these transactions (see attached letter of Leasing Co., dated February 18, 1966).

FINANCING PLANS

Total construction costs are estimated to be \$505,500, including approximately \$420,000 in equipment to be provided by RCA. Operating costs for three months are estimated at \$100,000. The total financial requirements of \$605,500 will be covered by \$315,000 in equipment credit (see attached RCA letter) and a loan of \$350,000 by the Western Pennsylvania National Bank (see attached letter).

Applicant is a new corporation and has had no income. It has no assets and liabilities other than its capital.

Applicant has made arrangements to use the tower and facilities of WKJF-TV for its TV antenna (see attached letter).

(San Francisco)

FINANCING

Applicant's construction costs are estimated at \$475,000. Its estimated operating expenses during the first year of operation are \$400,000. 16 monthly payments out of the 50 monthly payments on the RCA credit of \$340,000 may reasonably be expected before the end of the first year of operation; these will amount to \$31,000. Interest on the Bank loan and RCA credit for an assumed 16 months will amount to \$38,000 and \$27,000, respectively, or a total of \$65,000. Thus, the financial requirements of the Applicant through the end of the first year of operation are the sum of \$475,000, \$400,000, \$91,000 and \$65,000, or a total of \$1,031,000. Though no amortization of the bank loan is required for two years, if reduction of the bank loan by one-fifth is assumed, an additional \$95,000 should be added, making the total requirements \$1,126,000.

Cash and credit available to the Applicant are:

For capital stock from S. Corwin.....	\$10,000
For capital stock from D. H. Overmyer.....	40,000
Loan from S. Corwin.....	80,000
Loan from Bank of America.....	475,000
Credit from RCA.....	340,000
Total	945,000

The balance sheet of S. Corwin is attached to the amendment, dated November 30, 1964, to this application. The balance sheet of D. H. Overmyer is attached to the amendment, dated February 2, 1965, to this application. The loan commit-

ment of the Bank of America is attached. The credit letter of RCA is attached to the amendment dated March 5, 1965 to this application).

The above total of \$945,000 funds available leaves only \$181,000 to meet full financial requirements through the first year of operation. It is to be noted that is less than half of the first year's revenues estimated by the Applicant. With national and local spot TV revenue in San Francisco, the seventh national market, increasing from \$15,062,000 in 1959 to \$24,559,000 in 1963 (FCC data), or about 15% per year; with a total of 4 V and 5 U commercial stations in the market; with an estimated 25% of the market converted to UHF by 1966 (NAB data), there should be well over \$30,000,000 available in national and spot revenue for all 9 television broadcasting stations in San Francisco in 1966, even if no increase in revenues is attributed to the new UHF stations. The 5 UHF stations together need take much less than 10% of these revenues for there to be \$400,000 as the Applicant's one-fifth share, or more than twice the amount required for Applicant to meet its financial requirements in full.

Applicant's construction costs are estimated at \$475,000, of which equipment is expected to amount to approximately \$400,000. Operating expenses are estimated at \$400,000, or \$100,000 for three months. Total construction costs and three months' operating expense thus total \$575,000.

Available funds are \$300,000 on equipment credit (see attached letter) and \$350,000 on bank loan (see attached letter), a total of \$650,000, and thus ample to cover requirements.

Applicant is a new corporation and has no assets or liabilities except its stock subscriptions and loan commitments.

FINANCING PLANS

Estimated costs of construction are \$1,147,744 and estimated operating expenses for three months are \$80,000—a total of \$1,227,744. RCA equipment credit will be \$713,058 (see attached letter, dated January 6, 1965); and there will be a bank loan of \$550,000 (see attached commitment of January 19, 1965, of Southern National Bank)—a total of \$1,263,058.

Applicant is a new corporation and has had no income and no present assets other than the \$1000 paid in on its capital stock.

ITEM 10(c)

D. H. Overmyer Balance Sheet—Aug. 31, 1964

[Fixed assets at appraised value]

ASSETS

Current assets:	
Cash	\$8,699.39
Accounts receivable	1,600.00
Total current assets	<u>10,299.39</u>
Fixed assets:	
Real estate	211,000.00
Furniture and fixtures	16,850.00
Personal property	24,800.00
Total fixed assets	<u>252,650.00</u>
Other assets:	
Capital stock—Wholly owned corporations	5,224,194.57
Due from wholly owned corporations	506,327.44
Total other assets	<u>5,730,522.01</u>
Total assets	<u>5,993,471.40</u>

LIABILITIES AND NET WORTH

Current liabilities:	
Accounts payable	\$9,336.25
Total current liabilities	<u>9,336.25</u>
Mortgages payable	78,476.37
Net worth	<u>5,905,658.78</u>
Total liabilities and net worth	<u>5,993,471.40</u>

[Submitted With Houston, San Francisco, and Atlanta CP Applications]

D. H. Overmyer Warehouse Co. & Affiliates—Balance Sheet With Fixed Assets at Appraised Valuation—Aug. 31, 1964

ASSETS

Current assets:	
Cash	\$1,661,728.87
Accounts receivable	218,645.37
Less: Provision for doubtful accounts	(13,500.00)
Total cash assets	<u>205,145.19</u>
Prepaid expenses	46,094.64
Short-term returnable deposits	280,361.50
Total current assets	<u>2,193,330.20</u>
Fixed assets:	
Land	2,344,700.00
Buildings	9,142,800.00
Equipment	236,030.13
Leasehold improvements	2,147.25
Construction in progress	1,599,931.66
Less: Accumulated depreciation and amortization	(308,317.22)
Total fixed assets	<u>13,017,291.82</u>
Deferred charges:	
Cash surrender value of life insurance	19,341.31
Other assets	140,163.99
Total deferred charges	<u>159,505.30</u>
Due from nonconsolidated affiliates	<u>274,206.41</u>
Total assets	<u>15,644,333.73</u>

LIABILITIES AND SHAREHOLDERS EQUITY

Current liabilities:	
Accounts payable	\$661,924.38
Accrued expenses	
Taxes (including provision for Federal taxes)	125,710.97
Wages	22,817.94
Interest	38,946.05
Other	36,247.02
Total current liabilities	223,721.98
Current portion of long-term debt	267,183.86
Total current liabilities	1,152,830.22
Long-term debt:	
Real estate mortgages	8,719,129.97
Notes payable	15,000.00
Equipment mortgages	26,851.53
Total long-term debt	8,760,981.50
Due to D. H. Overmyer	506,327.44
Shareholders equity:	
Common stock	2,016,800.00
Surplus	3,207,394.57
Total shareholders equity	5,224,194.57
Total liabilities and shareholders equity	15,644,333.73

[Submitted With Cincinnati and Pittsburgh CP Applications]

D. H. Overmyer Warehouse Co. & Affiliates—Balance Sheet—Aug. 31, 1965

ASSETS

Current assets:	
Cash	\$2,262,111.74
Accounts receivable	505,474.27
Less: Provision for doubtful accounts	20,022.62
Total current assets	485,451.65
Prepaid expenses	210,111.17
Short-term returnable deposits	722,544.00
Total current assets	3,680,218.56
Fixed assets: ¹	
Land	3,313,800.00
Buildings	16,973,200.00
Equipment	369,270.84
Leasehold improvements	18,185.63
Construction in progress	10,444,253.79
Less: Accumulated depreciation and amortization	441,610.30
Total fixed assets	30,677,099.96
Deferred charges:	
Cash surrender value life insurance	41,574.00
Other assets	175,014.55
Total deferred charges	216,588.55
Due from affiliates and D. H. Overmyer	273,196.71
Total assets	34,847,103.78

LIABILITIES AND SHAREHOLDERS EQUITY

Current liabilities:	
Accounts payable	\$486,459.23
Accrued expenses:	
Taxes (including provision for Federal taxes)	291,126.20
Wages	113,150.18
Interest	147,182.74
Other	62,452.62
Total current liabilities	613,911.74
Current portion of long-term debt	449,893.80
Total current liabilities	1,550,264.77
Long-term debt:	
Real estate mortgages	25,297,058.41
Notes payable (equipment)	288,436.26
Total long-term debt	25,585,494.67
Shareholder's equity:	
Common stock	2,022,800.00
Surplus	5,688,544.34
Total shareholder's equity	7,711,344.34
Total liabilities and shareholder's equity	34,847,103.78

¹ Real property stated at M.A.I. valuation.

ITEM 10(d)

SOUTHERN NATIONAL BANK,
Houston, Tex., January 19, 1965.D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

(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 facilities 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 would be subject further to your providing us with 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 would be subject to customary legal requirements and a mutually acceptable loan agreement.

We look forward to working with you.

Very truly yours,

F. MAX SCHUETTE,
Senior Vice President.

BANK OF AMERICA,
NATIONAL TRUST & SAVINGS ASSOCIATION,
San Francisco, Calif., July 26, 1965.

D. H. OVERMYER COMMUNICATIONS Co.
New York, N.Y.
(Attention of Mr. Robert F. Adams).

GENTLEMEN: We understand you have made application to the Federal Communications Commission for authorization to construct and operate a UHF television station on channel 20 in San Francisco. You have apprised us that you plan to obtain the usual equipment credit and also of Mr. Overmyer's plans for television stations in other cities.

In connection with the proposed San Francisco station, you have asked us to extend to your company an unsecured loan in the amount of \$475,000 payable over a period of five to seven years, with amortization to begin about two years after the station is in operation at the then prevailing rate of interest. We further understand that this loan will be guaranteed by Mr. D. H. Overmyer, personally, whose financial statement has been submitted to us.

We are agreeable to making the loan requested, with documentation satisfactory to us, subject to approval by the Federal Communications Commission of the authorization for the station, and since the loan would not be used by you for six to eight months, to your submitting to us at the time of your need for the loan, satisfactory financial and operating projections, and to Mr. Overmyer's financial condition not having changed adversely in the meantime.

This commitment will expire April 30, 1966.

Sincerely,

MERLYN E. DOLEMAN,
Vice President.

BANK OF AMERICA,
NATIONAL TRUST & SAVINGS ASSOCIATION,
San Francisco, Calif., October 2, 1964.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.
(Attention of Robert F. Adams).

GENTLEMEN: This will confirm our willingness to lend you, within a year, up to \$350,000 at a rate of interest that will not exceed 6%, to be repayable over 5 years commencing two years after the station goes on the air, providing the following terms and conditions are met:

- (1) Analysis and review of your financial condition, as well as that of Mr. D. H. Overmyer, and of the future plans of the company, both financial and operating, the results of which must be satisfactory to us.
- (2) Your receipt of a permit for a television station in San Francisco.
- (3) Guarantee of your stockholder, D. H. Overmyer, covering the amount of the loan.
- (4) Execution of documentation satisfactory to us.

If the above meets your requirements will you please sign the enclosed copy and return it to us.

Yours very truly,

M. C. ABRAMSON,
Assistant Vice President.

WESTERN PENNSYLVANIA NATIONAL BANK,
Pittsburgh, Pa., January 29, 1965.

D. H. OVERMYER COMMUNICATIONS Co.,
New York City, N.Y.
(Attention of Mr. Robert F. Adams).

GENTLEMEN: We understand you have made application to the Federal Communications Commission for authorization to construct and operate a UHF television station on Channel 53 in Pittsburgh. You have apprised us that you plan to obtain the usual equipment credit and also of Mr. Overmyer's plans for television stations in other cities.

In connection with the proposed Pittsburgh station, you have asked us to extend to your company an unsecured loan in the amount of \$350,000, payable over a period of five to seven years, with amortization to begin about two years after the station is in operation at the then prevailing rate of interest. We further

understand that this loan will be guaranteed by Mr. D. H. Overmyer personally, whose financial statement has been submitted to us.

We are agreeable to making the loan requested subject to approval by the Federal Communications Commission of the authorization for the station. Also, since the loan would not be used by you for six to eight months, we would expect that Mr. Overmyer's financial condition has not changed materially in the interim.

Cordially,

E. I. H. BENNETT,
Executive Vice President.

GIRARD TRUST BANK,
Philadelphia, Pa., August 6, 1964.

Re loan \$400,000.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

GENTLEMEN: You have asked us to assist you financially in the purchase of a television station in Atlanta, Georgia, by granting you a loan in the amount of \$400,000. This would be with interest at 6% for a term of 5 to 7 years with amortization to begin 18 months or 2 years after the station is in operation.

This loan is to be unsecured, however, we are to receive the personal guarantee of Mr. D. H. Overmyer. You stated that you would want to take the loan down approximately 7 or 8 months from now and, of course, this would be subject to the rate question at that time.

The granting of this loan is also subject to the condition of the financial statement of D. H. Overmyer, providing, therefore, that there is no substantial adverse change in this statement as submitted to us under date of May 31, 1964.

We are pleased to advise you that we will be happy to comply with your request subject to the conditions as enumerated herein.

Sincerely yours,

J. J. McHUGH, Jr.,
Vice President.

THE FIRST NATIONAL BANK OF CINCINNATI,
Cincinnati, Ohio, August 14, 1964.

Mr. ROBERT F. ADAMS,
Executive Vice President,
D. H. Overmyer Broadcasting Co.,
New York, N.Y.

DEAR MR. ADAMS: It is our understanding that you have entered into 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 endorsed 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.

Sincerely,

ROLF H. BROOKES,
Vice President.

ITEM 10(e)

RADIO CORP. OF AMERICA,
New York, N.Y., January 25, 1965.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

(Attention of Mr. Robert F. Adams, Vice President).

DEAR MR. ADAMS: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in Pittsburgh, Pennsylvania, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$415,500.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

25% of the total price prior to shipment;

75% deferred balance to be payable in 48 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate, and for your information, our present rate is 6 per cent per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have the opportunity to be of service and we will be happy to hear from you if there is anything further that we can do.

Very truly yours,

R. F. VARDA

(New York Broadcast Sales, for C. D. Snyder, Manager, Credit and Collection).

RADIO CORP. OF AMERICA,
Camden, N.J., July 6, 1965.

Re BC 56225.

D. & H. OVERMYER BROADCASTING Co.
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish TV facilities in Cincinnati, Ohio, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$659,692.04.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any of all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

RADIO CORP. OF AMERICA,
New York, N.Y., August 18, 1964.

D. & H. OVERMYER BROADCASTING Co.
New York, N.Y.

(Attention of Mr. Robert E. Adams).

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in Cincinnati, Ohio, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$475,000.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

25% of the total price prior to shipment;

75% deferred balance to be payable in 48 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

J. L. NICKELS

(Broadcast and Closed Circuit Equipment Sales, for C. D. Snyder, Manager, Credit and Collection.)

RADIO CORP. OF AMERICA,
Camden, N.J., February 26, 1965.

Re BC 43725.

D. H. OVERMYER BROADCASTING Co.
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in Cincinnati, Ohio and we are also pleased to learn of your interest in our equipment which will amount to approximately \$475,000.00.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

RADIO CORP. OF AMERICA,
Camden, N.J., August 6, 1964.

D. & H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

(Attention of Robert E. Adams).

We are happy to learn of your plans, subject to FCC approval, to increase your power in Atlanta, Georgia, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$400,000.00.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

25% of the total price prior to shipment;

75% deferred balance to be payable in 48 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

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RADIO CORP. OF AMERICA,
Camden, N.J., February 25, 1965.

Re BC 43814.

D. H. OVERMEYER COMMUNICATIONS Co.,
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in Atlanta, Georgia, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$400,000.00.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collections.

RADIO CORP. OF AMERICA,
Camden, N.J., February 26, 1965.

Re BC 44625.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in San Francisco, California and we are also pleased to learn of your interest in our equipment which will amount to approximately \$400,000.00.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

RADIO CORP. OF AMERICA,
New York, N.Y., October 29, 1964.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

(Attention of Mr. Robert E. Adams, Executive Vice President).

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in San Francisco, California, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$400,000.

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This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

25% of the total price prior to shipment;

75% deferred balance to be payable in 48 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments with penalty.

We are glad to have this opportunity of being of service and we will be happy to hear from you if there is anything further that we can do.

Very truly yours,

O. E. WAGNER,
Manager, New York Broadcast Sales
(For C. D. Snyder, Manager, Credit and Collection).

RADIO CORP. OF AMERICA,
Camden, N.J., February 25, 1965.

Re BC 50125.

D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in Rosenberg, Texas, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$950,744.32.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate, and for your information, our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

RADIO CORP. OF AMERICA,
New York, N.Y., January 6, 1965.

D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

(Attention of Mr. Robert F. Adams).

DEAR MR. ADAMS: We are happy to learn of your plans, subject to FCC approval to establish television facilities in Rosenberg, Texas, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$950,744.32.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

25% of the total price prior to shipment;

75% deferred balance to be payable in 48 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which

it is paid. Interest will be at our then current rate, and for your information, our present rate is 6 per cent per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also you would have the right to prepay any or all installments without penalty.

We are glad to have the opportunity to be of service and we will be happy to hear from you if there is anything further that we can do.

Very truly yours,

O. E. WAGNER,
Manager, New York Broadcast Sales
(For C. D. Snyder, Manager, Credit & Collection).

ITEM 10(f)

D. H. OVERMYER WAREHOUSE Co.,
New York, N.Y., July 15, 1965.

D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

(Attention of Mr. Robert F. Adams, Executive Vice President).

GENTLEMEN: This will confirm our agreement to make an unsecured loan to you of up to \$250,000 as follows:

1. You shall have a construction permit for a television station in Rosenberg, Texas.
2. The loan shall be at an interest rate not in excess of 6% of the unpaid balance, repayable at the same time as the principal.
3. The principal shall be repayable in equal annual installments over a period of five years, commencing 18 months after you get on the air.

Attached hereto is the Balance Sheet of D. H. Overmyer Warehouse Co. & Affiliates. There has been no adverse change since August 31, 1964 in overall assets, excess of current assets over current liabilities and cash on deposit.

D. H. OVERMYER WAREHOUSE Co.,
By D. H. OVERMYER, *President.*
By GARY R. SILCOX,
Vice President, Finance.

D. H. OVERMYER WAREHOUSE Co.,
New York, N.Y., February 14, 1966.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

GENTLEMEN: We understand you have made application to the Federal Communications Commission for authorization to construct and operate a UHF television station on Channel 53 in Pittsburgh, Pennsylvania.

In connection with the proposed Pittsburgh station, this will confirm our agreement to extend to your company an unsecured loan in the amount of Three Hundred-Fifty Thousand dollars (\$350,000) payable over a period of five (5) years in equal annual installments commencing eighteen (18) months after you get on the air. The loan shall be at an interest rate not in excess of six percent (6%) of the unpaid balance, payable at the same time as the principal. The said loan subject to approval by the Federal Communications Commission of your authorization for the station.

Attached hereto is the balance sheet of the D. H. Overmyer Warehouse Company and affiliates. There has been no adverse change since August 31, 1965 in overall assets, excess of current assets over current liabilities and cash on deposit.

D. H. OVERMYER WAREHOUSE Co.,
By D. H. OVERMYER, *President.*
By J. BYRNES, *Treasurer.*

D. H. OVERMYER WAREHOUSE Co.,
New York, N.Y., January 14, 1966.

D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

GENTLEMEN: This will confirm our understanding that, in connection with your proposed television station at Newport, Kentucky, I will cause D. H. Overmyer Warehouse Co. and/or one of its warehouse subsidiaries and/or warehouse affiliates, of each of which I am the sole beneficial stockholder, to make you an unsecured loan of up to \$100,000 for construction and operation of the station. Interest and/or payments will be fixed to accommodate your requirements.

A true and correct copy of a recent combined balance sheet of D. H. Overmyer Warehouse Co. and its warehousing subsidiaries and affiliates is attached.

— Very truly yours,

D. H. OVERMYER.

ITEM 10(g)

Re KBAY-TV San Francisco,
(BAPCT-354) Your file 8430.

DEAR MR. WAPLE: This is in reply to your letter of January 6, 1965 to D. H. Overmyer Communications Co., the proposed assignee in the above application.

1. Attached is the commitment, dated January 27, 1965, of the Bank of America, to lend the Applicant \$350,000.

The several proposals for constructing television stations mentioned by you are being submitted by separate corporate applicants, and each of these proposals is being financed separately—largely through credit, to be extended in part on the basis of the guarantee of the sole stockholder, Mr. D. H. Overmyer, of each applicant. Although, it will therefore be unnecessary for the several applicants to utilize other resources of Mr. Overmyer, both he and a wholly-owned company, D. H. Overmyer Warehouse Company have substantial net worth (in excess of \$5,000,000) and the latter has cash in excess of \$1,500,000. Mr. Overmyer will use the resources not only of himself but of the Warehouse Company to whatever extent may be necessary to support and effectuate the instant as well as the other proposals in which he is interested. Attached is a copy of the balance sheets of D. H. Overmyer (individually) and of D. H. Overmyer Warehouse Company and affiliates.

2. Applicant has long since made arrangements for a transmitter site for KBAY-TV, namely, the present tower of KGO-TV, as the attached letter, dated September 30, 1964, from American Broadcasting Company shows. Applicant knows that there is presently pending a proposal for a new tower to be installed on Mt. Bruno which will be available to other stations in the Bay area including the applicant. And Applicant has recently been informed that this new tower will be constructed in a little over a year from now. Applicant would, of course, prefer to make its initial and permanent installation on the new tower, rather than make a temporary installation on another tower and lose the investment in that installation.

Applicant intends to proceed diligently in putting KBAY-TV on the air preferably with a transmitter site on Mt. Bruno, but if the availability of such a site is unreasonably delayed, then at the present ABC-TV site on Mt. Sutro.

Very truly yours,

D. H. OVERMYER COMMUNICATIONS Co.,
By ROBERT F. ADAMS,
Executive Vice President.

FEBRUARY 2, 1965.

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 Company (and affiliates). The Warehouse Company is wholly owned by Mr. Overmyer, as is each of the above applicants.

Although the financing plan for each of the above proposals relies on equipment credit and a 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 out 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.*

FEBRUARY 3, 1965.

ITEM 10(h)

FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C.

FEBRUARY 8, 1965.

Commission action, March 10, 1965.

Interoffice memorandum (63558).

For: AL & TC Agenda¹

To: The Commission.

From: Chief, Broadcast Bureau.

Subject: Assignment of the Construction Permit for Station WNOP-TV, Newport, Kentucky, from Tri-City Broadcasting Co. to K. H. Overmyer Broadcasting Company (BAPCT-352).

Recommended action: Assignor proposes to assign this CP to assignee for \$100,000. As the assignee has made a firm commitment to construct and operate the station, a grant of this application is recommended. This application is presented to the Commission because it concerns a Construction Permit for an unbuild UHF station.

1. Assignor, the licensee of Station WNOP-AM and permittee of WNOP-TV, proposes to assign this permit and sell a tract of land to assignee for \$100,000 payable \$10,000 in escrow and the balance at closing. As part of this agreement the assignor agrees not to compete for five years in the television business within 50 miles of Cincinnati.

2. Assignee is a newly formed corporation with one shareholder—D. H. Overmyer. He is sole or controlling stockholder of D. H. Overmyer Warehouse Company, Toledo, Ohio, and New York, New York, with affiliates in many other states; D. H. Overmyer Trucking Company, (trucking); D. H. Overmyer Company (holding company); Toledo Business Research Institute, Incorporated (publisher of a weekly newspaper in Toledo); and a National Bank, all located in Toledo, Ohio. D. H. Overmyer has the following applications (including the subject application) pending before the Commission:

BPCT-3173, Channel 79, Toledo, Ohio (in hearing, Docket No. 15327).

BPCT-3463, Channel 29, Dallas, Texas (Pending).

BAPCT-351, Channel 36, Atlanta, Georgia (WATL-TV).

BAPCT-352, Channel 74, Newport, Kentucky (Cincinnati, Ohio—WNOP-TV).

BAPCT-354, Channel 20, San Francisco, California (KBAY-TV).

BPCT-3443, Channel 55, Stamford, Connecticut.

Applicant also advises that he may file an application for transfer of Station WENS-TV, Channel 22, Pittsburgh, Pennsylvania. None of these stations will overlap.

3. The proposed programming for WNOP-TV is within the delegable limits. Assignee will subscribe to the NAB Code.

4. This construction permit was granted December 24, 1953. An application for an extension of time to construct is pending. The station was never operated nor was any construction actually undertaken. Assignor states that its expense in acquiring the CP was \$6340. The land being sold with the CP was acquired more than 10 years ago for \$7462. However, assignor submitted an appraisal giving the present value of this land as between \$90,000 and \$95,000. The appraisal was made by William S. Edgemon, a licensed real estate broker, who has handled, among other things, the acquisition of \$5,000,000 worth of real

¹ The studio is not being sold.

estate by the Cincinnati Metropolitan Housing Authority and has made appraisals for housing projects in other cities as well as for the United States government. He stated that the land, 6.2 acres on a hill overlooking the Ohio River, can be best used for "radio towers and high rise apartments." He listed five recent sales of similar sites, all for high rise apartments, with prices averaging \$.70 per square foot. As these sites are all across the Ohio River in Ohio (no one has bought any similar land on the Kentucky side recently) the appraiser, to compensate for this difference in location, halved the sales price to \$.35 per square foot in computing the value of this site.

5. In an amendment to this application, the assignee states that it intends to move this station to Cincinnati (the channel is allocated there) and that within 60 days after consummation of this assignment it will file an application for improvement of facilities. "When that application is granted, we will proceed promptly with construction and plan to be on the air within one year."

6. As the assignee's plans for commencement of broadcasting appear reasonably definite and the assignor's compliance with the "out-of-pocket" rule is demonstrated through his showing of the increased value of the land being sold, a grant of this application is recommended.

JAMES B. SHERIDAN,
ROBERT W. ALFORD
(For the Chief, Broadcast Bureau).

DECEMBER 15, 1964.

Commission action, March 3, 1965.

Interoffice memorandum (63424).

For: AL & TC Agenda.

To: The Commission.

From: Chief, Broadcast Bureau.

Subject: Application for assignment of the construction permit for Station WATL-TV, Atlanta, Georgia, from Robert W. Rounsaville to D. H. Overmyer Communications Company (BAPCT-351).

Recommended action: Grant the application.

SUMMARY

This application is presented to the Commission because it concerns a silent UHF construction permit. As the assignee represents that within 60 days of a grant of this application it will file an application for an improvement of facilities and, after grant of that application, "proceed promptly with construction and plans to be on the air within one year," a grant is recommended.

1. Assignor was granted this construction permit November 19, 1953. The station commenced commercial operations November 15, 1964 and suspended operations May 31, 1955. An application, BMPCT-4254, for "extension of time to complete construction" was filed on September 18, 1956 and is still pending.

2. Assignor states that he has \$16,186.44 invested in the station (remodeling the studio building, \$7,299.40; legal fees, \$7,661.08; and engineering, \$1,225.96) and that during the period he operated the station he lost \$104,720. The assignor purchased fixed assets and spare parts worth \$171,145 when he commenced operations on this station. When he took the station off the air his principal equipment supplier, General Precision Laboratories, took the equipment back, retaining assignor's payments totalling \$23,607. Assignor later sold the television tower for \$17,500 (it had cost \$33,965) for a loss of \$16,465. These losses on the sale of assets were added to the operating losses sustained by assignor in computing his loss figure of \$104,720. He proposes to assign this construction permit and sell the books, records, and technical studies for \$100,000 cash. The estimated cost of construction is \$455,005, the estimated cost of operation for the first year after construction is \$300,000, and the estimated revenues for he first year of operation are \$200,000. The 100% stockholder of assignee, D. H. Overmyer, who states that his net worth is in excess of \$5,000,000, has agreed to guarantee all costs of constructing and operating this station. In addition, the assignee has loan commitments for \$700,000.

3. Assignee stated in an amendment submitted that it will "proceed promptly with construction and plans to be on the air within one year" after having acquired a grant of its proposed application for an improvement of facilities.

¹ The studio is not being sold.

4. Assignee is a newly organized Georgia corporation having authorized and outstanding 500 shares of no par value voting stock owned 100% by D. H. Overmyer, who is President and Director. He is sole or controlling stockholder of O. H. Overmyer Warehouse Company, Toledo, Ohio, and New York, New York, with affiliates in many other states, including Georgia; D. H. Overmyer Trucking Company, (trucking); D. H. Overmyer Company (holding company); Toledo Business Research Institute, Incorporated (publisher of a weekly newspaper in Toledo); and a National Bank; all located in Toledo, Ohio. D. H. Overmyer has the following applications (including the subject application) pending before the Commission:²

- BPCT-3173, Channel 79, Toledo, Ohio (In hearing, Docket No. 15327).³
- BPCT-3463, Channel 29, Dallas, Texas (Pending).
- BAPCT-351, Channel 36, Atlanta, Georgia (WATL-TV).
- BAPCT-352, Channel 74, Newport, Kentucky (Cincinnati, Ohio—WNOP-TV).
- BAPCT-354, Channel 20, San Francisco, California (KBAY-TV).
- BPCT-3443, Channel 55, Stamford, Connecticut.
- Unassigned, Channel 17, Rosenberg, Texas.

5. The proposed programming is within the delegable standards. The assignee will also subscribe to the NAB Code.

6. Assignor was granted this Construction Permit November 19, 1953. He commenced operations November 15, 1954 and suspended service June 3, 1955. His operating loss during this period totalled \$104,720. In subsequent applications filed to keep the Construction Permit alive the assignor stated that he could not resume broadcasting in competition with Atlanta's three VHF network stations until some changes occurred in UHF's competitive position. The assignee is financially qualified to build and operate this station and has represented that within 60 days of a grant of this application it will file an application for an improvement of facilities and after grant of that application "proceed promptly with construction and plans to be on the air within one year."

7. The Bureau believes that since the sales price of \$100,000 is less than the assignor's operating losses of \$104,720 there is no problem here of "trafficking". Accordingly, a grant of this application is recommended in the interests of the speedy restoration of UHF television service to Atlanta.

JAMES B. SHERIDAN
(For the Chief, Broadcast Bureau).

APRIL 30, 1965.

Commission action, May 12, 1965.

Interoffice memorandum (67115).

For: AL & TC Agenda.

To: The Commission.

From: Chief, Broadcast Bureau.

Subject: Application for assignment of the construction permit for Station WATL-TV, Atlanta, Georgia, from Robert W. Rounsaville to D. H. Overmyer Communications Company (BAPCT-351).

Recommended action: Grant the application.

1. In response to a request from the Commission, the assignor Robert W. Rounsaville, amended this application on April 27, 1965 to show his loss on the operation and sale of this station after the federal tax consequences have been considered.

2. Assignor holds this station as an individual and states that he will treat the "monies received from D. H. Overmyer Communications Company under the sale of this construction permit as ordinary income and will pay taxes on it in accordance with ordinary income schedules. The proceeds will not be considered as capital gains."

3. He states that his actual investment in WATL-TV, "after tax savings," is \$97,695. The sales contract provides for a sale price of \$99,000 but Vincent A. Pepper, attorney for the assignor, states that his fees in connection with this sale, not included in the assignor's "investment" figure, will amount to more than \$2,500, reducing, in effect, the sales price to \$96,500.

²D. H. Overmyer has also requested an assignment of Station WENS-TV, Channel 22, Pittsburgh, Pennsylvania. This would be his eighth UHF television station and an item will be submitted shortly to the Commission recommending that the multiple ownership rule (Section 73.636) not be waived and the application be dismissed.

³An initial decision was issued Jan. 19, 1965, looking toward a grant of BPCT-3173.

4. Aside from these considerations the base cost of \$97,695 after taxes, varies from the base figure of \$104,720, before taxes, previously submitted by the assignor. Assignor's secretary-treasurer in a letter of April 13, 1965 to Pepper states that this letter figure was understated because he had failed to include as expenses certain items, part of which should have been allocated to WATL-TV. These items refer to costs borne by both WATL-TV and its then sister station, WQXI, Atlanta. These additional expenses, totaling \$45,456, when combined with the estimated income tax on this sale of WATL-TV brings the "cost" of the station to \$210,002. Subtracting income taxes saved in 1954 and 1955 because of the station's operating losses (those tax savings are represented to be \$112,306) from the total "cost" the assignor arrives at his base cost of \$97,695.

5. Relying on these figures the staff recommends a grant.

ROBERT W. ALFORD,
JAMES B. SHERIDAN
(For the Chief, Broadcast Bureau).

JUNE 14, 1965.

Commission action, July 28, 1965.

Interoffice memorandum (70517).

For: AL & TC Agenda.

To: The Commission.

From: Chief, Broadcast Bureau.

Subject: Application for voluntary assignment of construction permit of Station WAND-TV, Channel 53, Pittsburgh, Pennsylvania, from Agnes J. Reeves Greer to D. H. Overmyer Communications Co. (BAPCT-304).

Recommended action: Grant the application for assignment of construction permit and adopt the attached by-direction letter advising assignee of expected construction schedule.

SUMMARY

Assignee has committed itself to construct the station expeditiously within the schedule as proposed i.e., modification application to be filed within 60 days and construction to be completed within six months after the grant of the modification.

1. The assignor's application for an extension of time to construct the station (BMPCT-4205) was granted on June 16, 1965, after oral argument held in Docket No. 15890 on May 13, 1965. The assignee had initially proposed to construct the station and to be operational within one year from a grant of the pending assignment of construction permit. However, in view of the fact that the extension granted was only for six months, the assignee was given the opportunity to supplement the assignment application. Overmyer now proposes to file for a modification of facilities within 60 days of a grant of the assignment and thereafter to complete construction within six months of a grant of such modification of facilities. See the attached amendment and the attached by-direction letter to the assignee advising of the expected construction schedule.

2. This application was originally returned as unacceptable for filing pursuant to a Memorandum Opinion and Order adopted by the Commission on April 21, 1965, FCC 65-320, whereby a waiver of the multiple ownership rule was denied thus rendering the application an inconsistent application within Section 1.518 of the Rules. At that time this application would have been the eighth UHF grant to the assignee. On May 11, 1965, the assignee's application for a new UHF station in Stamford, Connecticut was dismissed pursuant to the assignee's request. The Pittsburgh application was then resubmitted and accepted for filing on May 18th.

3. D.H. Overmyer or a corporation controlled by Mr. Overmyer has been awarded the following three UHF grants:

Channel	Market rank	City	Date
79	32	Toledo, Ohio.....	Finalized Mar. 10, 1965.
36	23	Atlanta, Ga.....	May 12, 1965.
74	16	Newport, Ky. (Cincinnati).....	Mar. 10, 1965.

Four additional UHF applications (including the subject application) are now pending on behalf of the assignee.

Channel	Market rank	City	File No.
20	7	San Francisco, Calif.	BAPCT-354 (prehearing letter sent).
29	14	Dallas, Tex.	BPCT-3463.
17	25	Rosenberg, Tex. (Houston)	BPCT-3518.
53	9	Pittsburgh, Pa.	BAPCT-364 (subject application).

All of the above stations are in the top 50 TV markets. However, the interim "freeze" limiting an applicant to no more than three TV stations in the top 50 markets does not apply to Overmyer since all the applications were filed prior to the June 21, 1965, effective date of the "freeze", all such applications specifically being exempted from the "freeze" order, FCC 65-548, June 21, 1965.

4. The seller spent about \$300,000 to construct the station and lost approximately \$450,000 during the eleven months the station was in operation from July, 1953 to June, 1954, for a total loss of approximately \$750,000. A small amount of this was recouped through the sale of the station's equipment over the years. The seller is assigning the construction permit along with business records for \$28,000 of which \$13,000 is to be cash at closing and the balance of \$15,000 due December 31, 1965. The assignee will rent tower and studio space from the seller. The seller also covenants not to compete in television for two years within 30 miles of Pittsburgh. No consideration is being paid for this non-competitive covenant.

5. The assignee has the following first year costs and credits:

	Amount
Consideration and costs:	
Cash purchase price	\$28,000
Construction	505,500
Estimated operational cost first year	400,000
	933,500
First-year equipment payment	97,650
Total	1,031,150
Credits:	
Bank loan	350,000
Deferred equipment payment	315,000
Total	665,000

¹The bank loan is on an unsecured basis with the personal guarantee of Mr. Overmyer sufficing as security. Repayment does not start until two years after the station has commenced operation. Assumedly interest payments would begin immediately (prevailing rates) which would mean an additional first year interest expense of \$21,000 on the bank loan.

Thus, \$366,150 is needed in addition to the above credits. Overmyer has stated that he anticipates revenues for the first year of operation in the amount of \$450,000. However, under the test specified in *Ultravision*, Docket No. 15254, this revenue cannot be relied upon to prove financial qualifications since no basis for these projected revenues is given. Turning then to the further assets of the assignee, the latest balance sheet (August 31, 1964) shows cash of approximately \$1,661,000 with current assets in excess of current liabilities by approximately \$1,000,000. Mr. Overmyer's personal financial statement shows a net worth of about \$5,900,000. Of course, these funds are not devoted exclusively to the assignee's proposed entrance into broadcasting. It is an unsegregated balance sheet covering all the assets of the assignee including its operations in trucking and warehousing. Included therein is a total of \$4,271,310 in unencumbered realty and personalty.

It should be kept in mind that Pittsburgh would be the fourth permit awarded to the assignee. Assuming that each station will cost \$500,000 to build, this would mean \$2,000,000 in construction costs for the four. It would also be realistic to assume a first year operational loss in each of these stations. Taking between \$100,000 to \$250,000 as a range of average losses, this would mean between \$400,000 to \$1,000,000 in losses for the first year, or a total of between \$2,400,000 to \$3,000,000 for the four stations. If to this is added the same figure for the remaining three applications of the assignee (San Francisco, Dallas and Houston), an additional \$1,500,000 would be needed for construction and between

\$300,000 to \$750,000 for operational losses the first year, for a sub-total of between \$1,800,000 to \$2,250,000 or a grand total of between \$4,200,000 to \$5,250,000 in construction costs and first year losses for all seven UHF stations. The approximate amount of \$4,270,000 in unencumbered physical assets of the assignee will be available as a credit source when needed. The Bureau is of the opinion that we should confine our consideration of the assignee's finances to this application for Pittsburgh, plus the assignee's commitments to build and operate its UHF construction permits in Toledo, Atlanta and Cincinnati (Newport, Kentucky). On the basis of the foregoing, the assignee appears to be financially qualified to purchase, construct and operate WAND-TV.

6. The programming proposed is within delegable limits. The station will adhere to the N.A.B. Code.

7. It is recommended that the application be granted and the attached by-direction letter be adopted.

JAMES B. SHERIDAN
(For the Chief, Broadcast Bureau).

SEPTEMBER 22, 1965.

Commission action, October 20, 1965.

Interoffice memorandum (74174).

For: AL & TC Agenda.

To: The Commission.

From: Chief, Broadcast Bureau.

Subject: Assignment of construction permit for KBAY-TV, (Channel 20) San Francisco, California, from Sherrill C. Corwin, Tr/as Bay Television to D. H. Overmyer Communications Co. (BAPCT-354) and application for additional time to construct KBAY-TV (BMPCT-5122).

Reference: Item No. 4, AL & TC Agenda, May 12, 1965, Mimeo No. 67076.

Recommended action: Grant applications.

SUMMARY

1. This item is being presented to the Commission to reflect the response of August 5, 1965, which the applicants submitted to the Commission's pre-hearing letter of May 12, 1965, which had stated that a hearing appeared necessary because (a) the proposed consideration for the assignor of the bare permit appeared in excess of Mr. Corwin's expenses; and (b) the assignee did not make a sufficient commitment to construct the station (FCC 65-409). The assignment contract has been revised so that Mr. Corwin will not receive consideration in violation of Commission policy; and the assignee has made a more specific commitment to construct. Accordingly, the Bureau recommends a grant of the applications.

THE REVISED TRANSACTION

2. The old assignment contract has been cancelled, and the new agreement provides that Mr. Corwin will acquire a 20% interest in the assignee and will assign the bare permit for no consideration. Mr. Corwin will pay \$10,000 for his 20% interest in the assignee, which is a newly formed corporation with no assets, and, as part of the agreement, he has obligated himself to loan the assignee \$80,000¹ with the provision that D. H. Overmyer pay \$40,000 for his 20% of the assignee and will provide loans of at least \$320,000.

3. The agreement also provides that the assignee corporation will have the option to acquire Mr. Corwin's 20% at any time from the 49th to 63rd month following the last day of the month in which the station will have initiated commercial broadcasting, for not less than \$10,000 and not more than \$140,000. The option price will be the sum of \$10,000, plus 20% of an amount equal to the sum of (a) the gross billings of a 24 month period,² (b) plus the corporation's current assets at the end of the 24 month period, (c) minus all liabilities (up to \$400,000) at the end of the period.

4. The Bureau believes that Mr. Corwin, who has expended \$7,360 on the station, will not receive consideration in excess of out-of-pocket expenses in violation of Commission policy, because (a) his capital contribution to the

¹This loan will bear interest at the New York prime rate plus 1% and the principal will be repayable in not less than four years.

²If the option is to be exercised between the 49th to the 60th month after the commencement of programming, this 24 month period will be from the 25th to the 48th month after the commencement of broadcasting. If the option is to be exercised from the 61st to the 63rd month, the 24 month period will cover the 37th to the 60th month.

newly formed assignee corporation will be proportionate to that of Mr. Overmyer; and (b) the Commission has granted a similar application in which the assignee of a bare permit was not obligated to exercise an option for the balance of the stock even though it appeared that exercise of the option would allow the assignor to receive more than it had invested in the station. *WOGO-TV, Chicago*, Item No. 2, AL & TC Agenda, January 19, 1965.

FINANCIAL QUALIFICATIONS

5. The assignee proposes to obtain capital from the following sources: (a) stock subscriptions of \$50,000; (b) Mr. Corwin's loan of \$80,000; (c) a credit of \$340,000 from RCA for equipment; and (d) a loan of \$475,000 from the Bank of America, payable over a period of five to seven years, "with amortization to begin about two years after the station is in operation." The assignee lists the following expected expenses and resources available for the first year of operation.

Expenses:	
Construction costs.....	\$475,000
First year expenses.....	400,000
16 monthly payments to RCA*.....	191,000
16 months' interest to bank & RCA*.....	65,000
Total	1,031,000
Resources:	
Stock subscriptions.....	50,000
Mr. Corwin's loan.....	80,000
Bank loan.....	475,000
RCA credit.....	340,000
Total	945,000

*Installment payments and interest would be due before the station began broadcasting. It is estimated that 16 monthly payments would cover the first year of broadcasting.

The assignee estimates that it can cover the difference of \$86,000 between expenses and the resources listed above from revenues which it estimated to be \$400,000 for the first year of operation. It does not give detailed reasons for the total estimated revenues but it estimates that 25% of the market will be converted to UHF by 1966, and it notes that it would need only a very small percentage of the total TV revenues in the San Francisco market to get \$86,000 (In 1964, the four San Francisco television stations reported total revenues of \$30,796,394.). In any case, in an amendment of February 5, 1965, Mr. Overmyer stated that he "... will use the resources not only of himself but of the Warehouse Company to whatever extent may be necessary to support and effectuate the instant as well as the other proposals in which he is interested."

6. Since March 10, 1965, Mr. Overmyer has already acquired permits to construct five new UHF stations and has applications pending for KRAY-TV and a new station in Dallas. In a balance sheet of August 31, 1964, the D. H. Overmyer Warehouse Company showed net current assets of \$1,300,000 and a net worth of \$5,225,000. Mr. Overmyer submitted a personal balance sheet of August 31, 1964, which showed unencumbered personal assets (consisting primarily of investments in wholly owned corporations) of approximately \$4,270,000. Mr. Overmyer was found financially qualified for the first three stations pursuant to three applications filed before the *Ultravision* financial test was adopted in FCC 65-581, released on July 2, 1965, but acquired his last two (WAND-TV, Pittsburgh, Item No. 7, AL & TC Agenda, July 28, 1965 Mimeo No. 70517 and BPCT-3518 for Rosenberg, Texas, approved by circulation, August 12, 1965, Mimeo No. 71233) pursuant to applications granted after the new test became applicable. Although it is difficult to apply the *Ultravision* test to the aggregate requirements of the other five stations and KBAY-TV, because, among other things, the first years of operation for each of the stations will probably not coincide, it is estimated from the information submitted by Mr. Overmyer that the total cost of construction and first year operating expenses for the six

stations will be \$8,229,470 and that the total credit available to him from banks, equipment suppliers, and Mr. Corwin³ will be \$6,030,176. (See Appendix A). In addition Mr. Overmyer has made a commitment to use his personal assets of \$4,270,000. Even if he might have to use some of these assets to meet obligations as a guarantor of bank loans, he should still be able to provide additional capital because the bank loans for the six stations are approximately \$2,775,000. Furthermore it is not unreasonable to expect his six stations, all located in major markets, to generate total first-year revenue of \$1,000,000.⁴

CONSTRUCTION PLANS

7. The assignee now states that it plans to construct on Mt. Sutro on the new high tower as soon as the site becomes available (On June 11, 1965, in Docket No. T2866, the Commission denied a petition for reconsideration of its grant of the application for this high tower, subject to a condition that the applicant submit a plan for use of the tower by other broadcasters in the area).⁵ In any case, the assignee stated, on July 30, 1965, that "it will, if the new tower is not available, as expected, within a year, put the station on the air by using the existing ABC-TV tower."

THE REORGANIZED ASSIGNEE

8. The assignee is to be reorganized so that D. H. Overmyer will own 80% and Sherrill C. Corwin will own 20%.

9. D. H. Overmyer, whose qualifications have been examined by the Commission on several recent occasions, now is the individual permittee for a new UHF station in Toledo, and is the sole owner of five different corporations which are permittees of four other UHF stations and an applicant for another. The following table lists the permits held by Mr. Overmyer and his corporations, and KBAY-TV. (Mr. Overmyer had applications on file for these stations before the "frost" on acquisitions in the top 50 markets became effective in FCC 65-547).

Station	City and population	TV market	Competing commercial stations on air	Competing news-papers
WNOP-TV (channel 74).....	Newport, Ky. (Cincinnati) (502,550)	16	6 AM, 7 FM, 3 VHF.....	2
DHO-TV (channel 79).....	Toledo (318,003).....	32	5 AM, 4 FM, 2 VHF.....	12
ATL-TV (channel 36).....	Atlanta (487,455).....	23	10 AM, 6 FM, 3 VHF.....	12
WAND-TV (channel 53).....	Pittsburgh (604,332).....	9	8 AM, 10 FM, 3 VHF, 1 UHF.....	3
BPCT-3518.....	Rosenberg, Tex. (Houston) (938,219)	25	11 AM, 5 FM, 3 VHF.....	3
KBAY-TV (channel 20).....	San Francisco (742,855).....	7	13 AM, 16 FM, 4 VHF ²	33

¹ Morning and evening papers with same publisher.

² Including Oakland stations.

³ Including morning and evening papers with same publisher, but not specialized papers nor west coast edition of Wall Street Journal.

He also has an application pending to build a new station in Dallas:

Station: BPCT-3463.

City and population: Dallas, (679,684).

TV market: 14.

Competing commercial stations: 7 AM, 8 FM, 3 VHF.

Competing newspapers: 2.

⁴ Mr. Corwin's balance sheet of September 30, 1964, showed current assets of \$828,326; total liabilities of \$918,760 (there was no breakdown of current liabilities); and a net worth of \$4,759,414.

⁵ The Commission can consider Mr. Overmyer's financial ability to build his seventh station (in Dallas) when it acts on BPCT-3463.

⁶ Attorneys for the assignee have advised the staff that they have been participating in joint efforts to find a satisfactory use of the tower for all stations which will use it. The assignee is generally satisfied with the proposal made by ABC.

Sherrill Corwin has disposed of ownership interests in 8 AM, 5 PM, and 3 TV stations (which are listed in Appendix A of the reference item). His only other present ownership interests are as follows:

Extent of interest (percent)	Station	City and population	TV market	Competing stations	Competing newspapers
100.....	KGUD AM and FM.....	Santa Barbara, Calif. (58,768)	(1)	4 AM, 3 FM, 1 VHF.....	1
15.....	KAKE AM and TV.....	Wichita, Kans. (254,698)	52	5 AM, 3 FM, 2 VHF.....	22
15.....	KUPK-TV (channel 13).....	Garden City, Kans. (11,811)	(2)	2 AM, 1 FM.....	1

¹ No Corwin TV in market.
² Both with same publisher.
³ Satellite of KAKE-TV.

CONCLUSIONS AND RECOMMENDATIONS

10. In view of the facts that (1) the proposed consideration presents no problems in view of the precedent of the recent assignment of WOGO-TV, Chicago;⁶ and (2) that the assignee has indicated that it will begin construction as soon as a new tall tower is available on Mt. Sutro or within a year in any case;⁷ the Bureau recommends a grant of the applications.

ROBERT W. ALFORD,
 JAMES B. SHERIDAN
 (For Chief, Broadcast Bureau).

APPENDIX A

ESTIMATED COSTS OF 6 OVERMYER STATIONS AND OUTSIDE FINANCING AVAILABLE

	WNOP-TV	Rosenberg, Tex., BPCT-3518	WATL-TV	WAND	WDHO	KBAY	Total
Costs:							
Cost of construction.....	\$860,000	\$1,147,744	\$455,005	\$505,000	\$1,098,078	\$475,000	\$4,541,627
1st year expense.....	225,000	320,000	300,000	400,000	550,000	400,000	2,195,000
16 mo. installments ¹	149,619	215,529	80,010	106,680	249,495	91,000	892,333
Payments to sellers.....	100,000		100,000	28,000			228,000
Interest ²	57,660	81,488	42,000	45,000	81,362	65,000	372,510
Total.....							8,229,470
Outside financing:							
Bank credit.....	400,000	550,000	400,000	350,000	500/600,000	475,000	2,775,000
Equipment credit.....	561,000	808,132	300,000	400,000	756,044	340,000	3,165,176
Contribution from Mr. Corwin.....							90,000
Total.....							6,030,176

¹ Installments are for deferred payments on equipment.
² Interest estimated to be 6 percent of total credit in all cases but KBAY-TV, for which figures given by applicant were used.

AUGUST 11, 1965

Commission action, August 12, 1965.

Interoffice memorandum (71233).

For: Circulation.

To: The Commission.

From: Chief, Broadcast Bureau.

Subject: Application (BPCT-3518) for a construction permit for a new commercial television broadcast station to operate on channel 58, Rosenberg, Texas, filed by:

⁶This conclusion is consistent with the Commission's action in WOGO-TV, Chicago, (AL & TC Agenda, Jan. 19, 1965) when the WOGO assignee had an option for additional stock which, if exercised, would give the assignor total consideration in excess of out-of-pocket investment. In this KBAY case, the option price must be determined from the financial condition of the station in operation, and the price may or may not exceed Mr. Corwin's investment.

⁷The Commission in several grants has taken six months as the benchmark within which purchasers would be expected to construct silent UHF stations. KBAY-TV, however, was not designated for oral argument for failure to construct because of the peculiar problem of securing a site on Mt. Sutro. Accordingly, the one-year commitment seems sufficient.

D. H. Overmyer Broadcasting Co., 41 East 42nd Street, New York, N.Y.

Date filed: February 8, 1965.

Dates amended: March 9, 1965; May 27, 1965; and July 16, 1965.

Zone: III

Population: 9,698

Channels assigned to Rosenberg: 58

Channels authorized: None

Channel requested: 58

Antenna height above average terrain: 1,434 feet

ERP, visual: 1038 kw

Recommended action: Grant in accordance with attached specifications and subject to proposed condition.

1. THE APPLICANT

The applicant, D. H. Overmyer Broadcasting Company, is incorporated under the laws of the State of Florida with authority to issue 10,000 shares of stock at a par value of \$10.00 per share. The applicant has already issued 100 shares of stock. The officers, directors and stockholders of the applicant corporation, all of whom are citizens of the United States, are as follows: D. H. Overmyer, 100%, President and Director; sole or controlling stockholder, President and Director, D. H. Overmyer Warehouse Company and affiliates; D. H. Overmyer Trucking Company, D. H. Overmyer Company (holding company) and Toledo Business Research Institute incorporated (publisher of weekly newspaper); Mrs. Shirley Clark Overmyer, Director; Robert F. Adams, Executive Vice-President; Robert W. Robinson, Vice-President and Director; Manager of Inventory Planning and Executive Vice-President, D. H. Overmyer Warehouse Company; Gray R. Silcox, Vice-President; Controller and Vice-President, D. H. Overmyer Warehouse Company; Director, Toledo Business Research Institute, Incorporated; Thomas J. Byrnes, Treasurer; Treasurer, Toledo Monitor; Treasurer, D. H. Overmyer Warehouse Company; Edmund M. Connerly, Secretary; Secretary and General Counsel, D. H. Overmyer Warehouse Company; and Paul F. Emerson, Assistant Secretary and Assistant Treasurer; Office Manager, D. H. Overmyer Warehouse Company.

D. H. Overmyer or a corporation controlled by Mr. Overmyer has the following broadcast interests: permittee of Television Broadcast Station WDHO-TV, Channel 79, Toledo, Ohio; permittee of Television Broadcast Station WATL-TV, Channel 36, Atlanta, Georgia; permittee of Television Broadcast Station WNOP-TV, Channel 74, Newport, Kentucky; grantee (assignment application (BAPCT-364) approved by Commission July 28, 1965) of Television Broadcast Station WAND-TV, Channel 53, Pittsburgh, Pennsylvania; applicant (BAPCT-354) for transfer of Television Broadcast Station KBAY-TV, Channel 20, San Francisco; and applicant for a new commercial television broadcast station to operate on Channel 20, Dallas, Texas.

2. PERSONNEL

The applicant indicates that personnel will be hired to fill the following staff positions: five Administrative, six Program, three Sales, five Engineers. The applicant states that additional staff personnel will be hired as the operating schedule increases. In addition, all employees will be citizens of the United States.

3. PROGRAM PLANS

The applicant proposes to operate from 4:00 p.m. to 12:35 a.m., Monday through Friday; from 4:00 p.m. to 5:05 a.m., on Saturday; and from 4:28 p.m. to 11:30 p.m., on Sunday, a total of 63 hours and 2 minutes per week, of which 78% will be commercial and 22% will be sustaining. It is proposed to devote 32% of total broadcast time to live programming. No network affiliation is proposed. There will be an estimated 390 spot announcements per week and 80 noncommercial spot announcements per week. The percentage analysis of the applicant's proposed program week is as follows:

	Percent
Entertainment.....	70.0
Religious.....	2.8
Agricultural.....	3.5
Educational.....	.8
News.....	10.3
Discussion.....	1.1
Talks.....	11.5

With respect to the number and length of spot announcements allowed in a given period, the applicant states that it will follow the provisions of the NAB Code.

4. FINANCIAL QUALIFICATIONS

Estimated cost of construction.....	\$1,147,744
Estimated annual operating expense.....	320,000
Estimated annual revenue.....	350,000
Cash requirements:	
Equipment	\$142,605
Land	82,000
Building	75,000
Other items.....	40,000
Annual operating expense.....	320,000

Cash in the amount of approximately \$660,000 will be required for the construction and first year operation of the proposed station. The applicant has a bank loan of \$550,000 and a loan from D. H. Overmyer Warehouse Company in the amount of \$250,000.

When the staff recently presented Mr. Overmyer's application to acquire the permit for Channel 53 in Pittsburgh (granted July 28, 1965, AL & TC Agenda, Item No. 7, Mimeos 70517, 70518) we stated that we would present an overall assessment of Mr. Overmyer's financial position in connection with the present application. His position may be summarized as follows: In his application to build and operate UHF stations in Toledo, Atlanta, Newport and Pittsburgh, all of which have been granted, he reflected bank loans totalling \$1,700,000, and a loan from D. H. Overmyer Warehouse Company of \$340,000. The bank loans were guaranteed by Mr. Overmyer, whose personal balance sheet shows approximately \$4,270,000, in unencumbered physical assets. The loan from D. H. Overmyer Warehouse Company of \$340,000, is supported by its balance sheet which, as of July 15, 1965, shows current assets of \$1,300,000 in excess of current liabilities and a net worth of approximately \$5,225,000. In addition, Mr. Overmyer has indicated that both his individual assets and those of D. H. Overmyer Warehouse Company will be used to the extent necessary to construct and operate the above stations.

Based upon the foregoing, it appears that the applicant has sufficient financial resources to meet his prior commitments and to construct and operate the proposed station based upon the Commission's new financial standard as set forth in *Ultravision Broadcasting Company*, FCC 65-851.

5. ENGINEERING CONDITIONS

The application meets all of the technical requirements of the Commission's Rules.

6. RECOMMENDATION

The Broadcast Bureau is of the view that the applicant is legally, technically, financially and otherwise qualified to construct, own and operate the proposed station; that a grant of the subject application would serve the public interest, convenience and necessity and that the application should be granted in accordance with the attached specifications and subject to the following condition:

1. That prior to licensing, acceptable data shall be submitted for type-acceptance of the proposed transmitter in accordance with the requirements of Section 73.640 of the Commission's Rules.

JAMES O. JUNTILLA,
(For James B. Sheridan, Chief, Broadcast Bureau.)

ITEM 10(i)

Broadcast Application						FEDERAL COMMUNICATIONS COMMISSION						Section III	
FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT				Name of Applicant D. H. Overmyer Broadcasting Company									
The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.													
1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below.													
Transmitter proper including tubes			Antenna system, including antenna-ground system, coupling equipment, transmission line			Frequency and modulation monitors			Studio technical equipment, microphones, transcription equipment, etc.				
\$ 160,359			\$ 147,163			\$ 21,319			\$ 147,087				
Acquiring land		Acquiring, remodeling, or constructing buildings		Other items Items: Fees, furnishings, misc.		Total		Give estimated cost of operation for first year		Give estimated revenues for first year			
\$ 100,000		\$ 65,000		\$ 35,000		\$ 675,928		\$ 300,000		\$ 225,000			
b. State the basis of the estimates in (a) above.													
Estimates of consulting engineer and applicant and manufacturer prices													
c. The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be met and paid for from each source.) The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:													
Existing Capital		New Capital		Loans from banks or others		Profits from existing operations		Donations		Credit, deferred payments, etc.		Other sources (specify)	
\$ 1,000		\$		\$ 400,000		\$		\$		\$ 357,000		\$	
2. a. Attach as Exhibit No. IV a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. _____ schedules which give a complete analysis of such items.													
b. Attach as Exhibit No. IV a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.													
3. Furnish the following information with respect to the applicant only. If the answer is "none" to any or all items, specifically so state:													
a. Amount of funds on deposit in bank or other depository						b. Name and address of the bank in which deposited							
c. Name and address of the party in whose name the money is deposited													
d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition)													
e. Whether the funds were deposited for the specific purpose of constructing and operating the station													

ITEM 10(j)

Re WNOP-TV, Newport, Kentucky (BMPCT-6120).

DEAR MR. WAPLE: Herewith, as a supplement to the above application, for an improvement in facilities, is a copy of the RCA credit letter dated July 6, 1965.

Estimated costs of \$860,000 (\$200,000 for land, buildings and miscellaneous plus equipment of \$660,000) and operating expense of \$75,000 or a total of

\$935,000, are more covered by credit (attached letter) of \$560,730 plus loan commitment of \$400,000.

Very truly yours

D. H. OVERMYER BROADCASTING CO.
By ROBERT F. ADAMS,
Executive Vice-President.

Dated: July 13, 1965.

Mr. Ben F. Waple, Federal Communications Commission, Washington, D.C. 20554.

ITEM 10(k)

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section 311		
FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT		Name of Applicant D. H. OVERMYER BROADCASTING CO.				
The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.						
1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in Item 5b. Estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the costs for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below.						
Transmitter power including tubes	Antenna system, including antenna-ground system, coupling equipment, transmission line	Frequency and modulation monitors	Studio technical equipment, microphones, transcription equipment, etc.			
\$ Lease*	\$ Lease*	\$ Lease*	\$ Lease*			
Acquiring land	Acquiring, remodeling, or constructing buildings	Other items (lease fees, install. misc.)	Total	Give estimated cost of operation for first year	Give estimated revenues for first year	
\$ 55,000	\$ 15,000	\$ 41,000	\$ 111,000	\$ 425,000	425,000	
b. State the basis of the estimates in (a) above.						
Estimates by Applicant						
*See Exhibit I						
** Includes equipment lease payments						
c. The proposed construction is to be financed and paid for in the following manner (including specific statements as to the approximate amount to be met and paid for from each source.) The financial plan should provide for a 2-year period. Construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:						
Existing Capital	New Capital	Loan from banks or others	Profits from existing operations	Donations	Debit, deferred payments, etc.	Other sources (specify)
\$ 1,000	\$	\$ 510,000	\$	\$	\$	\$
2. a. Attach as Exhibit No. a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. schedules which give a complete analysis of each item. Exhibit I						
b. Attach as Exhibit No. a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source. Exhibit I						
3. Furnish the following information with respect to the applicant only. If the answer is "None" to any or all items, specify so state: Exhibit I						
a. Amount of funds on deposit in bank or other depository.			b. Name and address of the bank in which deposited			
c. Name and address of the party in whose name the money is deposited						
d. Conditions of deposit (in trust, savings, subject to check, or the deposit, show any other conditions and the purpose, or other condition)						
e. Whether the funds were deposited for the specific purpose of constructing and operating the station						

WSCO-TV-CP

ITEM 10(l)

OVERMYER COMMUNICATIONS COMPANIES

COMBINED BALANCE SHEET

AS AT MAR. 31, 1967

	Newport, Ky. WSCO-TV	Pittsburgh, Pa. WECO-TV	Atlanta, Ga. WBMO-TV	San Francisco Calif. KJDO-TV	Rosenberg, Tex. KEMO-TV	Total
ASSETS						
Current assets:						
Cash	\$550.00	\$1,000.00	\$6,350.00	\$7,983.10	0	\$15,883.10
Accounts receivable	225.00	0	172.38	1,000.00	0	1,397.38
Inventories	0	0	3,118.70	3,534.84	0	6,653.54
Total current assets	775.00	1,000.00	9,641.08	12,517.94	0	23,934.02
Land	90,000.00	0	0	0	0	90,000.00
Other assets:						
Broadcast rights	483,858.23	586,962.41	717,188.24	501,565.40	\$268,136.32	2,557,710.60
Preoperative expenses	218,139.13	225,955.96	278,384.08	183,876.94	64,426.69	970,782.80
Deposits	0	0	0	1,870.00	0	1,870.00
Total other assets	701,997.36	812,918.37	995,572.32	687,312.34	332,563.01	3,530,363.40
Total assets	792,772.36	813,918.37	1,005,213.40	699,830.28	332,563.01	3,644,297.42
LIABILITIES						
Current liabilities:						
Notes payable	15,000.00	0	7,000.00	66,996.80	0	88,996.80
Accounts payable	18,717.05	4,488.42	27,240.53	33,785.40	3,249.11	91,480.51
Broadcast rights	18,300.76	110,970.00	116,053.82	78,234.76	59,502.92	393,062.26
Accrued expenses	4,506.00	0	7,131.24	2,691.74	0	14,328.98
Accrued taxes	1,129.74	0	1,091.26	1,405.87	0	3,626.87
Total current liabilities	71,653.55	115,458.42	158,516.85	183,114.57	62,752.03	591,495.42
Long-term liabilities:						
Notes payable	45,000.00	0	342,000.00	350,000.00	0	737,000.00
Broadcast rights	431,758.30	448,983.80	575,393.32	370,470.48	182,650.21	2,009,256.11
Total long-term liabilities	476,758.30	448,983.80	917,393.32	720,470.48	182,650.21	2,746,256.11
Amortized company accounts	243,860.51	248,476.15	(71,696.77)	(253,754.77)	86,160.77	253,045.89
Capital: Common stock	500.00	1,000.00	1,000.00	50,000.00	1,000.00	53,500.00
Total liabilities and capital	792,772.36	813,918.37	1,005,213.40	699,830.28	332,563.01	3,644,297.42

ITEM 10(m)

MEMORANDUM OF CREDIT AND NEW BUSINESS INFORMATION

(Report by Clement H. Darby, Assistant Vice President, November 14, 1966)

Name: Overmyer Communications Company, Inc., Customer, Average Balance \$17,000.

Address: 201 E. 42 Street, New York, N.Y.

Business: TV Stations.

On Thursday, November 10, I met by appointment with Mr. Arthur Dorfner, Financial Vice President of Overmyer Communications Company and J. W. Field, Financial Vice President of the Overmyer Network.

Field advised that they now have signed up slightly over 100 stations for the Overmyer Network which will go into operation next April or May. Although newspapers have reported anywhere from \$10,000,000 to \$100,000,000 for the cost of such network, this will be done with a minimum of capital since there will be no major capital expenditures. Their projections indicate that on an accrual basis this will be showing a profit within the first two or three months although because of the delay in receivables, there may be required somewhere in the neighborhood of \$2,000,000 to get this thing off the ground. Their monthly charges from American Telephone and Telegraph for leased lines will approximate \$600,000. At beginning their network programs will include a weekly show

from Las Vegas, U. P. I. news and a Bible Series. They plan to work up to about 50 or 60 hours of weekly programing. We are not involved in the financing of this.

In relation to the television station which we are financing in Atlanta, a lease has been signed for the studio and arrangements are now being made to bring in the necessary equipment and set up the transmitting tower. Plans are for the station to go on line the end of January. I intend to take a trip to Atlanta the latter part of December in order to inspect the facilities and insure things are going along satisfactorily. At present Overmyer has a line of \$200,000 which we have approved from the National Bank of Georgia until January 3. At that time we will take out the National Bank of Georgia's loan in accordance with our agreement with Overmyer. Plans are to take a note from Overmyer for \$200,000 and deposit this to their account on January 3 and then wire \$200,000 to the National Bank of Georgia to pay off the loan.

Overmyer has lined up financing for their stations in Cincinnati, San Francisco, and Atlanta. They are now working on the financing for Pittsburgh and Houston which will give them a total of six stations out of their maximum allotment of seven by the F. C. C.

ITEM 10(n)

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 15, 1968.

Mr. F. MAX SCHUETTE,
Senior Vice President,
Southern National Bank,
Houston, Tex.

DEAR MR. SCHUETTE: In connection with its legislative oversight jurisdiction, the Special Subcommittee on Investigations maintains a continuing watch over the policies and administrative practices of the various Federal Agencies. Recently, Subcommittee attention has focused on the Federal Communications Commission's approval of the transfer of D. H. Overmyer's five television station construction permits.

As part of this proceeding, the Subcommittee has been looking into the facts and circumstances which surrounded the Commission's original grant of these permits to Mr. Overmyer, and observed that your letter of January 19, 1965, copy attached for your ready reference, accompanied his Rosenberg, Texas permit application. To assist our inquiry, we should appreciate your furnishing this Subcommittee with the following information pertaining to this letter:

1. Did Overmyer or someone on his behalf subsequently request the loan of \$550,000, or any part thereof, discussed in this letter? If the answer was yes, what were the bank's objections in refusing to extend said loan?*

2. Did the bank consider this letter a legally binding commitment to provide such a loan? If not, why?

3. Before authorizing such loan, what would the bank have required Overmyer to submit in the way of documentation? (For example, would financial statements have been necessary? If so: what type? For himself personally or for which of his organizations? Would it have been necessary that they be independently audited or certified by independent public accountants? Were any guarantees required? Subordination agreements? Collateral? Other security arrangements?)

4. In the letter's third paragraph it was stated that Overmyer's principal assets would have to be substantiated "in a manner and form satisfactory to us." What "manner and form" of substantiation by Overmyer would the bank have considered acceptable?

5. What specifically were the "customary legal requirements" also referred to in this third paragraph?

Your earliest possible reply to the Subcommittee's request would greatly assist its work in this matter. Please address same to the undersigned.

Very truly yours,

S. ARNOLD SMITH, *Staff Attorney.*

**If the answer was no, are you aware of any reasons for Overmyer's failure to follow-up on obtaining this loan?

SOUTHERN NATIONAL BANK,
Houston, Tex., January 19, 1965.

Attention: Mr. Robert F. Adams, Vice President.

D. H. OVERMYER BROADCASTING CO.,
New York, N.Y.

GENTLEMEN: We want to thank you for apprising us of your plans to apply to the Federal Communications Commission for permission to construct television facilities 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 would be subject further to your providing us with 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 would be subject to customary legal requirements and a mutually acceptable loan agreement.

We look forward to working with you.

Very truly yours,

F. MAX SCHUETTE, *Senior Vice President.*

SOUTHERN NATIONAL BANK,
Houston, Tex., May 2, 1968.

Mr. S. ARNOLD SMITH,
Staff Attorney, House of Representatives, Committee on Interstate and Foreign
Commerce, Washington, D.C.

DEAR MR. SMITH: This is in reply to your letter of April 15 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 lapse 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 in the circumstances.

3. As the letter points out, we would have required financial statements of D. H. Overmyer Broadcasting Company and D. H. Overmyer individually. Inasmuch as Mr. Overmyer's statement reflected a substantial investment in closely held inter-related companies, we would have required a certified statement substantiating the principal assets of Mr. Overmyer and his companies. This, also, I attempted to spell out in our letter. Mr. Overmyer's personal guaranty would very likely have been requested. Other security arrangements would have, of course, depended upon the matters disclosed by the personal and corporate statements 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 matters disclosed in the current statements of the company and him individually. This, of course, relates to the nature of the assets revealed by such statements. Inasmuch as Mr. Overmyer's assets were represented by interests in real estate in 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 refer to the legal documentation that would be required to implement the credit arrangements that would be 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 of 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 have regarding this matter, please let me hear from you.

Very truly yours,

F. MAX SCHUETTE, *President.*

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 15, 1968.

Mr. E. I. H. BENNETT,
Executive Vice President,
Western Pennsylvania National Bank,
Pittsburgh, Pa.

DEAR MR. BENNETT: In connection with its legislative oversight jurisdiction, the Special Subcommittee on Investigations maintains a continuing watch over the policies and administrative practices of the various Federal Agencies. Recently, Subcommittee attention has focused on the Federal Communications Commission's approval of the transfer of D. H. Overmyer's five television station construction permits.

As part of this proceeding, the Subcommittee has been looking into the facts and circumstances which surrounded the Commission's original grant of these permits to Mr. Overmyer, and observed that your letter of January 29, 1965, copy attached for your ready reference, accompanied his Pittsburgh, Pennsylvania permit application. To assist our inquiry, we should appreciate your furnishing this Subcommittee with the following information pertaining to this letter:

1. Did Overmyer or someone on his behalf subsequently request the loan of \$350,000, or any part thereof, discussed in this letter? If the answer was yes, what were the bank's objections in refusing to extend said loan? **

2. Did the bank consider this letter a legally binding commitment to provide such a loan? If not, why?

3. Before authorizing such loan, what would the Bank have required Overmyer to submit in the way of documentation? (For example, would financial statements have been necessary? If so: what type?)

For himself personally or for which of his organizations? Would it have been necessary that they be independently audited or certified by independent public accountants? Were any guarantees required? Subordination agreements? Collateral? Other security arrangements?)

Your earliest possible reply to the Subcommittee's request would greatly assist its work in this matter. Please address same to the undersigned.

Very truly yours,

S. ARNOLD SMITH, *Staff Attorney.*

WESTERN PENNSYLVANIA NATIONAL BANK,
Pittsburgh, Pa., January 29, 1965.

Attention: Mr. Robert F. Adams.
D. H. OVERMYER COMMUNICATIONS Co.,
New York City, N.Y.

GENTLEMEN: We understand you have made application to the Federal Communications Commission for authorization to construct and operate a UHF television station on Channel 53 in Pittsburgh. You have apprised us that you plan to obtain the usual equipment credit and also of Mr. Overmyer's plans for television stations in other cities.

In connection with the proposed Pittsburgh station, you have asked us to extend to your company an unsecured loan in the amount of \$350,000, payable over a period of five to seven years, with amortization to begin about two years after the station is in operation at the then prevailing rate of interest. We fur-

**If the answer was no, are you aware of any reasons for Overmyer's failure to follow-up on obtaining this loan?

ther understand that this loan will be guaranteed by Mr. D. H. Overmyer personally, whose financial statement has been submitted to us.

We are agreeable to making the loan requested subject to approval by the Federal Communications Commission of the authorization for the station. Also, since the loan would not be used by you for six to eight months, we would expect that Mr. Overmyer's financial condition has not changed materially in the interim.

Cordially,

E. I. H. BENNETT,
Senior Vice President.

WESTERN PENNSYLVANIA NATIONAL BANK,
Pittsburgh, Pa., April 22, 1968.

Mr. S. ARNOLD SMITH,
Staff Attorney, Special Subcommittee on Investigations of the Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. SMITH: This will acknowledge your letter of April 15 requesting certain information regarding permits granted to D. H. Overmyer for a Pittsburgh television station.

1. An officer of D. H. Overmyer Communications Company requested this loan in January 1966, and subsequent to that time, numerous conversations were held to attempt to arrive at a satisfactory basis for granting the loan. Among other things, the request in 1966 was substantially in excess of our original commitment and we were unable to secure satisfactory financial data to justify the extension of the credit requested.

2. We did consider our letter of January 29, 1965 a binding commitment to provide a loan of \$350,000, subject to (a) the company securing the necessary equipment credit; (b) approval of FCC; (c) a guarantee by Mr. D. H. Overmyer personally; and (d) no adverse change in Mr. Overmyer's financial condition.

3. Had the loan been approved, we would have required audited financial statements of the communications company and D. H. Overmyer's personal financial statement. This was one of the major points of contention and we declined to proceed with our credit arrangement until the company furnished us with statements certified by independent public accountants. Our loan, furthermore, would have been supported by a loan agreement which, among other things, would have placed certain restrictions on the company.

It eventually developed that we could not come to a complete meeting of the minds on certain requirements which we felt were in our best interests and the loan was not consummated.

I hope that this will give you the information you need, but if we can be helpful in any other way, please do let me know.

Cordially,

E. I. H. BENNETT,
Senior Vice President.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE —
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 15, 1968.

Mr. ROLF H. BROOKES,
Vice President,
The First National Bank of Cincinnati,
Cincinnati, Ohio.

DEAR MR. BROOKES: In connection with its legislative oversight jurisdiction, the Special Subcommittee on Investigations maintains a continuing watch over the policies and administrative practices of the various Federal Agencies. Recently, Subcommittee attention has focused on the Federal Communications Commission's approval of the transfer of D. H. Overmyer's five television station construction permits.

As part of this proceeding, the Subcommittee has been looking into the facts and circumstances which surrounded the Commission's original grant of these permits to Mr. Overmyer, and observed that your letter of August 14, 1964, copy

attached for your ready reference, accompanied his Cincinnati (Newport, Kentucky) permit application. To assist our inquiry, we should appreciate your furnishing this Subcommittee with the following information pertaining to this letter:

1. Did Overmyer or someone on his behalf subsequently request the loan of \$400,000, or any part thereof, discussed in this letter? If the answer was yes, what were the bank's objections in refusing to extend said loan? If the answer was no, are you aware of any reasons for Overmyer's failure to follow-up on obtaining this loan?

2. Did the bank consider this letter a legally binding commitment to provide such a loan? If not, why?

3. Before authorizing such loan, what would the bank have required Overmyer to submit in the way of documentation other than as shown in the letter (certified financial statements and guaranteed note)?

Subordination agreements? Collateral? Other security arrangements?

4. In the letter's second paragraph, it was stated that the loan would also be contingent "upon such terms and conditions as might be mutually satisfactory" to the bank and Overmyer. Specifically, what were these terms and conditions?

Your earliest possible reply to the Subcommittee's request would greatly assist its work in this matter. Please address same to the undersigned.

Very truly yours,

S. ARNOLD SMITH,
Staff Attorney.

THE FIRST NATIONAL BANK OF CINCINNATI,
Cincinnati, Ohio, August 14, 1964.

Mr. ROBERT F. ADAMS,
Executive Vice President,
D. H. Overmyer Broadcasting Co.,
New York, N.Y.

DEAR MR. ADAMS: It is our understanding that you have entered into 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 endorsed 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.

Sincerely,

R. H. BROOKES, Vice President.

THE FIRST NATIONAL BANK OF CINCINNATI,
Cincinnati, Ohio, April 18, 1968.

Mr. S. ARNOLD SMITH,
Staff Attorney, House of Representatives, Special Subcommittee on Investigations, Rayburn House Office Building, Washington, D.C.

DEAR MR. SMITH: Reference is made to your letter of April 15 in which certain questions were raised relative to a credit 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 statements had not been satisfactory, then perhaps efforts 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 an amortization schedule plus covenants as to working capital requirements, 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 service to the Subcommittee.

Sincerely,

R. H. BROOKES, Vice President.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 15, 1968.

Mr. MERLYN E. DOLEMAN,
Vice President, Bank of America, Corporate Finance Department,
San Francisco, Calif.

DEAR MR. DOLEMAN: In connection with its legislative oversight jurisdiction, the Special Subcommittee on Investigations maintains a continuing watch over the policies and administrative practices of the various Federal Agencies. Recently, Subcommittee attention has focused on the Federal Communications Commission's approval of the transfer of D. H. Overmyer's five television station construction permits.

As part of this proceeding, the Subcommittee has been looking into the facts and circumstances which surrounded the Commission's original grant of these permits to Mr. Overmyer, and observed that your letter of July 26, 1965, copy attached for your ready reference, accompanied his San Francisco, California permit application. To assist our inquiry, we should appreciate your furnishing this Subcommittee with the following information pertaining to this letter:

1. Did Overmyer or someone on his behalf subsequently request the loan of \$475,000, or any part thereof, discussed in this letter? If the answer was yes, what were the bank's objections in refusing to extend said loan?*

2. Did the bank consider this letter a legally binding commitment to provide such a loan? If not, why?

3. Before authorizing such loan, what would the bank have required Overmyer to submit in the way of documentation? (For example, would financial statements have been necessary? If so: what type? For himself personally or for which of his organizations? Would it have been necessary that they be independently audited or certified by independent public accountants, Were any guarantees required? Subordination agreements? Collateral? Other security arrangements?)

4. In the letter's third paragraph it was stated that "we are agreeable to making the loan requested with documentation satisfactory to us" and with "satisfactory financial and operating projections." Specifically, what documentation, other than as indicated in question 3 above, would have been required? What kind of financial and operating projections would have been required? What bases for making these projections would the bank have considered satisfactory? What were the bank's criteria in reviewing such projections?

Your earliest possible reply to the Subcommittee's request would greatly assist its work in this matter. Please address same to the undersigned.

Very truly yours,

S. ARNOLD SMITH,
Staff Attorney.

*If the answer was no, are you aware of any reasons for Overmyer's failure to follow-up on obtaining this loan?

Attention: Mr. Robert F. Adams.
D. H. OVERMYER COMMUNICATIONS CO.,
New York, N.Y.

GENTLEMEN: We understand you have made application to the Federal Communications Commission for authorization to construct and operate a UHF television station on channel 20 in San Francisco. You have apprised us that you plan to obtain the usual equipment credit and also of Mr. Overmyer's plans for television stations in other cities.

In connection with the proposed San Francisco station, you have asked us to extend to your company an unsecured loan in the amount of \$475,000 payable over a period of five to seven years, with amortization to begin about two years after the station is in operation at the then prevailing rate of interest. We further understand that this loan will be guaranteed by Mr. D. H. Overmyer, personally, whose financial statement has been submitted to us.

We are agreeable to making the loan requested, with documentation satisfactory to us, subject to approval by the Federal Communications Commission of the authorization for the station, and since the loan would not be used by you for six to eight months, to your submitting to us at the time of your need for the loan, satisfactory financial and operating projections, and to Mr. Overmyer's financial condition not having changed adversely in the meantime.

This commitment will expire April 30, 1966.

Sincerely,

MERLYN E. DOLMAN,
Vice President.

BANK OF AMERICA,
San Francisco, Calif., April 30, 1968.

S. ARNOLD SMITH, Esq.,
Staff Attorney, Congress of the U.S. House of Representatives, Special Subcommittee on Investigations of the Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. SMITH: This is in reply to your letter of April 15, 1968, concerning our letter of July 26, 1965, to D. H. Overmyer Communications Company.

Specific answers to your itemized questions follow:

1. Our file does not conclusively indicate that the company requested a loan prior to the April 30, 1966, date described in our letter of July 26th to D. H. Overmyer Communications Company. However, a June 10th meeting with us was held in which a larger request was made and a memorandum on that meeting refers to an earlier meeting. The answer to your first question is, therefore, a qualified yes.

In the June 10th meeting, the company indicated a need for \$600,000, not \$475,000, and we found at that time that the financial plans were not adequate to indicate to our satisfaction that the proposed financing was reasonable both to meet the capital requirements and to provide for operating losses and a program of servicing for the new proposed term loan. We advised the management, as we had earlier, that a strong financial presentation would be required for us to open a commitment and that any presentation would probably entail audit reports covering the underlying assets in support of Mr. D. H. Overmyer's guarantee.

2. We did not consider the letter a legally binding commitment but a highly conditioned expression of interest. No consideration passed between the com-

BANK OF AMERICA,
San Francisco, Calif., July 26, 1965.

pany and the bank to lead us to provide the letter, within the knowledge of the writer. We would not have, however, issued such a letter except in the belief at the time of writing of it that the company and the guarantors would have been capable of complying with the conditions contained in the letter had they chosen to do so. Our bank has always felt a strong compulsion to firmly commit where expressions of interest have been given in circumstances where subsequent information supports the indication of interest and the company complies with reasonable and standard requirements for information consistent with financial practices in these matters. In this instance, the company chose not to provide such information or to give any detailed information to us concerning the amount of appraisal surplus in the underlying warehousing company statements or the relationship of cost of these assets to the appraising values of them.

3. Our bank would have, in processing such a loan, required the execution of a term loan agreement calling for financial statements of the borrower, the guarantor and the important companies representing the principal holdings of the guarantor. We might have required subordination of advances made by the guarantor to our borrower. This would have all been in accordance with standard procedures for such credits.

4. The presentation from the proposed borrower would have required detailed evidence of the cost of the physical plant, an extensive forecast of operations over a period of several years and an assessment of the operating deficit involved. We would have found it necessary to be satisfied that the company could have commenced a debt servicing program after the proposed moratorium on principal payments of about two years. In the absence of serviceability, we would have required assurance that the guarantor had adequate financial liquidity to meet the possible demands upon him by the San Francisco company, as well as demands from the other television properties, each in separate corporation ownership, that might also have been enjoying that same guarantee. Beyond this, it is virtually impossible for me to define the bases or criteria which we would use in reviewing projections since this is invariably a very subjective process for a commercial banker, as no two situations appear to be similar in their analytical requirements.

Very truly yours,

MERLYN E. DOLEMAN,
Vice President.

ITEM 10(o)

D. H. OVERMYER BROADCASTING CO. (CINCINNATI)

ESTIMATE OF REVENUES

Based on FCC financial data to date, it is estimated that broadcast revenues in the Toledo market in 1966-67 will be \$12,000,000 (\$9,000,000 national and \$3,000,000 local). It is also estimated, based on available data (21% conversion in August 1965, increasing at 1.75% per month) that 40% of the households in the area will be able to receive UHF. Assuming that instead of its pro rata share as the fourth station in the market (40% of 1/4 or 10%), WSCO-TV achieved only half of that (or 5%), it would have revenues of \$600,000. Actually, in assuming revenues of \$100,000, WSCO-TV will be obtaining less than 1% of available revenues.

	TARGET	ASSIGNED	COMPL'D	STATUS AS OF
FILM PROJ. ORDERED		HQ	3-8-66	
DELIVERED		STA	11-20-66	
STUDIO CAM. ORDER		HQ	12-29-65	
DELIVERED		STA	11-25-66	
MASTER CTRL. ORDER		HQ	12-29-65	
DELIVERED	4-1-67	STA		partial
STL ORDERED		HQ	10-31-66	
DELIVERED		STA	12-20-66	
AUDIO ORDERED		HQ	3-8-66	
DELIVERED	4-1-67	STA		partial
TOOLS & TEST ORDER		HQ	9-9-66	
DELIVERED		STA	12-10-66	
LIGHTING ORDER		HQ		dependent on studio site
DELIVERED		STA		
OTHER STUDIO ITEMS ORDER		STA		dependent on studio site
DELIVERED		STA		
MOBILE UNIT ORDER		HQ	3-11-66	
DELIVERED		STA		
NEWS FILM ORDERED		HQ	9-9-66	
DELIVERED		STA	1-5-67	
TELEPHONE SVC. ORDER	3-15-67	STA		dependent on studio site
DELIVERED		STA		
OFFICE FURNISH ORDER	4-15-67	STA		
<u>PERSONNEL</u>				
STA. MGR. HIRED		HQ	6-6-66	Clark Davis
PROG. MGR. HIRED	4-15-67	STA		
SALES MGR. HIRED	4-15-67	STA		
BUS. MGR. HIRED	5-1-67	STA		
CHIEF ENG. HIRED		HQ	4-21-66	Lee Caput
LABOR CTACT NEG.		HQ		
<u>STAFF</u>				
BUSINESS AFFAIRS				
PROPERTY MORT.	X	X	X	
CAPITAL		HQ	1-3-67	Girard Trust Bank (Phil.)
LOCAL BANK ACCT.		HQ	1-3-67	Nat'l Bank of Georgia
OP. BOST. APPR.	4-15-67	HQ		

	TARGET	ASSIGNED	COMPL'D	STATUS AS OF
<u>BUSINESS AFFAIRS (CON'T)</u>				
CONTRACT FORMS DIST.	4-1-67	HQ		
REPORT FORMS DIST.	5-1-67	HQ		
INSURANCE COVERAGE	4-15-67	HQ		
SALES RATE CARD	4-1-67	STA		
MARKET DATA				
STA. BOOK & MAT.		HQ	11/66	
<u>PROGRAMMING</u>				
PROG. SCHEDULE	4-15-67	STA		
FILM INVENTORY	4-1-67	STA		partial
MUSIC LIC. CTRECT.	5-15-67	HQ		
NEWS SVS. CONTRACT	5-1-67	HQ		
<u>ADV. & PROMO</u>				
ADV. PLANS	3-15-67	STA		
ADV. DISPLAY	5-1-67	STA		
CIVIC PROMO.	4-1-67	STA		
AIR PROMO. INV.	5-15-67	STA		
OTHER PROMO SUPPLY				

Submitted _____

Date _____

ATLANTA STATION STATUS

Location Atlanta, Ga. Prime Market Atlanta, Ga. FCC Docket WAPCT-351
 Call Letters WRMO-TV Channel-Freq. 36(602-608 mc) Power Allot. 219 kw.
 D.H. Overmyer Communications Company, Inc. ANT. Ht. Appvd.
 Corp. Ownership Domicile Georgia 140 ft.
 Robert W. Rounsaville Purchase Price
 Rights Acquired/Purchased \$99,000
 FCC Appl. Filed CP Grant Expiration Date Expired-
 Pending FCC Application. 10/20/66 Change in site to Shepard property, change
 in power to 1622 kw. and increase in Ant. Hgt. to 1074 ft. 3/15/67
 Projected Air Date

TARGET	ASSIGNED	COMPLETED	STATUS AS OF 10/31/66
XMTR. SITE			
LAND ACQUIRED	Oct. 66	Tom	Option to lease granted 10-
FAA CLEARANCE		Tom	Shuebruk to push
FCC ACCEPTANCE		Tom	11/10 last day for objections
TOWER ORDERED	3/15/67	Schumacher	Mar. 66
TOWER ERECTED		Schumacher	Crew could start anchor pads 11/15
ANTENNA SELECTED		Schumacher	Feb. 66
ANTENNA ORDERED		Schumacher	Oct. 66
ANTENNA DELIVERED	12/30/66	Schumacher	
XMTR. UNIT ORDERED		Schumacher	Nov. 66
XMTR. UNIT DELIVERED		Schumacher	Sept. 66
BLDG. PLANS & SPECS	Nov. 66	Schumacher	Profan-Delivery from Pitts -
BLDG. CONTRACTED	Dec. 66	Schumacher	early Nov. No contracts let
BLDG. OCCUPANCY	Jan. 66	Schumacher	yet -will take 2 wks, then 2 1/2 wks. to build. Need bldg. permit.

STATION BLDG. SITE LOCATION Davis Oct. 66 Letter of intent signed
 PLANS & SPECS Nov. 66 Schumacher)
 LEASED Nov. 66 Tom) No P&S yet - G&W to make bid
 PURCHASED --) first - Drawings will take
 BLD/RENOV. CTRCT'D Nov. 66 Schumacher) 1 1/2 wks. letting contracts will
 take 2 weeks, then 4 wks to
 build. Lease form being
 sent to us this week.

EQUIPMENT
 VTR ORDERED Schumacher 12/21/66
 Delivered Nov. 66 Schumacher
 RCA-change order 10/13/66
 Being shipped

TARGET	ASSIGNED	COMPLETED	STATUS AS OF 10/31/66
FILM PROJ. ORDERED	Schumacher	2/7/66	RCA change order 10/28/66 Being shipped
DELIVERED	Nov. 66	Schumacher	
STUDIO CAM. ORDER	Schumacher	3/10/66	Visual-being shipped
DELIVERED	Nov. 66	Schumacher	3 cameras
MASTER CTRL. ORDER	Schumacher	3/10/66	Visual-being shipped
DELIVERED	Nov. 66	Schumacher	
STL ORDERED	Schumacher	3/22/66	Raytheon - Hal pushing for delivery
DELIVERED	Nov. 66	Schumacher	
AUDIO ORDERED	Schumacher	2/7/66	RCA change order 10/21/66
DELIVERED	Nov. 66	Schumacher	Being shipped
TOOLS & TEST ORDER	Schumacher	Oct. 66	
DELIVERED	Dec. 66	Schumacher	30-60 days
LIGHTING ORDER	Schumacher		Not until we have studio plans.
DELIVERED	Jan. 66	Schumacher	
OTHER STUDIO ITEMS ORDER	Davis		
DELIVERED		Davis	
MOBILE UNIT ORDER	Schumacher	Mar. 66	Gotham Ford
DELIVERED	Nov. 66	Schumacher	In Transit
NEWS FILM ORDERED	Schumacher	Oct. 66	30-60 days
DELIVERED	Dec. 66	Schumacher	
TELEPHONE SVG. ORDER	Davis		404-573-3602
DELIVERED	July 66	Davis	In operation
OFFICE FURNISH ORDER	Davis	10-31-66	Thor Leasing Co.
Color cameras	Apr. 67	Schumacher	Visual - ordered since March 66
PERSONNEL			
SA. MGR. HIRED		6-1-66	Clark Davis hired.
PROG. MGR. HIRED			Davis
SALES MGR. HIRED	11-14-66	Davis	John Farnes
BUS. MGR. HIRED	11-14-66	Davis	Snyder
CHIEF ENG. HIRED		4-21-66	Lee Caput hired
LABOR CTRCT. NEG.		Davis	
PROPERTY AFFAIRS		Davis	Partially - Completed, Secy, Eng.
PROPERTY MORT.	N/A	Dorfner	Grand Trust 830000 (1-3-67)
CAPITAL		Dorfner	10-21-66 Nat'l. BK. of Ga. 820000 (3-2-67)
LOCAL BANK ACCT.	Nov. 66	Dorfner	

TARGET	ASSIGNED	COMPLETED	STATUS AS OF 10/2/66
BUSINESS AFFAIRS (CONT.)			
OP. BDGT. APPR.	Davis	10-20-66	
CONTRACT FORMS DIST.	Nov. 66 Tom		
REPORT FORMS DIST.	Nov. 66 Davis		
INSURANCE COVERAGE	Whitney	Correct	
SALES RATE CARD	Nov. 66 Elliot		
MARKET DATA	?	Each	Eachman working on it includes contracts also
PROGRAMMING PROG. SCHEDULE	12-1-66 Davis		
FILM INVENTORY	13-1-66 Tom		In Process - See Attached
MUSIC LIC. CTRCT.	2-1-66 Tom		
NEWS SVS. CONTRACT ADV. & PROMO ADV. PLANS	2-1-66 Tom		Completed UP In Process
ADV. DISPLAY	Rice		
CIVIC PROMO	See Below		
AIR PROMO INV.			
OTHER PROMO SUPPLY			
Market Survey, Inc.	Mar 67 Elliot		
TV B	Feb 67 Elliot		
BAR	Elliot	66	
Eastman	Cyano	Oct 66	

ITEM 10(r)

MEMORANDUM OF CREDIT AND NEW BUSINESS INFORMATION

(Report by C. D. Henderson, June 7, 1966)

Name: D. H. Overmyer Communications Co. (Inc.), Customer.
Address: 201 42nd St., N.Y.C.
Business: Owns and operates a group of UHF television stations.
Average Balance combined, \$168M.

On June 6, Mr. Arthur M. Dorfner came in to see Mr. J. McHugh and the writer regarding the financing of a new UHF station in Atlanta, Georgia (WATL-TV). Overmyer Communications presently owns six franchise rights including New York City, Pittsburgh and San Francisco. The pilot station in Toledo, Ohio has been operational for six weeks and the initial response has been better than anticipated.

WATL-TV will be incorporated separately with a capitalization of approximately \$200M. Mr. Overmyer has absorbed the pre-operational expenses which will be folded into capital. The approximate cost of the land, tower and transmitting equipment will be \$800M and for the most part will be financed through the manufacturer. Mr. Dorfner projected a negative cash flow for the first 18 months of operation due to the limited advertising and preferred rates during initial stages. He has requested a credit line of \$500M for five years to provide the necessary working capital. His borrowing requirements suggested at \$500M revolving credit line for two years to be converted into a three year term loan payable in equal monthly instalments. We would receive the personal guarantee of Mr. D. H. Overmyer and the assignment of the stock of the Atlanta Corporation.

Legal opinion of Overmyer indicated that creditors could sell the franchise if needed and an independent appraisal of the franchise established a selling price of \$3 million (operational). The buyer must be approved by the F.C.C.

In August, 1964 we gave a commitment to D. H. Overmyer for \$400M to purchase this station. Mr. Dorfner was advised of the present tight money situation, but that we would give some thought to his request.

ITEM 10(s)

WEMO-TV, ATLANTA, GA.

RECOMMENDATION

Mr. Darby recommends approval of a \$500,000 unsecured revolving credit line available from January 2, 1967 until December 31, 1968, at which time the company has the option of converting the outstandings into a three year term loan, payable in various monthly installments (\$8,333 first year; \$16,667 second and third years); interest rate, 6 3/4%.

We will receive the guarantee of Mr. Daniel H. Overmyer and the assignment of the subject's stock.

Other banks

None.

Management

D. H. Overmyer, (42), Chairman of the Board, (Sole stockholder of the subject and, D. H. Overmyer Communication Company, D. H. Overmyer Warehouse Co., D. H. Overmyer Leasing Co., and their subsidiaries and affiliates).

Robert L. Bryan, President (Chief Executive), (Active in the broadcasting industry for fifteen years; manager of WJZ-TV, Baltimore).

Arthur M. Dorfner, Vice President-Finance, (Associated for six years with the American Broadcasting Company where he was the Business Manager of WABC-TV, New York).

Clark W. Davis, Vice President-General Manager, (twenty-four years of broadcasting experience as an on the air personality, writer, producer, and in station management).

Len. L. Caput, Chief Engineer, (nineteen years of extensive electronics experience; has served in a similar capacity for other television stations).

General

D. H. Overmyer Communications Company was formed (by Mr. D. H. Overmyer) approximately two years ago as a management company (providing executive, financial, technical, sales and programming services) for UHF-TV stations (which will also be owned by Mr. Overmyer).

A communications company is allowed, by the FCC, to operate seven stations. At present, they own six franchises (Atlanta, Toledo, Cincinnati, San Francisco, Pittsburgh and Houston) and one (Dallas) is pending. Six locations are in the top twenty-five television broadcasting markets and one is banned thirty-second (Toledo). Virtually all national advertisers require that time be purchased in the top twenty-five markets.

The Toledo station is the only one in operation at the present time, but the Atlanta (WEMO-TV) station is expected to commence broadcasting about 1/1/67.

The expenses incurred for setting-up WEMO-TV will be financed (approximately \$200,000) by Mr. Overmyer. The broadcasting equipment will be purchased by the Leasing Company and leased to the subject. The Atlanta Station is being appraised by the American Appraisal Company, which has placed a preliminary value of \$3,500,000 on it.

The subject has requested the revolving credit line to support its operations for the initial two years. During the third year of operations, profits should be realized and funds will be available for repayment of the outstandings.

We will receive:

(1) Compensating balances (minimum—15% of line) from an active account with D. H. Overmyer Communications Co. and/or another account from the D. H. Overmyer Warehouse Co.

(2) The right of first refusal on financing the Cincinnati, San Francisco, Pittsburgh, Houston and Dallas Stations.

(3) The right to refer local payroll and disbursement accounts to our correspondent banks.

(4) The assignment of the subject's stock.

(5) The guarantee of Mr. Daniel H. Overmyer.

Comments; WEMO-TV

The projected statement of income and cash flow for fiscals 1967 (fiscal date, 9/30) through 1971 was prepared by D. H. Overmyer Communications Company. The statement reflected the following:

[In thousands of dollars]

	1967	1968	1969	1970	1971
Operating revenues.....	510	778	1,184	1,771	2,641
Gross operating profit.....	150	120	127	565	1,161
Net profits before taxes.....	186	179	53	504	1,112
Taxes.....	0	0	0	106	534
Net profits.....	186	179	53	398	578
Add depreciation and amortization.....	10	10	10	10	10
Cash flow.....	176	169	63	408	588

Conclusion

Based on the projected cash flow and the pledged stock of the subject plus the guarantee of Mr. D. H. Overmyer, approval is warranted.

RONALD B. LEAR.

D. H. OVERMYER (PERSONAL)

[In thousands]

	Aug. 31, 1964	Aug. 31, 1965
Assets:		
Cash.....	9	67
Accounts receivable.....	2	49
Marketable securities.....		
Current assets.....	10	116
Real estate (appraised value).....	211	115
Other personal assets.....	42	90
Investment wholly owned corporation.....	5,224	7,712
Due from wholly owned corporation.....	506	
Total.....	5,993	8,033
Liabilities:		
N/P-D.H. Overmyer Warehouse Co.....		18
Accounts payable.....	9	8
Current liabilities.....	9	24
Mortgages payable.....	78	67
Total liabilities.....	87	91
Net worth.....	5,908	7,942
Total.....	5,993	8,033
Net worth, tangible (summary data).....	5,966	7,942

MEMORANDUM OF CREDIT AND NEW BUSINESS INFORMATION

(Report by John E. Strong, February 21, 1967)

Name: D. H. Overmyer Co., Customer.

Address: 41 East 42nd Street, New York City.

The following is a detailed report of conversations which Clem Darby and I had with various Overmyer people over most of the day last Tuesday, 2/21/67 in an effort to get the company's story about the Green and White Construction Co. financial crisis and to develop a better picture of where things stand in relation to our loans in the light of this crisis. Our credit facilities are:

1. \$1MM line (almost all outstanding) to Overmyer Leasing Co., secured by assignment of leases (\$350M of which may be inter-company).

2. \$500M revolving credit to Overmyer Communications Co. to finance a new TV station in Atlanta (UHF). This revolves to 12/31/68 and then converts into a 3 year term loan \$300M is outstanding.

3. \$90M personal loan to D. H. Overmyer, maturing \$2,500 quarterly with a balloon final payment on 12/31/67.

Gary Silcox, Financial Vice President of D. H. Overmyer Co., explained the present financial difficulties of the Warehouse Company, arising from poor management in the Green and White Construction Co., as follows. In earlier years Overmyer was having problems with the quality of workmanship going into some of his warehouses. William Nixon, a local Florida contractor in business for himself, did an exceptionally good job on a warehouse in Tampa at a price 30% less than what others had cost. Dan Overmyer met Nixon, liked him, and asked him to undertake three or four more jobs, all of which were also good. These were fixed fee contracts, as all the others have been since. With this experience under his belt, Overmyer asked Nixon to undertake to do most of the Warehouse Company's construction as jobs developed. This was an arrangement that Overmyer could walk away from at any time. In other words, there was no contractual arrangement or financial involvement on the part of either party.

About this time Overmyer persuaded Nixon to incorporate as the Nixon Construction Co. in order to limit Nixon's personal liability "should anything go wrong". Green and White Construction Co. was later formed as a management, or holding, company, with Nixon Construction Co. as the operating subsidiary. The reason for this latter move was not explained. Green and White continued to build until last fall almost all of Overmyer's buildings without any hint of a problem. Overmyer to this point continued to have no financial tie to Green and White, and according to Silcox took little, if any, part in the management.

The Overmyer organization first smelled trouble in Green and White last October when numerous subcontractors on the job complained of not being paid. Practically all construction came to a halt, and inquiries began piling into Overmyer from construction lenders and others as to what was happening. In October Overmyer began an immediate audit of all of Green and White's work (using its own internal staff), which is just now winding up. This was a difficult four month job, longer than anticipated because of time delays in getting responses from all of the subcontractors involved.

Up to the point of trouble the Warehouse Company had taken down interim construction funds from the lender involved as each job progressed, and paid these funds over to Green and White, which firm was in turn supposed to pay the subcontractors. Silcox commented that William Nixon was personally an excellent on-the-site construction man, but not a capable manager of a large organization. Green and White under his leadership built up a top heavy organization with attendant high overhead which was way out of line with what it should have been. Essentially what was happening was that construction advances from lenders were going into supporting the high overhead expenses instead of being paid over to the subcontractors to keep them up to date on billings. At this point

the audit shows that the total of delinquent subcontractor bills amounts to \$5MM to \$6MM. Silcox admits that in retrospect the Overmyer group made two mistakes. One was not to stay closed to the management problems in Green and White, and the second was to pay construction advances directly to Green and White for further disbursement, rather than to the subcontractors themselves. Silcox feels the first has been solved by forcing Nixon to take in new men capable of running the construction company on a businesslike basis (no frills). One of the men from Silcox' financial staff is now the financial officer of Green and White. The matter of paying out construction funds is now taken care of by means of the Warehouse Company, or the construction lender, paying directly to the subcontractors, bypassing Green and White.

We asked Silcox directly if the Overmyer group felt there was any fraud involved in Green and White. Silcox said absolutely not. Without mentioning any names, we told him we had had a report from the Chicago area that a lender had a suspicion that construction advances were being diverted and that fraud might be involved. Silcox, with considerable venom in his voice, said "I'll bet you are referring to Mr. Wing of the Lake Shore National Bank," which we neither confirmed or denied. He tossed the report off completely by saying that Wing has a smart lawyer behind him who smells trouble and is out to "make a big fat fee". He added that Overmyer representatives have been in contact with Wing, and that Wing is now satisfied. There is no fraud involved. From Silcox' version, detailed just above, Wing was put up to it all without justification, but now has been patted on the head and all is serene.

As to Green and White's delinquencies, the Warehouse Company has elected to assume all obligations of the construction company. As previously stated, we know that this amounts to at least \$5MM to \$6MM in past due bills. There was no indication today that any other amounts might be involved. Overmyer has made this election, without any legal liability to do so according to Silcox, for the following reason. Despite the fact that there is no tangible connection with the Warehouse Company and Green and White, the names have become so intertwined to the uninformed eye (because Green and White has built almost all the warehouses and very conspicuously uses office space in the Overmyer quarters), that Overmyer's reputation would suffer serious damage if Green and White folded.

The financial arrangement with the subcontractors is that the Warehouse Company is going around to all of them and offering 3 year notes at 6% interest with equal monthly payments beginning 8/1/67 covering the full amount of the past due bills. Silcox stated that this plan has gotten wide acceptance, including from such names as U.S. Steel and American Sprinkler. So far there have been refusals in only a few minor cases, and these amounts have, or will be, paid off in cash. Silcox in answer to a direct question which was repeated, said that the Warehouse Company's existing cash flow, without any additional infusion of money, is sufficient to cover this added burden of payments which will come to around \$2MM annually over the next 3 years. However, this would mean basically an indefinite suspension of its ambitious growth plans for new warehouses, most importantly because the assuming of Green and White's debt makes an already very heavy balance sheet completely unacceptable as a basis for gaining additional financing necessary to expansion. Therefore, with the interest of continuing rapid expansion being paramount, Overmyer is seeking substantial funds to clean the subcontractor's claims off the books completely over the next few months (prepay all the notes which it is now issuing). The steps being taken and considered are:

1. Dan Overmyer personally has borrowed up to \$2.5MM from his trusts and any other sources available. His personal well is apparently completely dry at this time. This undoubtedly explains why he tried to sell his stock in the Progress National Bank last fall, which stock we have as collateral behind our personal loan to him of \$90M (\$80M of which comes due in a balloon on 12/31/67.) This is not the place to discuss this particular loan, but had he been successful in selling this stock, he would have realized only \$37.5M after payment of the loan. Overmyer, incidentally, owns 80% of the bank. It is, according to Silcox, his only venture which he does not own 100%.

2. Arrangements are being made to sell some of the warehouses to tenants, with Overmyer leasing them back. One has been sold so far, with 15 more

in various stages of negotiation. These are some of the company's prime locations where the rental rates are high and the market values on the buildings are favorable. Silcox used a Seattle location as an example. This warehouse is being sold to Boeing (the tenant) at \$950M which is exactly the amount the building is being carried on the balance sheet at appraised value. Note: it will be remembered that D. H. Overmyer Company is not audited by outside accountants, and all warehouses are carried on the balance sheet on the basis of a market appraisal rather than at cost less depreciation. The mortgage on this Seattle facility is \$700M which, after satisfaction, means that the transaction produces \$250M in immediate cash. I believe Silcox said that \$250M is about the figure they are looking for from each sale which means, if it totals 16 buildings or so, it amounts to a total of around \$4MM in cash from this source. Silcox stated that all the sale-leaseback arrangements are on favorable enough terms to allow the Warehouse Company to make a profit over the life of the leases.

3. Dan Overmyer, who up to now would never consider splitting a piece of his pie with anyone else, is now actively seeking to bring in new equity partners who can contribute financial strength in the form of new money. This could go the route of either an individual, a group of individuals, or merger with another company with common interests in the freight and distribution business. Silcox did not give us any leads as to any approaches which have already been made or negotiations which might now be in progress.

As to the current status of the Warehouse Company's operations, beyond the Green and White problem, Silcox stated that all construction work which has been shut-down is now underway again. Current billings for leased warehouse space are running at \$1.2MM per month, over twice the pace of last year. Overmyer has been able to obtain mortgage commitments recently, but at a very reduced rate due to the Green and White difficulty largely, but also undoubtedly due to the tight money period as well. Silcox said that the company has also been successful in obtaining some interim financing since the Green and White situation exploded. In answer to a direct question, he stated that all company bills are being paid on time, that there have been no defaults on mortgages or other debt, and that there has not been any request made for any stretchout or moratorium on any debt maturities.

In addition to seeing Silcox on a fact finding mission to get the company's own version of its problems and possible solutions, we also were there to convey to Silcox that we were concerned by the reports of trouble that have been circulating and to let it be known that we do not feel that we have been supplied with enough financial information, nor has the effort been made to keep us properly informed. We reminded Silcox that we have a tie into the Overmyer picture from several directions, including the \$1MM line to D. H. Overmyer Leasing Company (almost all of which is outstanding), and our \$500M revolving commitment to D. H. Overmyer Communications Company, Atlanta (\$300M of which has now been taken, and the balance of which is available to 12/31/68), not to mention our personal loan to Overmyer referred to earlier in this memo. Silcox' strong reaction was to separate these various transactions as involving different companies and standing individually on their own feet. The attitude was one of "we have nothing to be concerned about." We pointed out to him that this is not our view at all and that we are concerned, mentioning the following factors affecting our thinking:

1. We have Dan Overmyer's personal guarantee behind the leasing loans and the communication loan (total potential exposure \$1.5MM), and it is quite obvious that he has no liquidity to satisfy these guarantees if called upon.

2. The leasing loan carries the guaranty of the Warehouse Company, so obviously we have an interest in the health of the warehouse operation.

3. The latest Leasing Company statements we have show that considerably in excess of 50% of all lease contracts are inter-company leases to Overmyer affiliates (Silcox reports this is now down to about 50% as more outside business has been generated). Obviously we have a continuing interest in the health of all Overmyer companies, particularly since \$350M of our \$1MM line is available for affiliated leases, and \$340M of this allowance is now outstanding.

4. All the fixed assets in the form of broadcasting equipment of the Atlanta TV station are to be leased to the station by Overmyer Leasing. Overmyer

Leasing, while it owns, or will own, this equipment, nevertheless has financed it completely (minus small downpayments) through the manufacturers (RCA, GE, Visual Electronics, etc.).

We started to ask Silcox one or two questions about the leasing and communications operations, but he told us these were subjects better covered with Messrs. Rader and Dorfner. We did formally request of Silcox that he supply us with a statement of the outstanding personal guarantees given out by Dan Overmyer. Apparently there is no such detailed listing available at the moment. He threw up his hands at the request, saying it would be quite a task to put them all together. He added something to the effect that if it's a loan, you can bet it's guaranteed. We left the subject with the understanding that Silcox will furnish us with a summary total of guarantees outstanding broken down by the type of operation involved (warehouse, leasing, communications).

In summary, both Clem Darby and I felt that while Silcox listened to all we said and made responses which were addressed to the subject, nevertheless the replies were painted with a broad brush. Some details came out, but we did not have the feeling that we came away with a very complete or clear picture of what the full situation is. At times he seemed on the defensive, which, as my own observation, may not mean anything as this is the first time I have met him. His attempt was to convey the impression that the Overmyer complex is basically sound and prosperous in every way, with the Green and White difficulty only a temporary one, if admittedly a serious one of some magnitude. The Overmyer staff is on top of things and loyally devoting themselves to overcoming the crisis (no one of any importance has resigned). He said that the Warehouse Company and the headquarters group are making every effort to cut expenses and streamline operations. Silcox confirmed, and Dorfner put it even more strongly, that quite a number of people have been let go, both out in the field and at the head office. In a few words, everything is under good control and the future continues to look bright. While today's talk perhaps filled in some gaps, we are not yet convinced enough to join in on that summation.

After our interview with Silcox, we were to be the lunch guest of Art Dorfner, Executive Vice President of the Communications Company. We had hoped to start right off getting into possible problems in getting Overmyer's group of UHF TV stations underway, but Silcox invited himself in on this lunch and as it happened Overmyer also joined us. Dorfner made it obvious when we were alone afterwards that their joining in had not been to his liking. Lunch was nothing more than an hour and a half of pleasantries. We did not want to quiz Dorfner first in front of Overmyer, and we didn't want to put the situation up to Overmyer until we had had a chance to talk to both of his assistants privately beforehand. Overmyer, however, did confirm that he is actively looking for equity from outside partners, and said that he has been having conversations with Butcher & Sherrerd to bring this about. He would not voluntarily go any further as to which of his companies might be involved or what form a deal might take.

After lunch we went over to Dorfner's office and talked until 4:00. We explained to Dorfner that we were concerned about assuring ourselves as to the safety of our loan to finance the new UHF station in Atlanta both because of the difficulties produced by the Green and White situation, and also because of increasing delays in getting the Atlanta station on the air. Unlike Silcox, Dorfner understood completely why we are interested in the total picture (because of the guarantees and other interrelationships), rather than in just its separate parts.

Dan Overmyer in a published article just over a year ago stated that all six of his planned stations would be on the air in 1966. To date only one (Toledo) has made it. Last fall we had expected that Atlanta would begin operating in January, about coinciding with the first takedown under our revolving credit on 1/3/67. In January we learned that various delays meant a postponement to April. Today we learned again it has been pushed back two months or so to June. The new delay apparently involves some unforeseen problems (now presumably solved) getting together the necessary real estate package which will allow the studio and the transmitter site to be together. We were given a copy of a completion and installation schedule showing dates for deliveries of equipment and the setting up of the studio (including hiring of personnel) which would seem to indicate June as the earliest date for opening, provided everything sticks to schedule.

Dorfner confirmed to us that Dan Overmyer has not yet put any equity funds into Atlanta. He admitted that he would have liked to have seen this done by now, but said that his understanding was that Overmyer's funds were not scheduled to go in until the station went on the air. At that time Overmyer contributed sufficient funds to cover capitalized pre-operating expenses (these amounted to \$236M on the 12/31/66 balance sheet which was handed us today). In other words, our money is the only money which has gone in, with some minor exceptions perhaps. The land and buildings will be leased from Atlanta interests, and the station equipment will be leased from Overmyer Leasing Company. These equipment leases (amounting to around \$850M in total) are over varying terms, but generally 6 years on the major items. As previously described, the manufacturers (RCA, etc.) are in turn financing the Leasing Company for the purchase of the equipment. Both Dorfner and Silcox said we would have to talk to Rader about what the terms of arrangements with the manufacturers are. While on the subject of this equipment and the Leasing Company, we made it plain to Dorfner (and also Silcox) that under no circumstances would we take any leases involving the Atlanta station. We were told that we would have to register this with Rader.

As just stated in the last paragraph, our money is all that is in at this point, and there is absolutely nothing in the way of fixed assets to show for it, nor are there yet any revenues to provide any internal cash flow to cover continuing expenses. With \$300M of our loan already taken down (\$200M to go) and operations still 4 to 5 months off, and with on the companies own projections close to \$400M of losses before profits appear, it is obvious that our loan will not be sufficient to carry the project. When this was put up to Dorfner, he agreed there were not sufficient funds in sight, and that unless such funds appeared in one form or another, the station would be in serious financial condition around the end of next year (1968). This of course assumes that projected revenues and expenses are met. Dorfner has thought to himself that he could obtain added interim financing from us and perhaps stretch out existing maturities on the term portion which begins in 1969 to meet his further needs. We disabused him of this idea as a safety valve to be counted on, and, as we had on several other occasions, we brought him back to the point that Overmyer must come up now with his original equity portion and, at least at this point of viewing the situation, any other funds necessary to sustain the operation until it stands on its feet. Dorfner agrees that it would be a nice idea to have Overmyer do this, but admits he is not the one to tell him so. We are. It was left unsaid that Overmyer is in no position to put up any money today. In fact it could be stated that the delay in getting his contribution in to date really means that Girard has been financing his other difficulties to some extent, and we said as much to Dorfner.

Dorfner finally said in confidence that the only hope he saw for immediate funds would have to come from outside equity partners, and he told us that Overmyer is actively seeking out possibilities. Proposals have apparently been sent out to at least one individual of substance, and one or more broadcasting companies. No replies have come in, and there is nothing to base any arrangement on yet. Overmyer is looking to bring in a partner covering the whole group of 6 stations because of his feeling that the venture's value lies importantly in keeping the group together in the six major TV markets to be served. The other four stations (besides Toledo and Atlanta) are also in various stages of construction, and a total of around \$1.5MM is needed to keep the whole group going. Each station is a separate corporation, and presumably there are bank loans, guarantees, Overmyer Leasing Company arrangements, etc. involved in each. We recalled to Dorfner's attention that much as we would welcome a new equity source, it must not be forgotten that our loan agreement calls for prior approval of any arrangement involving the sale of added stock, or the sale or merger of the station.

We asked if it was still felt that Atlanta would live up to its revenue and expense projections previously submitted to us. These provide us with relatively thin coverage as it is (at least through 1969). Dorfner said he still sticks by the original projections and believes they are realistic. We then asked him about Toledo, and how it is meeting its projections. After a long discussion about why Toledo is a poor example because this city is not in the same league as a market with Atlanta, he stated that expenses are right on the button, but revenues are

substantially behind forecast. He admitted that from the cash point of view the lack of revenues is making the situation pretty tight and thin, but added that the U.S. Trust Co. (financing similar to ours) is keeping a close watch and to date has raised no objections. Dorfner's attitude about Toledo, despite obvious start-up difficulties, is one of optimism that the station will prove to be an economic property. He described to us that all sorts of gimmicks (very low rate cards, beating the out-of-the-way bushes with high commission, low grade sales agents, etc.) are being employed to push up revenues. The implication was that Atlanta would use the same tactics, and that while no self respecting broadcaster liked to use such means, they were nevertheless some of the evils which had to be undertaken to get a start.

We made it plain to Dorfner that we did not feel that we had been provided with nearly enough financial details or other information as the Atlanta situation has gone along. He admitted this as a failing on his part, and offered to supply us with anything requested. We told him we to date have never had a balance sheet, and he forthwith gave us an unaudited one for 12/31/66. Incidentally, he stated that all the communications operations will now be audited by outside accountants (he could not give us the name). This is contrary to Overmyer's usual practice, and may be in preparation for bringing in a partner. We asked if the station had signed any contracts of substance for advertising time, and while he mentioned a couple of possibilities (Delta Airlines weather report, as one example), there is nothing firmly on the books yet. We asked that we be supplied with figures on business signed up as it comes about. We next requested figures as what the additional delay would mean in terms of added unplanned for cash expenditures on a monthly basis, and also for figures as to what expenditures have been, and for what, over past months. He had none of these in hand, and it was left at our request that he will send such details to us, with breakdowns by categories, no later than the end of next week.

As a consequence of all the above Dorfner understands that we are not at all happy with the Atlanta loan as it stands, and further that we do not look with any favor on putting any more of our commitments in until Dan Overmyer, or outside investors acceptable to us, come up with the equity first. He claims that he has no immediate need to take down more funds until operations start in July. Our existing notes are on 90 day terms, with \$200M maturing on 4/3/67 and \$100M on 4/5/67. He wants assurance that these can be rolled over.

In summary, Dorfner tried to be as cooperative as possible, but obviously has little feeling as to what a loan should look like from a bank's point of view in terms of soundness and protection. Without the promised equity and an assurance that more is available if required to complete the project, this is an extremely high risk situation. We are faced with several choices, including— (1) attempting to declare a default under the loan agreement and hence keeping any more loans out (this may be difficult); (2) putting more money in to carry the project if we can be satisfied that the return is eventually there; and/or (3) a workout involving either (1) or (2) with stretched maturities and little in the way of tangible collateral. It is true we have the stock of the Atlanta company and could presumably sell the franchise, but this is hard to evaluate at this point without an operating station.

* * * * *

As a concluding comment, while Silcox speaks of loyalty within the organization to overcome the Green and White difficulty, the impressions we have had do not completely bear this out. Harry Enssler has had word from Rader, President of the Leasing Company, that he is unhappy with the situation and may be looking for a job (*confidential*). Dorfner commented that Silcox is on the fringe of things (not in the inner circle).

ITEM 10(u)

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section 111	
FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT		Name of Applicant D. H. Overmyer Communications Company			
The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.					
1. a. Give estimated (initial) costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below.					
Transmitter proper including tubes	Antenna system, including antenna-ground system, coupling equipment, transmission line	Frequency and modulation controls	Studio technical equipment, microphones, transcription equipment, etc.		
\$ 152,530.	\$ 57,100.	\$ 22,900.	\$ 182,870.		
Acquiring land	Acquiring, remodeling, or constructing buildings	Other items (rents, contract, fees, misc.)	Total	Give estimated cost of operation for first year	Give estimated revenue for first year
\$ Lease	\$ 40,000	\$ 50,000.	\$ 505,500.	\$ 400,000	\$ 450,000
b. State the basis of the estimates in (a) above. Equipment supplier, consulting engineer and applicant.					
c. The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be met and paid for from each source.) The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:					
Existing Capital	New Capital	Loans from banks or others	Profits from existing operations	Donations	Credit, deferred payments, etc.
\$ 1000.	\$	\$ 350,000.	\$	\$	\$ 315,000.
2. a. Attach as Exhibit No. <input checked="" type="checkbox"/> a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach an exhibit no. schedule which give a complete analysis of such items.					
b. Attach as Exhibit No. <input checked="" type="checkbox"/> a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.					
3. Furnish the following information with respect to the applicant only. If the answer in "None" to any or all items, specify so state: EX. <input checked="" type="checkbox"/>					
a. Amount of funds on deposit in bank or other depository		b. Name and address of the bank in which deposited			
c. Name and address of the party in whose name the money is deposited					
d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition)					
e. Whether the funds were deposited for the specific purpose of constructing and operating the station					

WECO-TV-cp¹

THE UNION NATIONAL BANK OF PITTSBURGH,
Pittsburgh, Pa., December 15, 1966.

Mr. RAYMOND J. EULER,
Girard Trust Bank,
Philadelphia, Pa.

DEAR MR. EULER: Last Friday I was in Philadelphia on other appointments, one of which was our mutual friend, Charles Fernald. Had fully intended to stop by and see you—this at Mr. Fernald's suggestion.

I am wondering if Girard Trust would be in a position to help us in a participation. We have been approached by the Overmyer Television Division to finance the installation of an UHF station in Pittsburgh, and we are giving it serious thought. Mr. Dorfner indicated that Girard had financed the Atlanta franchise in a manner most acceptable to them.

Would it be possible for you to give me the details of this program, covering such points as cross guarantees or guarantees by the parent corporation, security, and the like? We would, indeed, be grateful.

Sincerely yours,

CHARLES R. WILSON,
Senior Vice President.

GIRARD TRUST BANK,
Philadelphia, Pa., December 21, 1966.

Mr. CHARLES R. WILSON,
Senior Vice President,
The Union National Bank of Pittsburgh,
Pittsburgh, Pa.

DEAR MR. WILSON: Mr. Raymond Euler has asked me to answer your letter of December 16, 1966 concerning our financing of the Overmyer Television Station in Atlanta.

We have granted a \$500M loan to them comprising a 2 year revolving credit converted to a 3 year term loan with equal monthly payments. We have the assignment of the stock in the Georgia Corporation and the personal guarantee of Mr. Daniel H. Overmyer. Should this situation turn sour, we would look towards the value of the franchise to cover us, and the ownership of this is guaranteed through the ownership of the stock.

Should you have any additional questions about this, do not hesitate to call me on the phone, and I will be happy to share whatever information we have.

Yours very truly,

CLEMENT H. DARBY,
Assistant Vice President.

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION			Section III	
FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT		Name of Applicant				
		D. H. OVERMYER COMMUNICATIONS COMPANY (Pa)				
The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.						
1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervisory, materials, supplies and freight. (Cost items such as professional fees, mobile equipment, non-installed studio furnishings, etc. should be included under "Other Items" below.)						
Transmitter proper including lines		Antenna system, including antenna-ground system, coupling equipment, transmission line		Frequency and modulation equipment		Studio technical equipment, microphones, transcription equipment, etc.
Lease		Lease		Lease		Lease
Acquiring land	Acquiring, remodeling, or constructing buildings	Other items itemize legal, eng., miscellaneous	Total	Give estimated cost of operation for first year*	Give estimated revenues for first year	
\$80,000	\$15,000	\$27,000	\$122,000	\$692,000	\$450,000	
b. State the basis of the estimates in (a) above.						
*including interest and lease payments estimates based on quotations, contract prices and knowledge of Applicant.						
c. The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be met and paid for from each source.) The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost; and also for the early operation of the station in the event operating expenses should exceed operating revenues:						
Existing Capital	New Capital	Loans from banks or others	Profits from existing operations	Donations	Credit, deferred payments, etc.	Other sources (specify)
\$1,000	\$	\$700,000	\$	\$	\$	\$
2. a. Attach as Exhibit No. 1 a detailed balance sheet of applicant as at the close of a month within 60 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. 2 schedules which give a complete analysis of each item.						
b. Attach as Exhibit No. 3 a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.						
3. Furnish the following information with respect to the applicant only. If the answer in "None" to any or all items, specifically so state: Exhibit 1						
a. Amount of funds on deposit in bank or other depository			b. Name and address of the bank in which deposited			
c. Name and address of the party in whose name the money is deposited						
d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition)						
e. Whether the funds were deposited for the specific purpose of constructing and operating the station						
WECO-TV-CP 2						

ITEM 10(x)

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section 111	
FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT		Name of Applicant D. H. Overmyer Broadcasting Company			
The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.					
1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below.					
Transmitter proper including tubes	Antenna system, including antenna-ground system, coupling equipment, transmission line	Frequency and modulation monitors	Studio technical equipment, microphones, transcription equipment, etc.		
\$ 279,720.	\$ 447,452.	\$ 15,690.	\$ 207,882.		
Acquiring land	Acquiring, remodeling, or reconstructing buildings	Other items, licenses, fees, misc. Conting.	Total	Give estimated cost of operation for first year	Give estimated revenue for first year
\$ 82,000.	\$ 75,000.	\$ 40,000.	\$ 1,147,744.	\$ 320,000.	\$ 350,000.
b. State the basis of the estimates in (a) above. Manufacturer's quotations and estimates of applicant and its consulting engineer.					
The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be set and paid for from each source). The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:					
Existing Capital	New Capital	Loans from banks or others	Profits from existing operations	Donations	Credit, deferred payments, etc.
1000.	\$	\$ 550,000	\$	\$	\$ 713,058
2. a. Attach as Exhibit No. 3 a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. 3 schedules which give a complete analysis of such items.					
b. Attach as Exhibit No. 3 a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.					
3. Furnish the following information with respect to the applicant only. If the answer is "None" to any or all items, specifically so state: Exhibit 3					
a. Amount of funds on deposit in bank or other depository		b. Name and address of the bank in which deposited			
c. Name and address of the party in whose name the money is deposited					
d. Conditions of deposit (in trust, savings, subject to check, on the deposit, who may draw on account and for what purpose, or other condition)					
e. Whether the funds were deposited for the specific purpose of constructing and operating the station					

STATEMENT AND SUPPORT OF ESTIMATE OF REVENUE DURING FIRST YEAR OF OPERATION OF UHF TELEVISION STATION IN ROSENBERG, TEX., BY ROBERT F. ADAMS, EXECUTIVE VICE PRESIDENT

The all channel set law put a new light on the future of UHF television stations. Based on the obsolescence of sets (12% per year according to NAB) UHF is expected to achieve almost full circulation in the Houston-Galveston-Rosenberg area by 1972. Color set sales will increase this rate of obsolescence, annually, but without statistical facts to rely on, the 12% figure is used as a minimum.

This market area shows a need for more commercial tv competition. It has only 3 commercial VHF stations, though it is the 25th-ranked ARB market and one of the fastest growing population centers in our country. For the past 5 years (1959-1963) the percent of national and local tv spot advertising in this market area has increased an average of 7.3% per year. The revenues per family in this market area have averaged \$14.47 per year, which is considerably ahead of the national average of \$11.80 (Broadcasting August 17, 1964). These facts show the Houston-Galveston-Rosenberg area has outdistanced many of the larger markets in spot revenues, and reflect a healthy economic state conducive to the development of UHF and to purchasing of television advertising time by local and national advertisers.

By the time we put the Rosenberg station on the air in 1966, the market conversion will, as shown, be approximately 24%. In that year the national and local spot business for the market should be \$7,432,000 and \$2,000,000 respectively. These projections are arrived at by using a 5% annual increase over 1963 for national spot business only, compared to the average of 7.3% from 1950-1963 as reported by the FCC in the annual "Television Financial Data." No increase is assumed for local spot business.

The current allocations provide 3 VHF stations in this area and 5 UHF's (3 in Houston, 1 in Rosenberg and 1 in Galveston). It is conservatively estimated that with the allocated 5 UHF stations operating in 1966, they should receive 20% of the total national spot business, or \$1,486,000 25% of total local revenue, or \$500,000, or a combined total available to the 5 UHF stations of \$1,986,000. Assuming a 5-way equal split of these revenues, each station should receive 4.2% of total market revenues, or \$395,000 in local and national spot revenues (after agency commissions and discounts).

It is our opinion that an estimate of \$350,000 in annual revenues for a UHF station in the Houston-Galveston-Rosenberg area in 1966 is a conservative one. See attached chart of statistical details.

HOUSTON-GALVESTON-ROSENBERG UHF REVENUE PROJECTIONS, 1966

(Dollar amounts in millions)

	Number of stations	National spot net	Local spot net	National and local net	Percent of conversion ¹
1960 (FCC figures)	3 VHF	\$4,089	\$2,067	\$6,156	
1963 (FCC figures)	3 VHF	\$6,420	\$2,000	\$8,420	
Percent of increase average, 1959-63		11	(0.6)	7.3	
1966 projections ²	3 VHF, 5 UHF	\$7,432	\$2,000	\$9,432	24
UHF revenue projection 1966:					
20 percent of national spot		\$1,486			
25 percent of local spot			\$500		
Total national and local revenue for UHF stations.				\$1,986	
20 percent revenue share for each UHF station or 4.2 percent of market total spot revenues.				\$395,000	

¹ Using NAB conversion of 12 percent annually since all channel law effective April 1964.

² Estimated using 5 percent annual increase compared to 7.3 percent over last 5 years.

The above projections compared to actual FCC prior year figures rely on national and local spot only, excluding network revenues.

ITEM 11(a) (1)

In re Applications of

FLORIAN R. BURCOZYNSKI, STANLEY J. JASINSKI AND ROGER K. LUND, DBA
ULTRAVISION B/CASTING CO. BUFFALO, NEW YORK

Docket No. 15254, File No. BPCT-3200

WEBR, INC., BUFFALO, NEW YORK

Docket No. 15255, File No. BPCT-3211

For Construction Permits for New Television Broadcast Stations

In re Application of

THE SUPERIOR B/CASTING CORP., CLEVELAND, OHIO

Docket No. 15250, File No. BPCT-3243

For a Construction Permit for a New Television Broadcast Station

In re Application of

INTEGRATED COMMUNICATION SYSTEMS, INC. OF MASSACHUSETTS

Docket No. 15323, File No. BPCT-3167

For a Construction Permit for a New Television Broadcast Station

Adopted: June 30, 1965.

Released: July 2, 1965.

[§51:229(L), §53:24(C)] *Financial qualifications—construction costs and operating expenses*

Applicants for commercial UHF television stations in markets where there are three commercial VHF television stations will be required to submit evidentiary proof relating to estimated construction costs and estimated operating expenses during the first year of operation. The applicants should not encounter any particular difficulty in submitting evidentiary proof concerning amounts allocated for staffing, programming, fixed charges and other expenses during the first year of operation, and in establishing that the funds allocated for programming are reasonably likely to suffice for effectuation of program proposals. Ultravision B/casting Co., 5 RR 2d 343 [1965].

[§51:229(L), §53:24(C)] *Financial qualifications—revenues*

Applicants for commercial UHF television stations in three-VHF-station markets will be required to produce evidentiary proof concerning the basis for estimated revenues for the first year of operation, and not for three years. Continued operation after one year may depend on the licensee's ingenuity or business acumen, attractiveness of programs, and other factors difficult to assess. Ultravision B/casting Co., 5 RR 2d 343 [1965].

[§51:229(L), §53:24(C)] *Adequacy of funds—showing required*

Applicants for commercial UHF television stations in three-VHF-station markets should be permitted to demonstrate their ability to meet all fixed charges and operating expenses during the first year of operation either by proof that adequate funds are available and committed for the purpose without income, or by a convincing evidentiary showing that the available and committed funds will be supplemented by sufficient advertising or other revenue to enable the applicants to discharge their financial obligations during the first year. Where

ITEM 10(y)

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section III	
FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT		Name of Applicant D. H. Overmyer Communications Co.			
The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.					
1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below.					
Transmitter proper including tubes	Antenna system, including antenna-ground system, coupling equipment, transmission line	Frequency and modulation modifiers	Studio technical equipment, microphones, transcription equipment, etc.		
\$154,290	\$56,580	\$22,634	\$153,361		
Acquiring land	Acquiring, remodeling, or constructing buildings	Other items Itemize Misc. Equip. Fees, Furn. etc.	Total	Give estimated cost of operation for first year	Give estimated revenues for first year
\$ Lease	\$ Lease	\$ 88,000	\$ 475,000	\$ 400,000	\$ 400,000
b. State the basis of the estimates in (a) above. Quotations of manufacturer and estimates of Applicant and its Consulting Engineer					
c. The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be met and paid for from each source.) The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:					
Existing Capital	New Capital	Loans from banks or others	Profits from existing operations	Donations	Credit, deferred payments, etc.
\$ -	\$ 1,000	\$ 350,000	\$ -	\$ -	\$ 300,000
2. a. Attach as Exhibit No. V a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. schedules which give a complete analysis of such items.					
b. Attach as Exhibit No. V a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.					
3. Furnish the following information with respect to the applicant only. If the answer in "none" to any or all items, specifically so state: None					
a. Amount of funds on deposit in bank or other depository		b. Name and address of the bank in which deposited			
c. Name and address of the party in whose name the money is deposited					
d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition)					
e. Whether the funds were deposited for the specific purpose of constructing and operating the station					

viability of the proposed facility during the first year is dependent on income, the accuracy of the estimate becomes a critical factor in determining whether a continuing operation is likely. In such cases, it is essential that applicants demonstrate the soundness of figures submitted. Where applicants are able to demonstrate financial ability to meet costs and expenses for the first year without income only be cause the first monthly or quarterly installment payments for equipment or other fixed charges have been deferred beyond that period, the Commission will scrutinize with care the applicants' itemizations of expenses. Ultravision B/casting Co., 5 RR 2d 343 [1965].

[¶51:229 (L), ¶53:24 (C)] *Financial qualifications standards extended to other applicants*

All applicants for commercial broadcast facilities, whether AM, FM, VHF-TV or UHF-TV, will be required hereafter to demonstrate their financial ability to operate for a period of one year after construction of the station. In those instances where operation during the first year is dependent on estimated advertising revenues, the applicants will be required to establish the validity of the estimate. Ultravision B/casting Co., 5 RR 2d 343 [1965].

MEMORANDUM OPINION AND ORDER¹

By the Commission :

1. By petitions filed on April 1, 1965, Florian R. Burczynski, Stanley J. Jasinski and Roger K. Lund, dba Ultravision Broadcasting Company and The Superior Broadcasting Corporation seek review by the full Commission of the Memorandum Opinion and Order, FCC 65M-282 [4 RR 2d 655], released March 12, 1965, by a Panel of the Commission.² Responsive pleadings filed on April 21, 1965, consist of an opposition by WEBR, Inc., and comments by the Broadcast Bureau. A reply to oppositions was filed by Ultravision on May 3, 1965.

2. These cases relate to applications for UHF television stations in Buffalo, New York; Cleveland, Ohio; and Boston, Massachusetts.³ In each Community, three commercial VHF stations are presently in operation, and the significant issue herein presented is whether a higher standard should be applied in determining the financial qualifications of applicants for UHF facilities under such circumstances. The Panel majority held that "we must seek to strike a balance between our desire, on the one hand, to stimulate the earliest possible development of the UHF medium, and the danger, on the other hand, that attainment of our alternate goal may be impaired if there should be any broad-scale repetition of the financial failures of the early UHF years" (paragraph 13). The Panel majority found that all of the applicants would depend upon advertising revenues for a continuing operation and noted the wide divergence in the estimates of revenues submitted by the applicants. The Panel concluded that each applicant should be required to project estimated annual revenues over a three-year period and to establish by evidentiary proof the basis for such estimates. The Panel majority further concluded that a realistic estimate of construction costs and operating expenses is also essential and required that each applicant disclose all factors which were considered in computing such costs and expenses. The issues in each proceeding were therefore enlarged to include the following:

(a) To determine the basis of each applicant's (1) estimated construction costs, (2) estimated operating expenses for the first year of operation (or for a three-year period, if desired), and (3) estimated annual revenues projected over a three-year period; and

(b) To determine, in light of the evidence adduced, which of the applicants, if any, has demonstrated a reasonable likelihood of construction and continuing operation of its proposed station in the public interest.

3. Ultravision and Superior object to the additional issues. The principal arguments advanced are that the issues improperly delve into financial success rather than financial qualifications which is the test prescribed by Section 308(b) of the Communications Act; that the information required by the Panel majority

¹ [For clarification of the applicability of this ruling see Public Notice, 5 RR 2d 349].

² The Panel consisted of Commissioners Bartley, Lee, and Cox. Commissioner Lee dissented and issued a statement.

³ The request of Cleveland Telecasting Corp. for dismissal of its application for the Cleveland UHF facility was granted by Order of the Examiner, FCC 65M-452, released April 14, 1965. By Order, FCC 65R-195, released June 2, 1965, the Review Board granted the petition of United Artists Broadcasting, Inc., for dismissal of its application in the Boston proceeding.

consists of intangible factors which would be difficult if not impossible of proof in an adjudicatory proceeding; that obtaining the said information will place an intolerable burden upon the applicants with no concomitant public interest value; that the issues favor the wealthy applicant over the one with more limited resources; and that the new financial standards adopted represent an unwarranted departure from Commission precedent, and they are inconsistent with the policy of encouraging the development of UHF. The Broadcast Bureau reiterates its proposal, rejected by the Panel, that the applicants demonstrate their ability to meet all fixed costs during the first year of operation in addition to the showing of sufficient funds for construction and operation for a period of three months without revenue.

4. In its opposition, WEBR states that petitioners rely entirely on arguments previously presented to and considered by the Panel; and that the Commission should not grant reconsideration merely for the purpose of again debating matters on which the tribunal has already deliberated and spoken. WEBR further contends that the Commission has not only the statutory responsibility but also the plain duty to require a reasonable showing of the ability of new UHF stations to survive the period of set conversion in all-VHF markets, and the Panel's decision is fully consistent with both the policy of the Communications Act and past actions of the Commission in other special situations; that the modified issue is not incapable of proof and would not unreasonably burden the applicants; and that the issues do not favor multiple owners, and are in furtherance of rather than contrary to Commission UHF policy. Regardless of the action the Commission may take with respect to the Panel's decision, WEBR asserts that a standard financial issue must be added against Ultravision in the Buffalo proceeding.

5. We are authorized by statute⁴ to determine whether an applicant for a broadcast facility has sufficient funds to construct the station and to commence operation, and in making that determination we must take into consideration any factors which are peculiar to a given situation or to any change of circumstances which call for a revision of our existing standards. In these proceedings we believe there is cause for concern lest we permit a repetition of the earlier history of UHF failures which could seriously prejudice our goal for the expanded use of the UHF band. Station failures will result not only in a private detriment, but also in a public detriment in that applicants who may have the financial ability to operate a station on a continuing basis will be discouraged from seeking permits for such facilities. However, we also believe that there is merit to the concern of petitioners that the task of projecting estimated annual revenues over a three-year period and demonstrating, in every instance, the basis for such estimates may place a heavy burden on applicants. Before discussing this aspect of the case, we shall first consider the objections to the requirement that evidentiary proof be submitted to support estimated construction costs and operating expenses.

6. As stated by the Panel, a determination as to whether there exists a reasonable likelihood of a continuing operation must rest on a realistic estimate of construction costs and operating expenses. Applicants for broadcast stations are expected to plan carefully their programming and other operations. We see no reason why the parties hereto should encounter any particular difficulty in submitting evidentiary proof concerning the amounts allocated for staffing, programming, fixed charges and other expenses during the first year of operation; and to establish that the funds allocated for programming are reasonably likely to suffice for effectuation of program proposals. We agree with the Panel's determination to enlarge the issues to permit inquiry into the basis of each applicant's estimated construction costs and estimated operating expenses during the first year of operation.

7. With respect to the production of evidentiary proof concerning the basis for estimated revenues, it appears that some modification of the issues added by the Panel is advisable. First, we believe that a projection of estimated revenues for the first year of operation will suffice for our purposes. The continued operation of the proposed station after the first year may depend upon the licensee's ingenuity or business acumen, the attractiveness of its programming, or upon numerous other factors which are difficult to assess. If there is established a reasonable assurance that the applicant possesses the financial capability to operate for a year, the possibility that a failure will thereafter

⁴ Section 308(b) of the Communications Act of 1934, as amended.

occur is sufficiently reduced so that our objective to obtain an applicant which is likely to provide service on a continuing basis will essentially be accomplished.

8. Secondly, we conclude that an applicant should be permitted to demonstrate its ability to meet all fixed charges and operating expenses during the first year of operation either by proof that adequate funds are available and committed to the proposed station for this purpose without income, or by a convincing evidentiary showing that the available and committed funds will be supplemented by sufficient advertising or other revenue to enable the applicant to discharge its financial obligations during the first year. With respect to the applicant which demonstrates that it possesses the financial resources to operate for a year without income, the estimate of anticipated revenue has only limited significance and we believe we are justified in accepting the available assets as adequate proof that the applicant is financially qualified to receive a grant. Where, however, viability of the proposed facility during the first year is dependent upon income, the accuracy of the estimate becomes a critical factor in determining whether a continuing operation is likely. In such cases, we deem it to be essential that the applicant demonstrate the soundness of the figure submitted. Only if the factors which were considered in arriving at the estimate are fully disclosed will we be able to judge whether the figure is realistic and whether it has a sufficient foundation in fact.

9. We wish to emphasize, however, that where an applicant is able to demonstrate the financial ability to meet costs and expenses during the first year without income only because the first monthly or quarterly installment payments for equipment or other fixed charges have, by agreement with the manufacturers or supplier, been deferred beyond that period, we will scrutinize with care the applicant's itemization of expenses. Our purpose in requiring supporting proof for estimated revenues is to enable us to make an informed judgment as to whether a continuing operation in the public interest is likely, and we expect applicants to provide us with the necessary information in every case where, as a practical matter, the information would be relevant.

10. Our reexamination of the test to be applied in determining the financial qualifications of applicants for broadcast facilities was prompted by our concern as to whether there existed a reasonable likelihood of a continuing operation in the public interest where a UHF applicant seeks to enter a three-VHF station market. However, we see no reason to confine the new standard adopted herein to such situations. A continuing operation is a vital public interest factor in the case of applications for other commercial broadcast facilities as well. For this reason we shall hereafter require all applicants for commercial broadcast facilities, whether AM, FM, VHF-TV or UHF-TV, to demonstrate their financial ability to operate for a period of one year after construction of the station. In those instances where operation during the first year is dependent upon estimated advertising revenues, the applicants will be required to establish the validity of the estimate.

11. We do not believe that any undue hardship will result to the applicants required to provide evidentiary showings in support of estimated revenues. Applicants are expected to act in good faith in submitting information to the Commission, and to submit estimates which reflect their best judgment. All that is being requested here is that applicants explain the basis for their expressed judgment concerning anticipated revenues where such revenues are crucial to a continuing operation. The fact that applicants may be put to some expense or inconvenience to provide this essential information cannot be permitted to become a determinative factor in view of the very significant public interest consideration that applicants be chosen who have a reasonable likelihood of providing service to the public on a continuing basis.⁵

12. We realize, of course, that the views expressed herein represent a departure from the policy concerning the standard of financial qualifications applied in the past. For this reason, we believe that applicants should be afforded an opportunity to amend their applications to the extent outlined by the Panel. The time within which such amendments may be made will start to run from the date of release of his Memorandum Opinion and Order.

Accordingly, it is ordered, this 30th day of June, 1965, that the petitions of Ultravision Broadcasting Company and The Superior Broadcasting Corp. for review of the Panel's Memorandum Opinion and Order, FCC 65M-282, released

⁵ Although neither applicant in the Boston case objected to the enlargement of issues by the Panel, we believe that the same standard should be applied in the three proceedings under consideration.

March 12, 1965 are granted to the extent reflected herein, and are otherwise denied.

It is further ordered, that the financial issues added in each of the three proceedings enumerated above by the Panel are modified as follows:

(a) To determine the basis of each applicant's (1) estimated construction costs and (2) estimated operating expenses for the first year of operation;

(b) In the event that the applicant will depend upon operating revenues during the first year of operation to meet fixed costs and operating expenses, to determine the basis of each such applicant's estimated revenues for the first year of operation; and

(c) To determine, in light of the evidence adduced, which of the applicants, if any, has demonstrated a reasonable likelihood of construction and continuing operation of its proposed station in the public interest.

It is further ordered, that each of the parties to these proceedings is granted a period of 60 days from the date of release of this Memorandum Opinion and Order within which to amend its estimates of anticipated revenues and operating expenses for the first year of operation, and to revise its proposals as to hours of broadcast or program content, and that the Examiner is authorized to allow an additional 30 days within which to make the aforesaid amendments.

It is further ordered, that our Order FCC 65-298, released April 14, 1965, staying the proceedings insofar as they relate to the financial issues is vacated.

CLARIFICATION OF APPLICABILITY OF NEW FINANCIAL QUALIFICATIONS STANDARD CONCERNING BROADCAST APPLICATIONS

FCC 65-595, 69657, 30 FR 8865

Adopted: July 7, 1965.

Released: July 8, 1965.

[¶ 51:229(L), ¶ 53:24(C)] Clarification of applicability of new financial qualifications standard for broadcast applications

The Commission's new standard that all applicants for commercial broadcast facilities, whether AM, FM, VHF-TV or UHF-TV, must demonstrate their financial ability to operate for a period of one year after construction of the station, and that where operation during the first year is dependent on estimated advertising revenues, applicants will be required to establish the validity of the estimate, applies to all applications, whether now pending or hereafter filed, for new UHF-TV facilities in markets where three or more VHF stations are presently in operation. With respect to other applications, the prior financial qualifications standard will be applied to those applications designated for hearing on or before July 2, 1965, and the new standard will be applied to all other broadcast applications. Public Notice, 5 RR 2d 349 [1965].

By the Commission: (Commissioner Loevinger absent).

In its Memorandum Opinion and Order in Ultravision Broadcasting Company, et al., (Docket Nos. 15254, 15255, 15250, 15323), FCC 65-581, released July 2, 1965 [5 RR 2d 343], the Commission adopted a new standard for determining the financial qualifications of applicants for commercial broadcast facilities. The Commission stated:

" * * * we shall hereafter require all applicants for commercial broadcast facilities, whether AM, FM, VHF-TV or UHF-TV, to demonstrate their financial ability to operate for a period of one year after construction of the station. In those instances where operation during the first year is dependent upon estimated advertising revenues, the applicants will be required to establish the validity of the estimate."

The Commission believes that a clarification of the applicability of the new standard to pending applications will be helpful. The new standard will be applied to all applications, whether now pending or hereafter filed, for new UHF-TV facilities in markets where three or more VHF stations are presently in operation. With respect to other applications for commercial broadcast facilities, whether AM, FM, UHF-TV or VHF-TV, the prior financial qualifications standard will be applied to those applications which were designated for hearing on or before July 2, 1965, the release date of the Commission's Memorandum Opinion and Order in Ultravision, and the new standard will be applied to all other broadcast applications.

IN THE MATTER OF SUSPENSION OF POLICY AND INSTITUTION OF INQUIRY OR RULE MAKING PROCEEDING CONCERNING STANDARDS USED TO DETERMINE FINANCIAL QUALIFICATIONS OF COMMERCIAL BROADCAST APPLICANTS (THE ULTRAVISION STANDARD)

FCC 67-812, 2205, RM-828

Adopted: July 5, 1967.

Released: July 31, 1967.

[¶ 25:4, ¶ 51:229 (L), ¶ 53:24 (C)] *Ultravision standard.*

The Commission is not persuaded that an inquiry or rule making proceeding would have resulted in a different or more equitable standard for determining the financial qualifications of applicants for commercial broadcast facilities than the Ultravision standard, adopted in adjudicative proceedings. The standard was the sum of Commission experience in dealing with applications for broadcast facilities, plus the pleadings and arguments in the proceedings. Ultravision Standard for Financial Qualifications, 10 RR 2d 1757 [1967].

[¶ 51:229 (L), ¶ 53:24 (C)] *Ultravision standard—clarification.*

Applicants are not generally required to show the basis for their estimates of operating costs under the Ultravision standard. If, however, the estimate is unrealistic, or if it is contested, a detailed breakdown of the estimate is required. Prior to Ultravision, the so-called "Evansville" issue had been dispensed with, and that action was not affected by the adoption of the Ultravision standard. Ultravision Standard for Financial Qualifications, 10 RR 2d 1757 [1967].

MEMORANDUM OPINION AND ORDER

By the Commission: (Commissioner Bartley concurring in the result; Commissioner Lee not participating; Commissioner Wadsworth absent.)

1. On July 28, 1965, the Federal Communications Bar Association (FCBA) filed a Petition for Suspension of Policy and Institution of Inquiry or Rule Making concerning the general application of the standard adopted by the Commission for determining the financial qualifications of commercial broadcast applicants as announced in Memorandum Opinion and Order of July 2, 1965, *Ultravision Broadcasting Co. et al.* (FCC 65-581), 5 RR 2d 343, 1 FCC 2d 544; and its subsequent Clarification (FCC 65-595), 5 RR 2d 349, 1 FCC 2d 550.

2. Prior to the Ultravision decision, Commission policy was to require certain financial information in the application form, limit the period of initial operation into which inquiry was made to three months, and permit inquiry into "the sufficiency of funds" only where a petition to enlarge issues indicated the necessity of such an issue. The Ultravision standard now requires applicants for broadcast facilities to demonstrate their financial ability to construct and to operate for a period of one year, and in those instances where operation during the first year is dependent upon estimated advertising revenues, applicants are required to establish the validity of such estimates.

3. In support of its request for a Notice of Inquiry or of the institution of rule making proceedings, the FCBA objected to the manner in which the policy was adopted. Three cases involving applications for UHF television stations in Buffalo, New York; Cleveland, Ohio; and Boston, Massachusetts, were in hearing. Intervenor in each proceeding petitioned for designation of expanded financial issues, contending essentially that since the competing applicants were planning to operate UHF stations in markets in which three VHF stations were on the air, they should be required to show financial resources to sustain operation over a year or longer. The Review Board referred the request to the Commission, which designated a Panel of three Commissioners to consider the matter. The Panel invited comments from the parties in the proceeding and held oral argument. In a Memorandum Opinion and Order of March 12, 1965 [4 RR 2d 655]

(FCC 65M-282), 30 FR 3555, financial issues substantially different from those previously required of broadcast applicants were added to the three proceedings. The Decision of the Panel¹ was appealed to the full Commission and on July 2, 1965, the Commission released its Memorandum Opinion and Order enlarging the issues in the three adjudicative proceedings, all of which involved applications for permits to construct UHF stations in markets where three VHF stations are operating. However, the Opinion of July 2 expanded the Commission's standard to require all applicants for commercial broadcast facilities, whether AM, FM, VHF or UHF, to demonstrate the basis of each applicant's estimated construction costs and estimated operating expenses for the first year of operation; and, in the event that the applicant would depend upon operating revenues during the first year of operation to meet fixed costs and operating expenses, to determine the basis of each such applicant's estimated revenues for the first year of operation. This has become known as the Ultravision standard.

4. FCBA takes no position on the substantive merits of this change in policy, either as applied in the proceedings involved in Ultravision or as applied generally to applications for commercial broadcast facilities. Nor does the Association challenge the Commission's procedural authority to make new policy in the course of deciding issues presented to it in an adjudicative proceeding. Rather, it urges that the rule making process is the more appropriate vehicle for the resolution of broad issues of such scope as the financial qualifications of all commercial broadcast applicants. In such a proceeding, FCBA suggests that the Commission consider the adequacy of the standards which were previously applied in determining financial qualifications; the need for any general revision of standards; whether particular broadcast services, or types of applications within particular services, should be given special treatment; the nature of the showing to be required in applications, and the impact of any new standard upon the showing required in hearing proceedings when a financial issue is designated.

5. Although the Ultravision policy was adopted in adjudicative proceedings, the Panel formed by the Commission held an oral argument on the possible redefinition of the Commission's criteria for the establishment of basic financial qualifications. Attorneys for the Commission's broadcast Bureau and for applicants for UHF stations in Buffalo, Cleveland, and Boston participated. And, although the Ultravision standard was announced as Commission policy in these adjudicative proceedings, it was the sum of Commission experience in dealing with applications for broadcast facilities, plus the pleadings and arguments in these proceedings, which led to the conclusion that in today's highly competitive market something more than the prior financial showing is necessary.

6. The argument that an inquiry or rule making proceeding might result in a different standard, or a more equitable standard or standards, is not persuasive. Since the new policy was announced in 1965, the Commission has processed numerous applications for various types of broadcast facilities, and hearings have been held in which financial issues were an integral part. The applicants involved have, in most instances, been able to produce evidence to satisfy the Commission that they meet the statutory requirement of financial qualification as presently expressed in the Ultravision standard. However, should experience in the future indicate that a change should be made in the test of financial qualification in any of the broadcast services, the Commission will at that time consider what future course is necessary.

7. It should be pointed out that the Ultravision standard has not been applied rigidly. It is not applied to applications for changes in facilities where the stations concerned have an established earning record, nor is it applied to applications for new stations in situations where it is obviously not appropriate. For example, in designating for hearing the applications for Channel 9 in Orlando,

¹ The Opinion was a decision of the majority, with Commissioner Lee dissenting.

Florida, the Commission applied the old standard of three months' working capital requirement, because the existing Channel 9 operation had established that imposition of any more rigorous test was unnecessary. This has also been the policy in other situations, such as the comparative hearing for the KWK frequency in St. Louis and the WWIZ frequency in Lorain, Ohio.

8. Two matters raised by the petitioner require clarification. First, there has been no general requirement imposed under the Ultravision standard that applicants show the basis for their estimates of operating costs, nor does the Commission intend to impose any such requirement.² The petitioner also questions the effect of the new policy on the use of the so-called "Evansville" issue. However, in its Policy Statement On Comparative Broadcast Hearings, 1 FCC 2d 393 [5 RR 2d 1901] which was issued on the same day this petition was filed, the Commission stated that, "No independent factor or likelihood of effectuation of proposals will be utilized. The Commission expects every licensee to carry out its proposals, subject to factors beyond its control, and subject to reasonable judgment that the public's needs and interests require a departure from original plans. If there is a substantial indication that any will not be able to carry out its proposals to a significant degree, the proposals themselves will be considered deficient." With this statement, the Commission dispensed with the use of the "Evansville" issue, and that action was not affected by the adoption of the Ultravision standard.

9. In view of the foregoing, it is ordered, that the petition of the Federal Communications Bar Association for Suspension of Policy is moot and, therefore, is dismissed, and that the petition for Institution of Inquiry or Rule Making concerning the standards used to determine the financial qualifications of commercial broadcast applicants is denied.

ITEM 11(b) (1)

D. H. OVERMYER COMMUNICATIONS Co.,
February 2, 1965.

Re KBAY-TV San Francisco (BAPCT-354) Your file 8430.

DEAR MR. WAPLE: This is in reply to your letter of January 6, 1965 to D. H. Overmyer Communications Co., the proposed assignee in the above application.

1. Attached is the commitment, dated January 27, 1965, of the Bank of America, to lend the Applicant \$350,000.

The several proposals for constructing television stations mentioned by you are being submitted by separate corporate applicants, and each of these proposals is being financed separately—largely through credit, to be extended in part on the basis of the guarantee of the sole stockholder, Mr. D. H. Overmyer, of each applicant. Although, it will therefore be unnecessary for the several applicants to utilize other resources of Mr. Overmyer, both he and a wholly-owned company, D. H. Overmyer Warehouse Company have substantial net worth (in excess of \$5,000,000) and the latter has cash in excess of \$1,500,000. Mr. Overmyer will use the resources not only of himself but of the Warehouse Company to whatever extent may be necessary to support and effectuate the instant as well as the other proposals in which he is interested. Attached is a copy of the balance sheets of D. H. Overmyer (individually) and of D. H. Overmyer Warehouse Company and affiliates.

2. Applicant has long since made arrangements for a transmitter site for KBAY-TV, namely, the present tower of KGO-TV, as the attached letter, dated September 30, 1964, from American Broadcasting Company shows. Applicant knows that there is presently pending a proposal for a new tower to be installed on Mt. Bruno which will be available to other stations in the Bay area including the applicant. And Applicant has recently been informed that this new tower will be constructed in a little over a year from now. Applicant would, of course, prefer to make its initial and permanent installation on the new tower, rather than make a temporary installation on another tower and lose the investment in that installation. Applicant intends to proceed diligently in putting KBAY-TV on the air preferably with a transmitter site on Mt. Bruno, but if the availability of such a site is unreasonably delayed, then at the present ABC-TV site on Mt. Sutro.

Very truly yours,

ROBERT F. ADAMS,
Executive Vice President.

² If, however, the estimate of operating costs is unrealistic, or if it is contested, then a detailed breakdown of the estimate will be required.

ITEM 11(b) (2)

Re D. H. Overmyer Communications Company, Atlanta, Georgia (BAPCT-351);
D. H. Overmyer Broadcasting Company, Newport, Kentucky (BAPCT-352).

D. H. OVERMYER COMMUNICATIONS Co.,
February 3, 1965.

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 Company (and affiliates). The Warehouse Company is wholly owned by Mr. Overmyer, as is each of the above applicants.

Although the financing plan for each of the above proposals relies on equipment credit and a 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 out the above proposals.

Very truly yours,

ROBERT F. ADAMS,
Executive Vice President.

ITEM 11(c) (1)

(SAN FRANCISCO)

Projected balance sheet (as of closing)

Assets: Cash	-----	\$50,000
Liabilities: Capital (5,000 shares)	-----	50,000

In addition, as set forth in Exhibit V hereto, the Applicant will have available RCA credit of \$340,000, a bank loan of \$475,000 and a loan by its stockholder Corwin of \$80,000.

ITEM 11(c) (2)

(CINCINNATI)

Balance sheet (projected as of closing)

Assets:		
Cash on hand or deposit	-----	\$11,000
Purchase price	-----	100,000
Total assets	-----	111,000
Liabilities:		
Loans payable	-----	110,000
Capital stock	-----	1,000
Total liabilities and capital	-----	111,000

ITEM 11(c) (3)

(PITTSBURGH)

Pro forma balance sheet as of closing

Assets:		
Cash	-----	\$1,000
Contract payment	-----	28,000
Total	-----	29,000
Liabilities:		
Loans payable	-----	13,000
Contract payable	-----	15,000
Capital stock	-----	1,000
Total	-----	29,000

ITEM 11(c) (4)

(ATLANTA)

Balance sheet (projected as of closing)

Assets:	
Cash on hand.....	\$11,000
Cost of authorization.....	100,000
Total assets.....	<u>111,000</u>
Liabilities:	
Loans payable.....	110,000
Capital Stock.....	1,000
Total liabilities and capital.....	<u>111,000</u>

NOTE.—The applicant has equipment credit and bank loans available in the total amount of \$700,000.

ITEM 11(c) (5)

(HOUSTON)

FINANCING PLANS

Estimated costs of construction are \$1,147,744 and estimated operating expenses for three months are \$80,000—a total of \$1,227,744. RCA equipment credit will be \$713,058 (see attached letter, dated January 6, 1965); and there will be a bank loan of \$550,000 (see attached commitment of January 19, 1965, of Southern National Bank)—a total of \$1,263,058.

NOTE.—No pro forma statement submitted for Houston. Last sentence submitted in lieu thereof.

ITEM 11(d) (1)

GIRARD TRUST BANK,
Philadelphia, Pa., August 6, 1964.

Re loan \$400,000.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

GENTLEMEN: You have asked us to assist you financially in the purchase of a television station in Atlanta, Georgia, by granting you a loan in the amount of \$400,000. This would be with interest at 6% for a term of 5 to 7 years with amortization to begin 18 months or 2 years after the station is in operation.

This loan is to be unsecured, however, we are to receive the personal guarantee of Mr. D. H. Overmyer. You stated that you would want to take the loan down approximately 7 or 8 months from now and, of course, this would be subject to the rate question at that time.

The granting of this loan is also subject to the condition of the financial statement of D. H. Overmyer, providing therefore, that there is no substantial adverse change in this statement as submitted to us under date of May 31, 1964.

We are pleased to advise you that we will be happy to comply with your request subject to the conditions as enumerated herein.

Sincerely yours,

J. J. McHUGH, Jr.,
Vice President.

ITEM 11(d) (2)

SOUTHERN NATIONAL BANK,
Houston, Tex., January 19, 1965.

D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

(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 facilities 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 would be subject further to your providing us with 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 would be subject to customary legal requirements and a mutually acceptable loan agreement.

We look forward to working with you.

Very truly yours,

F. MAX SCHUETTE,
Senior Vice President.

ITEM 11(d) (3)

FIRST NATIONAL BANK OF CINCINNATI,
Cincinnati, Ohio, August 14, 1964.

Mr. ROBERT F. ADAMS,
Executive Vice President,
D. H. Overmyer Broadcasting Co.,
New York, N.Y.

DEAR MR. ADAMS: It is our understanding that you have entered into 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 endorsed 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.

Sincerely,

R. H. BROOKES, Vice President.

ITEM 11(d) (4)

BANK OF AMERICA,
San Francisco, Calif., July 26, 1965.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.
(Attention of Mr. Robert F. Adams).

GENTLEMEN: We understand you have made application to the Federal Communications Commission for authorization to construct and operate a UHF television station on channel 20 in San Francisco. You have apprised us that you plan to obtain the usual equipment credit and also of Mr. Overmyer's plans for television stations in other cities.

In connection with the proposed San Francisco station, you have asked us to extend to your company an unsecured loan in the amount of \$475,000 payable over a period of five to seven years, with amortization to begin about two years after the station is in operation at the then prevailing rate of interest. We further understand that this loan will be guaranteed by Mr. D. H. Overmyer, personally, whose financial statement has been submitted to us.

We are agreeable to making the loan requested, with documentation satisfactory to us, subject to approval by the Federal Communications Commission of the authorization for the station, and since the loan would not be used by you for six to eight months, to your submitting to us at the time of your need for

the loan, satisfactory financial and operating projections, and to Mr. Overmyer's financial condition not having changed adversely in the meantime.

This commitment will expire April 30, 1966.

Sincerely,

MERLYN E. DOLEMAN.

ITEM 11(d) (5)

WESTERN PENNSYLVANIA NATIONAL BANK,
Pittsburgh, Pa., January 29, 1965.

D. H. OVERMYER COMMUNICATIONS Co.,
New York City, N.Y.
(Attention of Mr. Robert F. Adams).

GENTLEMEN: We understand you have made application to the Federal Communications Commission for authorization to construct and operate a UHF television station on Channel 53 in Pittsburgh. You have appraised us that you plan to obtain the usual equipment credit and also of Mr. Overmyer's plans for television stations in other cities.

In connection with the proposed Pittsburgh station, you have asked us to extend to your company an unsecured loan in the amount of \$350,000, payable over a period of five to seven years, with amortization to begin about two years after the station is in operation at the then prevailing rate of interest. We further understand that this loan will be guaranteed by Mr. D. H. Overmyer personally whose financial statement has been submitted to us.

We are agreeable to making the loan requested subject to approval by the Federal Communications Commission of the authorization for the station. Also, since the loan would not be used by you for six to eight months, we would expect that Mr. Overmyer's financial condition has not changed materially in the interim.

Cordially,

E. I. H. BENNETT.

ITEM 11(d) (6)

RADIO CORP. OF AMERICA,
BROADCAST AND COMMUNICATIONS PRODUCTS DIVISION,
Camden, N.J., February 25, 1965.

Re BC-43814.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in Atlanta, Georgia, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$400,000.00.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

RADIO CORP. OF AMERICA,
BROADCAST AND COMMUNICATION PRODUCTS DIVISION,
Camden, N.J., February 25, 1965

Re BC-50125.

D. H. OVERMYER BROADCASTING Co.
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, submitted to FCC approval, to establish television facilities in Rosenberg, Tex. and we are also pleased to learn of your interest in our equipment which will amount to approximately \$950,744.32.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate, and for your information, our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract related to documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

ITEM 11(d) (8)

RADIO CORP. OF AMERICA,
BROADCAST AND COMMUNICATION PRODUCTS DIVISION,
Camden, N.J., February 26, 1965.

Re BC-43725.

D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in Cincinnati, Ohio, and we are also prepared to learn of your interest in our equipment which will amount to approximately \$475,000.00.

This will serve to confirm to you that, subject to the usual conditions of sales outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment, contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

ITEM 11(d) (9)

RADIO CORP. OF AMERICA,
BROADCAST AND COMMUNICATIONS PRODUCTS DIVISION,
Camden, N.J., February 26, 1965.

Re BC-44625.

D. H. OVERMYER COMMUNICATIONS Co.
New York, N.Y.

GENTLEMEN: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in San Francisco, California, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$400,000.00.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

15% of the total price prior to shipment;

85% deferred balance to be payable in 60 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate and for your information our present rate is 6% per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have this opportunity of being of service, and will be happy to hear from you if there is anything further that we can do.

Very truly yours,

C. D. SNYDER,
Manager, Credit and Collection.

ITEM 11(d) (10)

RADIO CORP. OF AMERICA,
New York, N.Y., January 25, 1965.

D. H. OVERMYER COMMUNICATIONS Co.,
New York, N.Y.

(Attention of Mr. Robert F. Adams, Vice President.)

DEAR MR. ADAMS: We are happy to learn of your plans, subject to FCC approval, to establish television facilities in Pittsburgh, Pennsylvania, and we are also pleased to learn of your interest in our equipment which will amount to approximately \$415,500.

This will serve to confirm to you that, subject to the usual conditions of sale outlined in the sales proposal, the following payment terms will be available to you in the purchase of equipment for such facilities:

25% of the total price prior to shipment;

75% deferred balance to be payable in 48 successive monthly installments, equal in principal amount, beginning 30 days after shipment, with each installment to bear interest from date of shipment until the date on which it is paid. Interest will be at our then current rate, and for your information, our present rate is 6 per cent per annum.

A purchase on installment terms would be covered by our standard forms of time payment contract and related documents, including promissory notes to evidence the installments. Also, you would have the right to prepay any or all installments without penalty.

We are glad to have the opportunity to be of service and we will be happy to hear from you if there is anything further that we can do.

Very truly yours,

R. F. VARDA,
New York Broadcast Sales
(For C. D. Snyder, Manager, Credit and Collection.)

ITEM 11(d) (11)

D. H. OVERMYER WAREHOUSE Co.,
New York, N.Y., July 15, 1965.

D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

(Attention of Mr. Robert F. Adams, Executive Vice President).

GENTLEMEN: This will confirm our agreement to make an unsecured loan to you of up to \$250,000 as follows:

1. You shall have a construction permit for a television station in Rosenberg, Texas.

2. The loan shall be at an interest rate not in excess of 6% of the unpaid balance, repayable at the same time as the principal.

3. The principal shall be repayable in equal annual installments over a period of five years, commencing 18 months after you get on the air.

Attached hereto is the Balance Sheet of D. H. Overmyer Warehouse Co. & Affiliates. There has been no adverse change since August 31, 1964 in overall assets, excess of current assets over current liabilities and cash on deposit.

D. H. OVERMYER WAREHOUSE Co.,
By D. H. OVERMYER, President.

By G. H. SILCO, Vice President, Finance.

ITEM 11(d) (12)

D. H. OVERMYER WAREHOUSE Co.,
New York, N.Y., January 14, 1966.

D. H. OVERMYER BROADCASTING Co.,
New York, N.Y.

GENTLEMEN: This will confirm our understanding that, in connection with your proposed television station at Newport, Kentucky, I will cause D. H. Overmyer Warehouse Co. and/or one of its warehouse subsidiaries and/or warehouse affiliates, of each of which I am the sole beneficial stockholder, to make you an unsecured loan of up to \$100,000 for construction and operation of the station. Interest and/or payments will be fixed to accommodate your requirements.

A true and correct copy of a recent combined balance sheet of D. H. Overmyer Warehouse Co. and its warehousing subsidiaries and affiliates is attached.

Very truly yours,

D. H. OVERMYER.

D. H. OVERMYER WAREHOUSE Co.,
New York, N.Y., February 14, 1966.

D. H. OVERMYER COMMUNICATIONS Co.
New York, N.Y.

GENTLEMEN: We understand you have made application to the Federal Communications Commission for authorization to construct and operate a UHF television station on Channel 53 in Pittsburgh, Pennsylvania.

In connection with the proposed Pittsburgh station, this will confirm our agreement to extend to your company an unsecured loan in the amount of Three Hundred-Fifty Thousand dollars (\$350,000) payable over a period of five (5) years in equal annual installments commencing eighteen (18) months after you get on the air. The loan shall be at an interest rate not in excess of six percent (6%) of the unpaid balance, payable at the same time as the principal. The said loan subject to approval by the Federal Communications Commission of your authorization for the station.

Attached hereto is the balance sheet of the D. H. Overmyer Warehouse Company and affiliates. There has been no adverse change since August 31, 1965 in overall assets, excess of current assets over current liabilities and cash on deposit.

D. H. OVERMYER WAREHOUSE Co.,
By D. H. OVERMYER, *President.*
By T. J. BYENES, *Treasurer.*

ITEM 11(e) (1)

(Submitted with Houston, San Francisco, and Atlanta CP Applications)

D. H. OVERMYER WAREHOUSE Co. & AFFILIATES

Balance sheet with fixed assets at appraised valuation, Aug. 31, 1964

ASSETS		
Current assets:		
Cash		\$1,661,728.87
Accounts receivable	\$218,645.19	
Less provision for doubtful accounts	(13,500.00)	
		205,145.19
Prepaid expenses		46,094.64
Short-term returnable deposits		280,361.50
Total current assets		\$2,193,330.20
Fixed assets:		
Land	2,344,700.00	
Buildings	9,142,800.00	
Equipment	236,030.13	
Leasehold improvements	2,147.25	
Construction in progress	1,599,931.66	
Less accumulated depreciation and amortization	(308,317.22)	
Total fixed assets		13,017,291.82
Deferred charges:		
Cash surrender value of life insurance	19,341.31	
Other assets	140,163.99	
Total deferred charges		159,505.30
Due from nonconsolidated affiliates		274,206.41
Total assets		<u>15,644,333.73</u>

LIABILITIES AND SHAREHOLDERS EQUITY

Current liabilities:		
Accounts payable		\$661,924.38
Accrued expenses:		
Taxes (including provision for Federal taxes)	\$125,710.97	
Wages	22,817.94	
Interest	38,946.05	
Other	36,247.02	223,721.98
Current portion of long-term debt		267,183.86
Total current liabilities		\$1,152,830.22
Long-term debt:		
Real estate mortgages	8,719,129.97	
Notes payable	15,000.00	
Equipment mortgages	26,851.52	8,760,981.50
Due to D. H. Overmyer		506,327.44
Shareholders equity:		
Common stock	2,016,800.00	
Surplus	3,207,394.57	
Total shareholders equity		5,224,194.57
Total liabilities and shareholders equity		<u>15,644,333.73</u>

ITEM 11(e) (2)

(Submitted with Cincinnati and Pittsburgh CP applications)

D. H. OVERMYER WAREHOUSE Co. & AFFILIATES

Balance sheet, Aug. 31, 1965

ASSETS		
Current assets:		
Cash		\$2,262,111.74
Accounts receivable	\$505,474.27	
Less provision for doubtful accounts	20,022.62	485,451.65
Prepaid expenses		210,111.17
Short-term returnable deposits		722,544.00
Total current assets		\$3,680,218.56
Fixed assets: ¹		
Land	3,313,800.00	
Buildings	16,973,200.00	
Equipment	369,270.84	
Leasehold improvements	18,185.63	
Construction in progress	10,444,253.75	
Less accumulated depreciation and amortization	441,610.30	
Total fixed assets		30,677,099.96
Deferred charges:		
Cash surrender value of life insurance	41,570.00	
Other assets	175,014.55	
Total deferred charges		216,588.55
Due from affiliates and D. H. Overmyer		273,196.71
Total assets		<u>34,847,103.78</u>

¹ Real property stated at MAI valuation.

LIABILITIES AND SHAREHOLDER'S EQUITY

Current liabilities:		
Accounts payable.....	\$486,459.23	
Accrued expenses:		
Taxes (including provi- sion for Federal taxes)	\$291,126.20	
Wages	113,150.18	
Interest	147,182.74	
Other	62,452.62	613,911.74
Current portion of long-term debt.....	449,893.80	
Total current liabilities.....		\$1,550,264.77
Long-term debt:		
Real estate mortgages.....	25,297,058.41	
Notes payable (equipment).....	288,436.26	
Total long-term debt.....		25,585,494.67
Shareholder's equity:		
Common stock.....	2,022,800.00	
Surplus	5,688,544.34	
Total shareholder's equity.....		7,711,344.34
Total liabilities and shareholder's equity.....		34,847,103.78

ITEM 11(e) (3)

(Submitted with San Francisco, Atlanta, and Cincinnati CP applications)

D. H. OVERMYER

Balance sheet, Aug. 31, 1964

ASSETS [AT APPRAISED VALUE]

Current assets:		
Cash	\$8,699.39	
Accounts receivable.....	1,600.00	
Total current assets.....		10,299.39
Fixed assets:		
Real estate.....	211,000.00	
Furniture and fixtures.....	16,850.00	
Personal property.....	24,800.00	
Total fixed assets.....		252,650.00
Other assets:		
Capital stock, wholly owned corporations.....	5,224,194.57	
Due from wholly owned corporations.....	506,327.44	
Total other assets.....		5,730,522.01
Total assets.....		5,993,471.40

LIABILITIES AND NET WORTH

Current liabilities: Accounts payable (total current liabilities)	9,336.25
Mortgages payable.....	78,476.37
Net worth.....	5,905,658.78
Total liabilities and net worth.....	5,993,471.40

ITEM 11(f) (1)

REASONS FOR PROPOSED TRANSFER (JUNE 1967)

(D. H. Overmyer/AVC Corp., forms 314 re WBMO-TV, KEMO-TV, WSCO-TV, WECO-TV, and KJDO-TV)

D. H. Overmyer commenced his warehousing business with rented space for one warehouse in Toledo in 1947. Within about seven years he began projecting a national warehousing and distribution system for large national manufacturing enterprises which need warehousing and distribution space and services in the many major consumer markets throughout the country.

Such a national warehousing service with its standardized procedures, simplified handling and lower costs was warmly accepted by many large companies looking for ways to distribute their goods faster and cheaper to the country's major markets.

Although Overmyer initially used rented facilities in expanding to other cities. In the middle 1950's he began to buy choice sites and to have new buildings constructed which he owned. The real estate values inherent in these properties and the prospects of assured revenues from the national concerns using the warehouse facilities produced a ready supply of long-term credit for purposes of constructing the new warehouse facilities. Over approximately the last ten years the Overmyer Warehouse Companies have generated first mortgage loans substantially in excess of \$100,000,000 for construction of over 16,000,000 square feet of warehouse facilities in 55 major consumer markets in the United States and Canada.

One of the better contractors used by Overmyer to construct the buildings during the initial part of the expansion program was a W. J. Nixon, who later organized Nixon Construction Company. When Overmyer began to implement his program for a national system, the Green & White Construction Co. was formed and became Overmyer's principal contractor. Nixon Company became a subsidiary of Green & White. (Overmyer has an option to buy Green & White's stock). Green & White has operated since in close association with the Overmyer companies. It set up a field organization and had the construction done principally by local subcontractors. Large-scale building began in 1965, and between January 1965 and August 1966, Overmyer increased its warehouse space from approximately 2,000,000 to 8,000,000 square feet with an additional 8,000,000 square feet under construction.

In the Summer of 1966, however, complaints began to reach the Overmyer Warehouse Company that Green & White was unduly slow in paying its subcontractors on Overmyer jobs. The initial inquiry indicated that the general restriction of credit usually available to subcontractors accounted for pressure on Green & White for accelerated payment. But further investigation showed that Green & White, probably due in large part to the great inflation in construction costs in 1966 and to the extensive scope of its undertakings, lost money on many of its projects, had a large deficit and owed millions of dollars to subcontractors. Overmyer's warehousing operations were soon seriously hampered, because completion of buildings was delayed and commitments to serve customers could not be met, and because the liens placed on its buildings by subcontractors prevented expected loans from being consummated.

The Overmyer Warehouse Company had no alternative under the circumstances to assuming and endeavoring to pay the liabilities of Green & White. This presented Overmyer with a critical two-pronged problem: (1) payment of the debts required cash of many millions of dollars which the Warehouse Company did not have; and (2) the construction and—it had become increasingly evident—anticipated large early operating deficits of Overmyer's six UHF stations—already faced Overmyer with demands upon most of the cash the warehousing operation could be expected to generate over the next few years.

Study of these financial problems made it clear that there was but one solution. It did not appear that Overmyer, with the first mortgages on its principal assets, had the resources to produce the cash needed to meet both Green & White debts and the requirements of the UHF stations. Trying to preserve the UHF enterprises alone was futile because they depended on the cash which the warehousing operations and assets alone could produce. Unless the warehousing operation could be preserved, everything would be lost. Hence, Overmyer was forced to adopt the alternative of paying the Green & White debts in order to keep the warehousing operations viable and of trying to get relieved of the substantial present and prospective cash drain caused by the UHF stations.

Accordingly, during the latter part of 1966 and early 1967, Overmyer explored the double approach of (1) extending payment of Green & White debts and putting payment of them on an orderly schedule over a period of two-three years, and of trying to realize some present cash from the warehousing properties by means of sale-leasebacks, and (2) trying to find a partner, preferably a minority stockholder, in the UHF stations which would provide the financing necessary to carry them. Considerable progress has been made in making arrangements for the orderly liquidation of the Green & White debts and in generating cash through sale-leasebacks. The attempt to find a minority stockholder for the UHF operations was unsuccessful; accordingly, the present arrangement was worked out with A.V.C. Corporation, the proposed transferee, under which Overmyer would be able to (1) get back part of his overall investment in UHF, (2) retain a significant interest (20%) in the UHF operations, the future financing of which will be largely the obligation of the proposed transferee, and (3) realize through loans from A.V.C. cash needed to meet the early maturing Green & White obligations.

It was originally thought that it would be necessary for Overmyer also to sell his Toledo UHF station, which is still operating at a deficit. But with the success of the other measures described above, it is the present intention to keep WDHO-TV and to bring it to a profitable status.

Mr. Overmyer entered UHF broadcasting with the full expectation of not only placing all the stations on the air, but of financing the early deficits through loans and by warehousing profits. Not only has WDHO-TV been on the air over a year, but as shown in Exhibit II hereto, plans were proceeding according to schedule to put all or most of the other five stations on the air during 1966 when the rug was pulled out during the latter part of 1966 by the unexpectedly large deficit of the company constructing the warehouses. If the efforts to realize cash through sale-leasebacks of the warehouses continue successfully, and if the present transaction with A.V.C. is consummated, it is expected that the Green & White debts can be paid off over the next two-three years and that the warehouse operations can be preserved.

ITEM 11(f) (2)

DUN & BRADSTREET ANALYTICAL REPORT, JANUARY 26, 1968

Date of report: September 28, 1967.

Company: Green & White Construction Co., Inc., general contractors, New York, N.Y.

Started: 1965.

Chairman of board and chief executive: Marian H. Willis.

SUMMARY

Payments: Slow.
Sales: \$45,000,000.
Employs: 110 (35 here).

PAYMENTS

Essentially all contracts of this company have been to erect warehouses for D. H. Overmyer Co. Inc. (Ohio) or its subsidiaries. Inter-company bills through those of Oct. 1966 were paid properly. Starting early Dec. 1966, Overmyer held up payment pending an independent engineers' review of work completed and pending completion of an audit of Green & White's finances. Inter-company balances were not specifically disclosed but are known to have been substantial. Multiple mechanics liens were filed on the uncompleted projects naming Green & White Construction Company as general contractor and the Overmyer subsidiaries which owned the buildings under construction.

By July 1, 1967 settlements were negotiated with all of Green & White's sub-contractors (except a few on which disputes exist) and work resumed on all jobs. The agreement provided for full payment of approved bills on the basis of an immediate cash payment plus a series of notes payable monthly starting in Aug. 1967. Maturing notes have been paid as scheduled. Under those agreements, the then existing obligations were assumed by the Overmyer subsidiary which owned each property and payment was guaranteed by D. H. Overmyer Co. Inc. (Ohio), the parent company of all the warehouse owning-operating companies; the sub-contractors released Green & White from that debt.

On all bills incurred since the agreement were concluded, at Overmyer's initiative disbursements of approved requisitions and bills are being made directly to

sub-contractors and material men by the bank or title company which is advancing construction loans on each job.

HIGHLIGHTS

Virtually all work of Green & White Construction Company and its subsidiaries has been as general contractor erecting warehouses for D. H. Overmyer Co. Inc. (Ohio) or its subsidiaries at various locations throughout the United States. Overmyer has had an extensive program of construction underway and billings of Green & White have been at the rate of \$40,000,000 to \$50,000,000 annually. There is stated to have been no direct or indirect ownership relationship between the companies.

ITEM 11(g) (1) (a)

(Atlanta)

FCC Form 701 December, 1963		Form Approved Budget Bureau No. 52-RO70-12		Applicant Should Not Use This Block	
Federal Communications Commission APPLICATION FOR ADDITIONAL TIME TO CONSTRUCT RADIO STATION				File No. EMPCT-6223	
INSTRUCTIONS				FILE NO. 30000	
A. This form is to be used in all cases when applying for additional time to construct a radio station. It is to be used only by holders of valid radio station construction permits.				246613 WATL66	
B. Prepare and file three copies if for any class of broadcast service; if for a non-broadcast service prepare and file 2 copies. File with the Federal Communications Commission, Washington, D. C. 20554 (EXCEPTION: If for a fixed Public Station in Alaska prepare in triplicate and file with Engineer in Charge, Federal Communications Commission, Seattle, Washington 98104.) Sign all copies.				FCC WASHINGTON D.C.	
C. The name of the applicant must be stated exactly as it appears in the construction permit.				Name of Applicant (See Instructions) D. H. Overmyer Communications Co.	
D. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his absence from the stated State. The attorney shall, in the event he signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall also set forth his reasons for believing that belief to be true.				201 E. 42 St., New York, N.Y. 10017	
E. Enclose this application with application. DO NOT SUBMIT CASH. Must check money order payable to Federal Communications Commission (see Part I guidelines to determine amount of fee to be paid with application).				Post Office address (Number, street, city, state) D.H.Overmyer at above address	
F. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL QUESTIONS ARE FULLY ANSWERED. IF ANY PORTION OF THE APPLICATION IS NOT APPLICABLE, SPECIFICALLY SO STATE. VAGUE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.				cc:Fly,Shuebruk,Blume & Gaguine *	
G. Have there been any changes in the information submitted in the original application for construction permit, any amendment thereto, or modification thereof since filing? If the answer is "Yes" give particulars in the space below.				2. Identity of construction permit for which additional time is requested:	
See over				File Number Location EMPCT-4254 Atlanta, Georgia	
See over				Call letters Frequency WATL-TV 602 - 608 mc	
See over				3. Reason why construction cannot be completed within time specified in construction permit (use back of form if necessary) See over	
See over				4. If equipment not delivered, from whom was it ordered? See over	
See over				When was equipment ordered? What was promised date of delivery? See over	
See over				5. Has equipment been delivered? When was installation commenced? See over	
See over				What is the extent of installation (use back of form if necessary)? See over	
See over				6. By what estimated date can construction be completed? 7/27/66	
CERTIFICATION					
I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.					
Signed and dated this <u>16th</u> day of <u>January</u> , 19 <u>66</u> .					
D.H.Overmyer Communications Co. (Name of applicant - see instruction C)					
Signed by <u>[Signature]</u>					
D.H.Overmyer, President (Designate appropriate classification below)					
<input type="checkbox"/> Individual Applicant <input type="checkbox"/> Member of Partnership					
<input checked="" type="checkbox"/> Officer of Applicant Corporation or Association					
<input type="checkbox"/> Official of Applicant Government Entity					
*30 Rockefeller Plaza, New York, New York 10020					

(Reverse side of preceding form 701)

Applicant has encountered very great difficulties in locating a site which meets engineering requirements, has a reasonable cost and, most important, will be approved by FAA. Applicant has had both its own land experts and local realty firms looking for sites and has studied in detail more than nine specific sites. It has just located a site on which it has a letter of intent to lease which is being reviewed and which it believes will be found suitable. It also has found a downtown studio location and will be negotiating for its lease in a few days.

The transmitting (GE) and some studio (Visual Electronics) have been ordered. Acquisition of additional studio (RCA) equipment has been negotiated and will be specifically ordered in the next month or two. Ordering of the tower (Stainless) and antenna (GE) will have to wait FCC and FAA approval, both of which will be sought immediately after the transmitter site is secure.

Applicant plans to be on the air by August 15, 1966.

ITEM 11(g) (1) (c)

Form BC-106
January 1961

FEDERAL COMMUNICATIONS COMMISSION

CLASS OF STATION COMM. TV B/C

EXT.

The following application is submitted for action by the Chief, Broadcast Bureau

FILE NO.	APPLICANT & LOCATION	CALL LETTERS	NATURE OF APPLICATION
BPCT-6223 CH. 36	D. H. Overmyer Com- munications Company Atlanta, Georgia	WATE-TV <i>WBMO-TV</i>	Mod. of CP(BPCT-1513, as mod., which authorized a new Comm. TV B/C Station) to extend completion date from 1-27-66 to 7-27-66.

\$30.00 FEE PAID

Quentin Skater
CHIEF, LICENSE DIVISION

ri 1-24-66
Recommendation: Grant () Construction dates: Start _____ End 7/27/67

*nois with
BMP-6387*

GRANT
JAN 27 1967

[Signature] 17-67
For Chief, Broadcast Bureau
F.C.C. - WASHINGTON, D.C.

ITEM 11(g)(1)(d)

FCC Form 351-B
June 1964

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION Call Letters WBGO-TV
MODIFIED AS OF JANUARY 27, 1967
TELEVISION BROADCAST STATION CONSTRUCTION PERMIT

Subject to the provisions of the Communications Act of 1934, subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this permit, authority is hereby granted to

- D.H. OVERMYER COMMUNICATIONS COMPANY, INC.**
to construct a television broadcast station located and described as follows:
- Station location: State GEORGIA city ATLANTA
 - Transmitter location: State GEORGIA county De Kalb
City or town North David Hills Division
Street and number Briarcliff Road & Shupard Lane, N.E. Approx. 2500 feet east of
North Latitude: Degrees 33 Minutes 48 Seconds 27 Atlanta
West Longitude: Degrees 84 Minutes 20 Seconds 26
 - Main studio location: State Georgia county De Kalb
City or town Atlanta, Georgia
Street and number Broadview Shopping Plaza, Piedmont Road & Mornings Drive N.E.
 - Transmitter: Viana AURAL
Make and type GE TT-50A GE TT-50A
Rated power 16.99 dbk (50 kw) peak. 10.61 dbk (11.5 kw).
 - Antenna GE TY-97A, 6-section, Zig-Zag, modified for 0.6 degree electrical beam
Make and type tilt with maximum lobe visual effective radiated power of 72.1 dbk (1620 kw)
Horizontal field pattern OMNIDIRECTIONAL
Antenna supporting structure 1083-foot guyed tower
Overall height above ground 117A feet (including obstruction lighting)
Overall height above mean sea level 3049 feet (including obstruction lighting)
Obstruction marking specifications in accordance with paragraphs 1, 3, 8, 12, 21 & 22 of FCC Form 715 attached.
 - Operating assignment:
Frequency 602 — 608 Megacycles. (Channel No. 36)
Visual AURAL
Carrier frequency 602.25 Mc. 607.75 Mc.
Effective radiated power 28.1 dbk (708 kw) peak. 21.5 dbk (141 kw).
Transmitter output power 17 dbk (50 kw) peak. 10.4 dbk (11 kw).
Antenna height above average terrain 1070 feet.
Hours of operation - Unlimited.
 - Date of required commencement of construction January 19, 1964
 - Date of required completion of construction July 27, 1967
 - Equipment and program tests shall be conducted only pursuant to Sections 73.628 and 73.629 of the Commission Rules.
 - This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow unless completion of the station is prevented by causes not under the control of the permittee. See Section 1.598 of the Commission Rules.

1 This construction permit consists of this page and pages 2
SUBJECT TO THE ATTACHED CONDITIONS
Dated: January 27, 1967



JAN 6 1967

FEDERAL COMMUNICATIONS COMMISSION
Bon F. Wylie
Secretary

F.C.C. - Washington, D. C.

ITEM 11(g)(2)(a)
(Pittsburgh)

FCC Form 701 December 1963	Form Approved Budget Bureau No. 52-R070.12 Federal Communications Commission	Applicant Should Not Use This Block File No. <u>BMPCT-6412</u>
INSTRUCTIONS		
A. This form is to be used in all cases when applying for additional time to construct a radio station. It is to be used only by holders of valid radio station construction permits.		
B. Prepare and file three copies if for any class of broadcast service; if for a nonbroadcast service prepare and file 2 copies. File with the Federal Communications Commission, Washington, D. C. 20554. (EXCEPTION: If for a fixed Public Station in Alaska prepare in triplicate and file with Engineer in Charge, Federal Communications Commission, Seattle, Washington 98104.) Sign all copies.		Name of applicant (See Instructions C) <u>D.H. Overmyer Communications Company, Inc.</u>
C. The name of the applicant must be stated exactly as it appears in the construction permit.		Post Office address (Number, street, city, state) <u>201 East 42 Street, New York N. Y. 10017</u>
D. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall, in the event he signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.		2. Identify of construction permit for which additional time is requested: File Number <u>BMPCT-6248</u> Location <u>Pittsburgh, Pa.</u> Call letters <u>WBGO-TV</u> Frequency
E. Enclose appropriate fee with application. DO NOT SUBMIT CASH. Make check or money order payable to Federal Communications Commission. (See Part 101 Rules to determine amount of fee to file with this application.)		3. Reason why construction cannot be completed within time specified in construction permit (use back of form if necessary) <u>See Exhibit A</u>
F. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS OF THIS FORM ARE FILLED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.		4. If equipment not delivered, from whom was it ordered? <u>See Exhibit A</u>
1. Have there been any changes in the information submitted in the original application for construction permit, any amendment thereto, or modification thereof since filing? If the answer is "Yes" give particulars in the space below: <u>See Form 301, tendered herewith</u>		When was equipment ordered? <u>Ex. A</u> What was promised date of delivery? <u>Ex. A</u>
		5. Has equipment been delivered? <u>Yes</u> No <u>See</u> Ex. <u>A</u> When was installation commenced?
		What is the extent of installation (use back of form if necessary)? <u>See Ex. A</u>
		6. By what estimated date can construction be completed? <u>May 10, 1967</u>
CERTIFICATION		
I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.		
Signed and dated this <u>23</u> day of <u>November</u> , 19 <u>66</u> .		
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.		D.H. Overmyer Communications Company, Inc. Merle H. Tom, Ass't. Sec'y. (designate appropriate classification below) Signed by <u>Merle H. Tom</u> Title <u>Merle H. Tom, Ass't. Sec'y.</u> <input type="checkbox"/> Individual Applicant <input type="checkbox"/> Member of Partnership <input checked="" type="checkbox"/> Officer of Applicant Corporation or Association <input type="checkbox"/> Official of Applicant Government Entity
F.C.C. - WASHINGTON, D. C.		

WECO-TV

EXHIBIT A, NOVEMBER 1966

As heretofore explained to the Commission: Applicant had a great deal of difficulty in securing a suitable site for the proposed antenna; such a site was finally obtained, and an application for approval thereof and of associated engineering proposals was filed (BMPCT-6248); such application was granted on June 7, 1966.

Applicant thereupon proceeded with construction, and as a part of this work, had soil tests made. The preliminary results were unfavorable and indicated that the site might not be suitable because of subsurface conditions. Further borings were ordered, and reports by Woodward-Clyde-Sherard & Associates, engineering consultants, in August and September showed that beneath the surface of the tower and/or proposed guy anchors, there were abandoned coal mine passages, which made the erection of a safe and stable tower entirely impractical, except at prohibitive cost.

As soon as these conditions at the above site were disclosed in August, Applicant began an intensive survey for an alternate site. It found the present proposed (Pannier) site formerly used by WENS-TV, when it was on the air. Soil tests were ordered at an early stage, and the above firm of consultants rendered a favorable report in October. The preparation of the necessary application to change sites was then ordered and it has either been filed or is being filed simultaneously herewith.

As heretofore explained, the Applicant has made most of the preparations and done most of the work necessary to get on the air, subject only to approval of the site and the necessary construction and installation incident thereto. Most of the equipment is already on hand in a warehouse in Pittsburgh. The tower is ready for shipment from North Wales, Pennsylvania. The antenna is scheduled for delivery on December 14. (The prefabricated transmitter building, which had been delivered to the former site, has been transferred for use in the Atlanta station of the associate D. H. Overmyer Company.)

FAA approval of the new site has been sought. Every effort is being made to get the construction completed and the station on the air before April, 1967, when an associate D. H. Overmyer Company proposes to commence network operations.

Form BC-106
January 1961

FEDERAL COMMUNICATIONS COMMISSION

CLASS OF STATION COMMERCIAL TELEVISION

Ext.

The following application is submitted for action by the Chief, Broadcast Bureau

FILE NO.	APPLICANT & LOCATION	CALL LETTERS	NATURE OF APPLICATION
BMPCT-6412	D.H.Overmyer Communica-	WECO-TV	Mod. of CP (BMPCT-1384, as mod., which auth. a new station) to extend completion date from 12-7-66 to 5-10-67.
SH-553	tions Company Pittsburgh, Pennsylvania		

\$30.00 Fee Paid

Quantin Horton
CHIEF, LICENSE DIVISION

ob 12-2-66
Recommendation: Grant (✓) Construction dates, Start _____ End 9-7-67

*Consistent with
BMPCT-6412*

GRANTED

MAR 7 1967

3-7-67

Approved

Samuel C. Bradley
For Chief, Broadcast Bureau

F. C. C. - WASHINGTON, D. C.

ITEM 11(g) (2) (d)

FCC Form 351-B
June 964

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
Modified as of March 7, 1967

BMPCT-6412
File No. BMPCT-6442
Call Letters WBCO-TV

TELEVISION BROADCAST STATION CONSTRUCTION PERMIT

Subject to the provisions of the Communications Act of 1934, subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this permit, authority is hereby granted to

D. H. OVERMYER COMMUNICATIONS COMPANY, INC.
to construct a television broadcast station located and described as follows:

- Station location: State Pennsylvania City Pittsburgh
- Transmitter location: State Pennsylvania County Allegheny
City or Town Pittsburgh
Street and number Troy Hill Road
North Latitude: Degrees 40 Minutes 29 Seconds 43
West Longitude: Degrees 80 Minutes 00 Seconds 18
- Main studio location: State Pennsylvania County Allegheny
City or Town Pittsburgh
Street and number To Be Determined
- Transmitter: Visual Aural
Make and type GE TT-57A GE TT-57A
Rated power 14.77 dbk (30 kw) peak. 8.45 dbk (7 kw).
- Antenna: GE TY-97A, 6-section, Zig-Zag, modified for 0.6 degrees electrical
Make and type beam tilt with maximum lobe visual power of 30 dbk (1000 kw).
Horizontal field pattern OMNIDIRECTIONAL
Antenna supporting structure 658.4-foot guyed tower
Overall height above ground 736.4 feet (including obstruction lighting)
Overall height above mean sea level 2049 feet (including obstruction lighting)
Obstruction marking specifications in accordance with paragraphs 1, 2, 3, 14, 21 and 22 of FCC Form 715 attached.

6. Operating assignment:
Frequency 704 710 Mc/cycles. (Channel No. 53)
Visual Aural
Carrier frequency 705.26 Mc. 709.76 Mc.
Effective radiated power 26.4 dbk (436 kw) peak. 19.4 dbk (87.1 kw).
Transmitter output power 14.4 dbk (27.8 kw) peak. 7.8 dbk (6.1 kw).
Antenna height above average terrain 1010 feet.
Hours of operation - Unlimited.

7. Date of required commencement of construction September 1, 1967

8. Date of required completion of construction September 7, 1967

9. Equipment and program tests shall be conducted only pursuant to sections 73.62b and 73.629 of the Commission Rules.

10. This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow unless completion of the station is prevented by causes not under the control of the permittee. See section 1.598 of the Commission Rules.

1/ This construction permit consists of this page and pages 2
SUBJECT TO THE CONDITIONS ON PAGE 2

Date: March 7, 1967

FEDERAL COMMUNICATIONS COMMISSION

F.C.C. - Washington, D. C.

Ben F. Hughes
Secretary

mht

MAR 9 1967

ITEM 11(g) (3) (a)

(Cincinnati)

FCC Form 701 December 1963 Form Approved Budget Bureau No. 52-R070-12 Federal Communications Commission APPLICATION FOR ADDITIONAL TIME TO CONSTRUCT RADIO STATION INSTRUCTIONS A. This form is to be used in all cases when applying for additional time to construct a radio station. It is to be used only by holders of valid radio station construction permits. B. Prepare and file three copies if for any class of broadcast service; if for a non-broadcast service prepare and file 2 copies. File with the Federal Communications Commission, Washington, D. C. 20554 (EXCEPTION: If for a fixed Public Station in Alaska prepare in triplicate and file with Engineer in Charge, Federal Communications Commission, Seattle, Washington 98104.) Sign all copies. C. The name of the applicant must appear as it appears in the construction permit. D. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners if the applicant is a partnership; by an officer if the applicant is a corporation; by a member who is an officer if the applicant is an unincorporated association; by such other elected or appointed officials as may be competent to sign after the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or the absence from the United States. The attorney shall, in the event he signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true. E. Enclose appropriate fee with application. DO NOT SUBMIT CASH. Make check or money order payable to Federal Communications Commission. (See Part 1 of Rules to determine amount of fee to file with this application.) F. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION. G. Have there been any changes in the information submitted in the original application for construction permit, any amendment thereto, or modification thereof since filing? If the answer is "Yes" give particulars in the space below: SEE ATTACHED	Applicant Should Not Use This Block File No. <u>BMPCT-6442</u> FEE: \$ <u>30.00</u> <u>345901 MAR3067</u> FCC-WASHINGTON, D. C.
	Name of applicant (See Instruction C) <u>D. H. OVERMYER BROADCASTING COMPANY, INC.</u> Post Office address (Number, street, city, state) <u>201 EAST 42ND STREET</u> <u>NEW YORK, NEW YORK 10017</u>
3. Reason why construction cannot be completed within time specified in construction permit (use back of form if necessary) ATTACHED	4. If equipment not delivered, from whom was it ordered? ATTACHED
5. Has equipment been delivered? What was promised date of delivery? Yes <input type="checkbox"/> No <input type="checkbox"/> ATTACHED 6. By what estimated date can construction be completed? <u>30 SEPTEMBER 1967</u>	3. Has equipment been delivered? What was installation commenced? Yes <input type="checkbox"/> No <input type="checkbox"/> ATTACHED What is the extent of installation (use back of form if necessary)? ATTACHED
CERTIFICATION I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. Signed and dated this <u>29TH</u> day of <u>MARCH</u> , 19 <u>67</u> .	D.H. OVERMYER BROADCASTING COMPANY, INC. (Name of applicant - see instruction C) Signed by <u>Arthur M. Dorfner</u> ARTHUR M. DORFNER Title <u>EXECUTIVE VICE PRESIDENT</u> (designate appropriate classification below) <input type="checkbox"/> Individual Applicant <input type="checkbox"/> Member of Partnership <input checked="" type="checkbox"/> Officer of Applicant Corporation or Association <input type="checkbox"/> Official of Applicant Government Entity
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.	F.C.C. - WASHINGTON, D. C.

ITEM 11(g) (3) (b)

WSCO-TV, NEWPORT, KY.

ATTACHMENT

Progress toward commencement of operations has continued. At the present date tower construction on the transmitter site is more than 50% complete, with an anticipated delivery date of the antenna within the immediate future from the General Electric Company. It is expected that the transmission facilities will be completed during the coming month. The transmitter is in the building ready for connection.

As was indicated in our last filing of October 1966, the essential studio equipment has been delivered and is in storage in the area. Locating suitable studio and office quarters continued to be a source of delay, but a satisfactory site located in a new building complex called Queensgate Service and Distribution Center has now been located. Completion of the new buildings is underway and applicant is prepared to occupy a portion immediately for office and storage space, while the remainder of the studio and office section is being completed.

An Officer-General Manager and a Chief Engineer have been in the area for many months actively developing the facilities. The General Manager and his wife have become active in community affairs. Meetings with community leaders have been conducted. Arrangements for telecasting high school sports have been developing and are awaiting establishment of the station's air date before being finalized.

Applicant has found the need for outside funds and has just concluded arrangements which will result in additional financial resources being made available. An appropriate application will be filed.

ITEM 11(g) (3) (c)

FEDERAL COMMUNICATIONS COMMISSION

Class of station: Comm. TV.

The following application is submitted for action by the Chief, Broadcast Bureau:

File No.: BMPCT-6523 CH-19.

Applicant & location: D. H. Overmyer Broadcasting Company, Inc., Newport, Kentucky.

Call letters: WSCO-TV.

Nature of application: Modification of CP (BPCT-2221, as mod., which authorized a new station) to extend completion date from 4-1-67 to 9-30-67.

\$30.00 fee paid.

QUENTIN S. PROCTOR,
Chief, License Division.

Recommendation: Grant.
Construction dates, End 6-6-68.
Granted: December 8, 1967.
Approved: 12-22-67.

SAMUEL L. SAADY,
(For Chief, Broadcast Bureau).

ITEM 11(g) (3) (d)

FEDERAL COMMUNICATIONS COMMISSION—MODIFICATION OF CONSTRUCTION PERMIT,
TELEVISION BROADCAST STATION

File No.: BMPCT-6523.
Call Letters: WSCO-TV.
Modifications No.: 1.

D. H. OVERMYER BROADCASTING CO., INC., NEW YORK, N.Y.

Permittee: D. H. Overmyer Broadcasting Company, Inc.
Station location: State Kentucky City Newport.
The Authority Contained in Authorization File No. BMPCT-6360; 6390 & 6398 dated December 8, 1966 granted to the Permittee listed above is hereby modified in part as follows: To extend completion date to June 8, 1968.

This modification of construction permit shall be attached to and be made a part of the construction permit of this station.

Except as herein expressly modified, the above-mentioned construction permit, subject to all modifications heretofore granted by the Commission, is to continue in full force and effect in accordance with the terms and conditions thereof and for the period therein specified.

Dated this 8 day of December, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,

Secretary.

KJDO-TV, ROSENBERG, TEX.

ATTACHMENT

Applicant has endeavored to maintain consistent progress towards completion of the facilities for this station's operations.

With the granting of the Commission's approval to the change in channel on January 13, 1967, engineering specifications for the construction of the antenna have been prepared by General Electric Company. Our Engineering Consultants have recommended a more efficient power connection technique which has required a revision in the General Electric proposal. Bids for tower construction are being sought. Orders for all necessary equipment are under option from RCA, General Electric, Visual Electronics and others. Deliveries can be coordinated with completion of facilities.

Applicant's affiliated companies have been concentrating on advancing the construction of both Newport, Kentucky and San Francisco stations, both of which are nearing completion.

Applicant has found the need for outside funds and has just concluded arrangements which will result in additional financial resources being made available. An appropriate application will be filed.

ITEM 11(g) (4) (a)

(Houston)

FCC Form #91 December 1963 Form Approved Budget Bureau No. 52-R070-12 Federal Communications Commission APPLICATION FOR ADDITIONAL TIME TO CONSTRUCT RADIO STATION INSTRUCTIONS A. This form is to be used in all cases when applying for additional time to construct a radio station. It is to be used only by holders of valid radio station construction permits. B. Prepare and file three copies of this form for any class of broadcast service; if for a nonbroadcast service prepare and file 2 copies. File with the Federal Communications Commission, Washington, D. C. 20534. If for a Public Station in Alaska prepare and file with Engineer in Charge, Federal Communications Commission, Seattle, Washington 98104. Sign all copies. C. The name of the applicant must be stated on the construction permit. D. This application shall be personally signed by the applicant. If the applicant is an individual, by one of the partners, if the applicant is a partnership, by an officer of the applicant's corporation, by a member who is an officer, if the applicant is an unincorporated association, by such duly selected or appointed officials as may be competent to execute the affairs of the applicant in jurisdiction, if the applicant is an individual government entity, or by the applicant's attorney-in-law or the applicant's physical disability or of his absence from the United States. The attorney shall, in the presence of the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if the application is filed on the basis of the attorney's belief only (from his knowledge), he shall separately set forth his reasons for believing that such statements are true. E. Enclose appropriate fee with application. DO NOT SUBMIT CASH. Make check or money order payable to Federal Communications Commission. (See Part I of Rules to determine amount of fee in file with this application.) F. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION. 1. Have there been any changes in the information submitted in the original application for construction permit, any amendment thereto, or modification thereof since filing? If the answer is "Yes" give particulars in the space below: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> SEE ATTACHED	Applicant Should Not Use This Block File No. <u>BMPCT-6522-30.00</u> <u>345900 MAR3067</u> FCC-WASHINGTON, D. C.								
	Name of applicant (See Instruction C) D. H. OVERMYER BROADCASTING COMPANY, INC. Post Office address (Number, street, city, state) 201 EAST 42ND STREET NEW YORK, NEW YORK 10017 2. Identity of construction permit for which additional time is requested: <table border="1"> <tr> <td>File Number</td> <td>Location</td> </tr> <tr> <td>BMPCT-6361</td> <td>ROSENBERG, TEXAS</td> </tr> <tr> <td>Call letters</td> <td>Frequency</td> </tr> <tr> <td>KJDO-TV</td> <td>656-662 MC</td> </tr> </table> 3. Reason why construction cannot be completed within time specified in construction permit (use back of form if necessary) ATTACHED	File Number	Location	BMPCT-6361	ROSENBERG, TEXAS	Call letters	Frequency	KJDO-TV	656-662 MC
File Number	Location								
BMPCT-6361	ROSENBERG, TEXAS								
Call letters	Frequency								
KJDO-TV	656-662 MC								
CERTIFICATION I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. Signed and dated this <u>29</u> TH day of <u>MARCH</u> , 19 <u>67</u> . D. H. OVERMYER BROADCASTING COMPANY, INC. (Name of applicant - see Instruction C) Signed by <u>Arthur M. Dorfner</u> ARTHUR M. DORFNER Title <u>EXECUTIVE VICE PRESIDENT</u> (designate appropriate classification below) <input type="checkbox"/> Individual Applicant <input type="checkbox"/> Member of Partnership <input type="checkbox"/> Officer of Applicant Corporation or Association <input checked="" type="checkbox"/> Official of Applicant Government Entity	WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT, U.S. CODE, TITLE 18, SECTION 1001.								

F.C.C. - WASHINGTON, D. C.

ITEM 11(g) (4) (c)

FEDERAL COMMUNICATIONS COMMISSION

Class of station: Comm. TV.
 The following application is submitted for action by the Chief, Broadcast Bureau.

File No.: BMPCT-6522 CH-45.

Applicant and location: D. H. Overmyer Broadcasting Company, Inc., Rosenberg, Texas.

Call letters: KJDO-TV.

Nature of application: Modification of CP (BPCT-3518, as mod., which authorized a new station) to extend completion date from 4-1-67 to 9-30-67.

\$30.00 fee paid.

QUENTIN S. PROCTOR,
 Chief, License Division.

Recommendation: Grant: Construction dates, _____ End 6-8-68.

Granted: Dec. 8, 1967.

Approved: 12-22-67.

SAMUEL L. SAADY,
 (For Chief, Broadcast Bureau).

UNITED STATES OF AMERICA FEDERAL COMMUNICATIONS COMMISSION—MODIFICATION OF CONSTRUCTION PERMIT, TELEVISION BROADCAST STATION

File No. BMPCT 6522.

Call Letters: KJDO-TV.

Modification No.: 1.

D. H. OVERMYER BROADCASTING Co., INC.,
New York, N.Y.

(Care Of Robert Bryan, President)

Permittee: D. H. Overmyer Broadcasting Company, Inc.

Station location: State, Texas; City, Rosenberg.

The Authority Contained in Authorization File No. Engineering Data, Docket No. 14229 dated January 13, 1967 granted to the Permittee listed above is hereby modified in part as follows: To extend completion date to June 8, 1968.

This modification of construction permit shall be attached to and be made a part of the construction permit of this station.

Except as herein expressly modified, the above-mentioned construction permit, subject to all modifications heretofore granted by the Commission, is to continue in full force and effect in accordance with the terms and conditions thereof and for the period therein specified.

Dated this 8th day of December, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, Secretary.

(San Francisco)

FCC Form 701 December 1963	Form Approved Budget Bureau No. 52-R070-12	Applicant Should Not Use This Block	
Federal Communications Commission APPLICATION FOR ADDITIONAL TIME TO CONSTRUCT RADIO STATION		File No. <u>BMPCT-6522</u>	FEE'S <u>20.00</u>
INSTRUCTIONS		350156 APR 20 67	
A. This form is to be used in all cases when applying for additional time to construct a radio station. It is to be used only by holders of valid radio station construction permits.		FCC-WASHINGTON, D.C.	
B. Prepare and file three copies if for any class of broadcast service; if for a non-broadcast service prepare and file 2 copies. File with the Federal Communications Commission, Washington, D. C. 20554 (EXCEPTION: If for a fixed Public Station in Alaska prepare in triplicate and file with Engineer in Charge, Federal Communications Commission, Seattle, Washington 98104.) Sign all copies.		Name of applicant (See instruction C) D. H. Overmyer Communications Co., Inc.	
C. The name of the applicant must be stated exactly as it appears in the construction permit.		Post Office address (Number, street, city, state) 201 East 42nd Street New York, New York 10017	
D. This application shall be personally signed by the applicant if the applicant is an individual; by each partner, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by each duly elected or appointed official as may be competent to do so on behalf of the applicable jurisdiction, if the applicant is a state or local government entity; or by the applicant's attorney, in case of the applicant's physical disability or other absence from the United States. The attorney shall, in the event he signs for the applicant, separately set forth the reasons why the application is not signed by the applicant. In addition, if any person, stated on the basis of the attorney's belief (to the best of his knowledge), he shall separately set forth his reasons for believing that such statements are true.		2. Identify of construction permit for which additional time is requested: File Number BMPCT-6487 Location San Francisco, California Call letters KEMO-TV Frequency 506-512 MHz	
E. Enclose appropriate fee with application. DO NOT SUBMIT CASH. Make check or money order payable to Federal Communications Commission. (See Part 1 of Rules to determine amount of fee to file with this application.)		3. Reason why construction cannot be completed within time specified in construction permit (use back of form if necessary) See Attached	
F. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.		4. If equipment not delivered, from whom was it ordered? See Attached	
G. Have there been any changes in the information submitted in the original application for construction permit, any amendment thereto, or modification thereof since filing? If the answer is "Yes" give particulars in the space below: See Attached		When was equipment ordered? <input type="checkbox"/> See Attached When was promised date of delivery? See Attached	
		5. Has equipment been delivered? Yes <input type="checkbox"/> No <input type="checkbox"/> See Attached When was installation commenced? See Attached	
		What is the extent of installation (use back of form if necessary)? See Attached	
		6. By what estimated date can construction be completed? November 20, 1967	
CERTIFICATION			
I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.			
Signed and dated this <u>19</u> day of <u>April</u> , 19 <u>67</u> .			
		D. H. Overmyer Communications Co., Inc. (Name of applicant - see instruction C)	
		Signed by <u>Arthur M. Dorfner</u>	
		Title <u>Arthur M. Dorfner, Executive V.P.</u> (designate appropriate classification below)	
		<input type="checkbox"/> Individual Applicant <input type="checkbox"/> Member of Partnership	
		<input type="checkbox"/> Officer of Applicant Corporation or Association	
		<input type="checkbox"/> Official of Applicant Government Entity	

D. H. OVERMYER COMMUNICATIONS CO., INC. (SAN FRANCISCO)

ATTACHMENT TO 701 FORM DATED APRIL 19, 1967

Applicant has virtually completed construction of the station. The transmission facility at the antenna farm—San Bruno Mountain is under lease as of March 1967 and completed to extent of constructed transmitter building and fabricated tower awaiting erection in coordination with the delivery of the antenna. The antenna construction has been completed by General Electric and is ready for shipment to San Francisco from their Syracuse, New York plant. The transmitter is in its building and applicant is presently preparing arrangements for completing its wiring installation.

Structural construction of the internal improvements to the studio—station building at 2500 Marin Street, San Francisco, will be finished in the next few weeks. The basic studio equipment has been ordered with most items, studio cameras, master control equipment, having been delivered and in storage. Additional time is required to install this equipment and prepare it for operational use.

As has been indicated in our previous filings with the Commission, the studio location was revised to a more desirable site since our application of September 27, 1966 which consumed a time delay in making preparation for the construction which has now been undertaken.

An officer—general manager and a chief engineer have been actively developing these facilities to their present state of readiness and simultaneously engaging in the affairs of the community's activities to generate the interests of the local programming efforts planned for the station. Plans have been laid for local programming involving community and professional leaders and acceptance has been considered good.

Applicant has found the need for outside funds and has just concluded arrangements which will result in additional financial resources being made available. An appropriate application will be filed.

Application is pending for modification of STL equipment.

ITEM 11(g) (5) (c)

FCC Form 351-B
June 1964UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSIONFile No. PERM-6533
Call Letters KSUT-TV

TELEVISION BROADCAST STATION CONSTRUCTION PERMIT

Modified as of December 8, 1967

subject to the provisions of the Communications Act of 1934, subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this permit, 1 authority is hereby granted to

D. H. OVERMYER COMMUNICATIONS CO., INC.

- to construct a television broadcast station located and described as follows:
- Station location: State CALIFORNIA city SAN FRANCISCO
 - Transmitter location: state California county San Mateo
city or town Bayshore-Brisbane Division
Street and number Antenna Farm, San Bruno Mountain
 - Main studio location: state California county San Francisco
city or town San Francisco
Street and number 2500 Marin Street
 - Transmitter: Visual Aural
Make and type GE TT-59A GE TT-59A
Rated power 16.99 dbk(50 kw) peak. 10.61 dbk(11.5 kw).
 - Antenna: See page 2
Make and Type
Horizontal field pattern DIRECTIONAL, with maximum horizontal visual effective radiated power of 31.4 dbk (1380kw) at 15 and 135 degrees true.
Antenna supporting structure 152-foot self-supporting tower
Overall height above ground 234.5 feet (including obstruction lighting)
Overall height above mean sea level 1484.5 feet (including obstruction lighting)
Obstruction marking specifications in accordance with paragraphs 1, 3, 11, 21 & 22 of FCC Form 715 attached.
 - Operating assignment:
Frequency 506 512 Megacycles. (Channel No. 20)
Carrier frequency 507.24 Mc. 511.74 Mc.
Effective radiated power 27.5 dbk(562 kw) peak (DA) 20.5 dbk(112 kw) (DA)
Transmitter output power 17 dbk(50 kw) peak. 10.4 dbk(11 kw).
Antenna height above average terrain 1250 feet.
Hours of operation - Unlimited.
 - Date of required commencement of construction May 11, 1968
 - Date of required completion of construction June 8, 1968
 - Equipment and program tests shall be conducted only pursuant to Sections 73.628 and 73.629 of the Commission Rules.
 - This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow unless completion of the station is prevented by causes not under the control of the permittee. See Section 1.598 of the Commission Rules.

1 This construction permit consists of this page and pages 2

Dated: December 8, 1967

FEDERAL COMMUNICATIONS COMMISSION

VSA
JAN 5 1968

F.C.C. - Washington, D. C.

Secretary

STOCK PURCHASE AGREEMENT

Agreement made this 28th day of March, 1967, and between A.V.C. Corporation, a Delaware corporation ("AVC") having its principal office in Wilmington, Delaware, and D. H. Overmyer, a resident of New York City, New York ("Overmyer");

Witnesseth: Whereas, Overmyer owns all of the outstanding capital stock of the following Texas, Georgia, Ohio and Pennsylvania companies and Eighty per cent (80%) of the outstanding capital stock of the following California company (collectively called the "TV Companies");

D. H. Overmyer Broadcasting Company, Inc., a Texas corporation holding a construction permit (BMPCT) for construction and operation of Television Station KJDO-TV in Rosenberg, Texas, issued by the Federal Communications Commission (called "FCC"); (the "Texas Company");

D. H. Overmyer Communications Company Inc., a Georgia corporation holding a construction permit (BMPCT 6223) for construction and operation of Television Station WBMO-TV in Atlanta, Georgia, issued by the FCC; (the "Georgia Company");

D. H. Overmyer Broadcasting Company, Inc., an Ohio corporation holding a construction permit (BMPCT 6390) for construction and operation of Television Station WSCO-TV in Newport, Kentucky; issued by the FCC; (the "Ohio Company");

D. H. Overmyer Communications Company, Inc., a Pennsylvania corporation holding a construction permit (BMPCT 6412) for construction and operation of Television Station WECO-TV in Pittsburgh, Pennsylvania, issued by the FCC; (the "Pennsylvania Company");

D. H. Overmyer Communications Co., Inc., a California corporation holding a construction permit (BMPCT 6487) for construction and operation of Television Station KEMO-TV in San Francisco, California, issued by the FCC; (the "California Company");

Whereas, AVC desires to acquire Eighty per cent (80%) of the outstanding capital stock of the TV Companies and Overmyer is willing to sell said stock to AVC pursuant to the terms and conditions hereinafter set forth.

Now Therefore, in consideration of the covenants and agreements herein contained and intending to be legally bound, the parties hereto agree as follows:

I. SALE OF PURCHASED STOCK

A. Overmyer hereby agrees to sell to AVC and AVC agrees to purchase from Overmyer Eighty per cent (80%) of the outstanding capital stock of each of the five TV companies (the "Purchased Stock") for a total consideration equal to Eighty per cent (80%) of the cost and expenses of Overmyer attributable to the acquisition and development of the TV Companies and Stations as of the date of this Agreement, such consideration not to exceed however, One Million Dollars (\$1,000,000), or such lesser amount as shall be specified as the maximum purchase price for the Purchased Stock by the FCC as a condition to its approval of the said transfer as provided for hereinafter in Paragraph III.

B. Contemporaneously with the execution and delivery of this Agreement, AVC has paid to Overmyer the sum of One Million Dollars (\$1,000,000), representing a down payment on account of the purchase price provided for in the foregoing Paragraph I A, the receipt of which is hereby acknowledged by Overmyer; and, concurrently with the execution and delivery of this Agreement, AVC, Overmyer and Girard Trust Bank (Girard) have executed and delivered an Escrow and Pledge Agreement, under which Overmyer has pledged to AVC as security for any refund of such down payment in whole or in part as hereinafter provided and as security for any loans which may be made by AVC to Overmyer or its subsidiaries all of the outstanding capital stock of the TV Companies owned by Overmyer and an assignment from the California Company of its irrevocable option to purchase Twenty percent (20%) of its outstanding capital stock from the present owner, Sherrill C. Corwin.

II. CLOSING

A. The Closing referred to herein shall be held at the office of D. H. Overmyer Co., Inc. at 201 East 42nd Street, New York City, New York, upon twenty (20) days written notice by AVC given within thirty (30) days following the issuance by the FCC of its approval of the transfer of control of the TV Companies to AVC pursuant to this Stock Purchase Agreement.

B. At the Closing and upon payment by AVC of the consideration provided for in Paragraph I A, Overmyer will give the notice as required under the Escrow and Pledge Agreement to deliver to AVC certificates for Eighty per cent (80%) of the outstanding capital stock of each of the TV Companies, duly endorsed in blank for transfer with all required transfer tax stamps attached, free of all liens, encumbrances and charges of every nature, except the rights of certain banks as pledgees of the outstanding capital stock of the California Company and the Georgia Company.

C. At the Closing AVC shall pay to Overmyer the balance, if any, of the purchase price payable pursuant to Paragraph I A hereof; or if said purchase price is less than One Million Dollars (\$1,000,000) Overmyer shall refund to AVC the amount of that differential. Any payments required to be made hereunder shall be made by certified or cashier's check.

III. FCC CONSENT

A. Overmyer and AVC shall proceed as expeditiously as practicable following execution of this Stock Purchase Agreement to file with the FCC all requisite applications and other instruments requesting the FCC's written approval of the transfer of control of the TV Companies from Overmyer to AVC and they will take all other steps that may be necessary or proper to the expeditious, diligent prosecution of such application or applications to a favorable conclusion.

B. If the FCC approval of the transfer of the control of the TV Companies to AVC is not received within six (6) months following the filing of the application or applications provided for in Paragraph III A above, either AVC or Overmyer may at any time thereafter elect to terminate this Agreement by giving thirty (30) days' written notice to the other. In the event such notice is given by AVC, Overmyer will be obligated to refund to AVC within ninety (90) days after the receipt of such notice the down payment made by AVC pursuant to Paragraph I B hereof, but the termination of this Agreement will be effective as of the date set forth in the notice given by AVC. If such notice is given by Overmyer, the termination of this Agreement will not be effective unless and until the refund of said down payment has been made and all loans made pursuant to the Loan Agreement between AVC and certain affiliates of Overmyer executed this date (the "Loan Agreement") shall have been repaid. Anything in this Paragraph B to the contrary notwithstanding, should the FCC approval of the transfer of the control of the TV Companies to AVC be received prior to the effective date of the termination of this Agreement at the election of either party, such termination shall not be effective and this Agreement shall continue in full force and effect.

C. Between the date hereof and the closing, AVC shall not directly or indirectly control, supervise or direct or attempt to control, supervise or direct the operation of the TV Companies but such operation, including complete control and supervision of all programs shall be the sole responsibility of the TV Companies and Overmyer. AVC shall, however, be entitled to reasonable inspection of the premises and the assets here involved and to notice of any unusual construction or operating problems or developments so that a non-interrupted and efficient transfer of ownership may be accomplished.

IV. REPRESENTATIONS AND WARRANTIES

Overmyer represents and warrants as follows:

1. The TV Companies are corporations duly organized, validly existing and in good standing under the laws of their respective States of incorporation; each is engaged in the television broadcasting business or is constructing neces-

sary facilities in preparation for doing so; each is duly authorized under all applicable provisions of law to carry on its business as presently conducted or as it proposes to conduct it upon completion of necessary facilities; and each is qualified under the laws of all States where their activities are such as to require qualification.

2. The outstanding capital stock of the TV Companies consists only of Common Stock in the following amounts:

	Authorized shares	Issued and outstanding shares
California company.....	5,000	5,000
Texas company.....	10,000	100
Georgia company.....	500	10
Ohio company.....	500	5
Pennsylvania company.....	500	10

All of said shares of Common Stock of the TV Companies have been duly and validly issued and are fully paid and nonassessable.

3. He has good, valid and unencumbered title to the Purchased stock and said stock is or as of the Closing will be, free and clear of all liens and encumbrances and charges of every nature except the rights of certain banks as pledges in the outstanding capital stock of the California Company and the Georgia Company created as security for loans to said Companies of working capital which have been used in the TV Companies.

4. The TV Companies have good and valid title to their assets, free and clear of all liens and encumbrances, and claims of others, except the existing mortgage on land of the Ohio Company on which the principal balance as of February 28, 1967 was Sixty Thousand Dollars (\$60,000) and all of said assets are in reasonable repair and satisfactory operating condition.

5. On the date hereof, the TV Companies hold the following construction permits, licenses and broadcast authorizations, all of which are in full force and effect:

	Construction No.	Expiration date
California company.....	BMPCT 6487	May 20, 1967
Texas company.....	BMPCT 6263	Apr. 1, 1967
Georgia company.....	BMPCT 6223	July 27, 1967
Ohio company.....	BMPCT 6390	Apr. 1, 1967
Pennsylvania company.....	BMPCT 6412	Sept. 7, 1967

SAMPLE

6. The TV Companies have delivered to AVC copies of their unaudited balance sheets as of February 28, 1967. Said balance sheets (including in each case any explanatory notes therein mentioned and attached thereto) are correct and complete and fairly present the financial condition of the TV Companies as at the dates of said balance sheets and there has been no material change in the financial condition of the TV Companies since the date of the balance sheets so furnished other than changes in the ordinary course of business, none of which have been materially adverse changes. The foregoing balance sheets have been prepared in accordance with sound accounting practice consistently maintained by the TV Companies. The TV Companies have filed all required tax returns and paid all applicable Federal, State and local taxes, other than taxes not yet due or which may hereafter be paid without penalty, and Overmyer has no knowledge of any deficiency or additional assessment in connection therewith not provided for on the books of the TV Companies.

7. The TV Companies possess all necessary patents, trademarks, trademark rights, trade names, trade name rights, copyrights and licenses to enable them to conduct their business as now operated without conflict with the valid patents, trademarks, trade names, copyrights or licenses of others.

8. There are no actions, suits or proceedings, either at law or in equity, or before any commission or any other administrative authority, pending, or, to the knowledge of Overmyer, threatened against or involving the TV Companies, and involving the possibility of any judgment or liability, not covered by insur-

ance, which could have a material adverse effect on the financial or other conditions of the TV Companies or their right to carry on their businesses as now conducted.

9. None of the TV Companies are parties to any contract or agreement, or subject to any charter or other corporate restriction (including, but without limitation, any agreement among stockholders) which materially and adversely affects their business, assets or condition, financial or otherwise, except for executory contracts set forth in Schedule "A" attached hereto.

10. None of the TV Companies are parties to any contracts for participation of officers or employees in profits or other contracts of employment based on profits other than contracts that are terminable at will by either party.

11. The making of this Agreement, the consummation of transaction herein contemplated, the fulfillment of the terms hereof and compliance with the provisions of this Agreement will not violate any provision of law and will not conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the TV Companies or of Overmyer pursuant to the terms of any other agreement or instrument to which Overmyer or the TV Companies are parties and none of the TV Companies is in default under the terms and conditions of any such agreement or instrument.

V. CONDUCT PENDING CLOSING

A. Negative Covenants as to Future Operations

Overmyer warrants and agrees that between the date hereof and the Closing none of the TV Companies will:

(1) Make any changes in their Certificates of Incorporation.
 (2) Declare or pay any dividends or make any distribution in respect of their stock, or purchase, redeem or otherwise acquire or retires for value any shares of their stock, or issue any additional shares of their capital stock.

(3) Enter into any contract or commitment or incur any expenses or indebtedness except in the ordinary and usual course of business, provided, however, that in the event the TV Companies spend or incur any expenses or indebtedness in excess of Fifty Thousand Dollars (\$50,000) per month in the aggregate (which amount Overmyer warrants to be adequate), the amount of such excess shall be deducted from the consideration payable by AVC, or added to the amount refundable by Overmyer, at the Closing, and provided further that there shall be no reimbursement to Overmyer or any corporation controlled by him for any goods or services furnished or rendered by it other than rentals under licenses existing at the time of this Agreement.

(4) Make any changes affecting the wages, salaries or other compensation payments (other than in the normal and usual course of business or as required by union contracts) or make any changes affecting the directors, officers, or banking arrangements.

(5) Create, assume, or permit to exist any mortgage, pledge or other lien or encumbrance upon any of their assets or properties whether now owned or hereafter acquired, except the mortgage referred to in Paragraph IV 4 thereof.

(6) Sell, assign, lease or otherwise transfer or dispose of any of their assets or properties whether now owned or hereafter acquired.

(7) Enter into any agreement for merger or consolidation into or with any other Company or corporation; or

(8) Conduct their business other than in the ordinary and usual course.

(9) Borrow any funds from banks other than the balance, not exceeding Three Hundred and Fifty Thousand Dollars (\$350,000) remaining under existing loan agreements with Girard Trust Bank, Pacific National Bank and Barclay Bank, which may be borrowed to the extent required for the operation of the TV Companies under the limitations of Paragraph V A (3) above.

B. Affirmative Covenants as to Future Operations

Pending the Closing, Overmyer will:

(1) Give to AVC and its representatives full access during normal business hours to all of the properties, books, and records of the TV Companies and furnish AVC with all such information concerning the operations of the TV Companies as AVC may reasonably request;

(2) Furnish to AVC unaudited balance sheets and profit and loss and surplus statements of the TV Companies, and any other information concerning their financial condition which AVC may reasonably request;

(3) Use his best efforts to preserve the business organization of the TV Companies intact, to keep available to AVC the services of the present employees; and

(4) Comply with and require the TV Companies to comply with all applicable laws including, but not limited to, the Communications Act of 1934 and the Rules and Regulations of the FCC.

(5) Take whatever steps may be required to eliminate all indebtedness due and payable from the TV Companies to Overmyer, D. H. Overmyer Co., Inc. (Overmyer Inc.) or any other corporation or entity affiliated with Overmyer or Overmyer Inc., (except indebtedness for moneys loaned between the date of this Agreement and the Closing not in excess of One Hundred Twenty-five Thousand Dollars (\$125,000) and in addition pay off or otherwise satisfy any Receivables of the TV Companies due from Overmyer, Overmyer Inc. or their affiliates as aforesaid.

(6) Contribute to the TV Companies or cause Overmyer Inc., or D. H. Overmyer Leasing Co., Inc. or his or their affiliates to contribute to the TV Companies (i) land (not shown on the February 28, 1967 balance sheet of the TV Companies) free and clear of liens and encumbrances purchased by D. H. Overmyer Leasing Co., Inc. for a consideration of approximately Sixty Thousand Dollars (\$60,000) for use by the Ohio Company; (ii) facilities and equipment required for the use of the TV Companies but not on their books as of this date, having a total value based upon actual cost paid to date of at least Three Hundred Thousand Dollars (\$300,000) provided the TV Companies assume any unpaid purchase price obligations outstanding on facilities and equipment so transferred; and (iii) rights of Overmyer, Overmyer Leasing Company, Overmyer, Inc., or any affiliate under all executory contracts for the purchase, construction or lease of any property intended for use by the TV Companies, provided that said rights are assignable and that the TV Companies agree to assume such contracts and save the assignor harmless with respect thereto.

(7) Sell to the TV Companies, or cause Overmyer Inc. or D. H. Overmyer Leasing Co., Inc., or his or their affiliates to sell to the TV Companies, for a price equal to the cost to such seller or sellers, all property which the TV Companies elect to purchase which was heretofore acquired by Overmyer, Overmyer Leasing Company, Overmyer Inc., or any affiliate for use by the TV Companies other than that contributed under subparagraph (6) above, including, if AVC shall so elect, any property leased to any of the TV Companies in which case the price shall be the Seller's cost less the excess of rentals paid to the date of sale over the interest on such cost which comprises a part of such rental.

(8) Take whatever steps may be required to maintain in full force and effect, and to renew when necessary or appropriate, the construction permits referred to in Paragraph IV 5, including without limitation filing applications for the extension of those expiring on April 1, 1967.

VI. OVERMYER'S INDEMNIFICATION

Overmyer agrees for a period of four (4) years from the Closing date to indemnify and hold the TV Companies and AVC harmless against and will reimburse AVC (or the TV Companies if AVC so directs) for the amount of any and all liabilities, claims, taxes, penalties and assessments to be made or levied against the TV Companies or against AVC (as purchaser of the capital stock of the TV Companies pursuant to the terms hereof) by any person, firm, corporation or governmental agency;

(a) Arising from acts, omissions or conduct of Overmyer prior to the Closing; except for (1) liabilities accepted by AVC at the Closing, (2) loans incurred in principal amounts not exceeding Five Hundred Thousand Dollars (\$500,000) with Girard Trust Bank, Five Hundred Thousand Dollars (\$500,000) with Pacific National Bank and Eighty Thousand Dollars (\$80,000) with Barclay Bank, and (3) obligations not due and payable on or before the Closing under executory contracts disclosed in Schedule A or entered into between the date hereof and the Closing in the normal and usual course of the business of the TV Companies; or

(b) Resulting from the breach of any of Overmyer's warranties contained in this Agreement.

Should any claim or liability arise after or continue after the Closing for which Overmyer is liable hereunder, AVC shall promptly notify Overmyer and give him a reasonable opportunity to take part in any examination of the

books and records of the TV Companies and the conduct of any proceedings or negotiations in connection therewith and necessary to defend the TV Companies and to take all other required steps or proceedings to settle or defeat any such claims and to employ counsel to contest any such claim or liability in the name of the TV Companies, and AVC shall give all reasonable assistance to Overmyer. The expense of all proceedings, contests or lawsuits with respect to any such claim or asserted liability shall be borne by Overmyer.

VII. AVC'S REPRESENTATIONS AND WARRANTIES

AVC represents and warrants to Overmyer that:

(a) It is a corporation duly organized and existing under the laws of the State of Delaware and in good standing as such, and that it has power and authority to enter into this Agreement and to carry out its undertakings hereunder pursuant to due and lawful corporate organization in the manner required by the laws of the State of Delaware; and the execution and delivery of this Agreement is not precluded by or in conflict with any provision of its Certificate of Incorporation or By-Laws or any Indenture, bank loan or other outstanding agreement, and the execution, delivery and consummation of this Agreement have been duly and validly authorized by its Board of Directors.

(b) AVC shall indemnify and hold Overmyer and wholly-owned and subsidiary companies harmless from any and all liabilities (including liabilities of the TV Companies under contracts which are payable after the Closing), claims, taxes, penalties, and assessments arising from actions, omissions or conduct of the TV Companies after the Closing.

VIII. CONDITIONS PRECEDENT TO CLOSING

(1) The obligations of AVC to close hereunder shall be subject to the fulfillment prior to or at the Closing or the waiver by AVC of each of the following conditions:

(a) *Commission Consent.*—The Commission shall have granted its approval to the transfer of control of all five of the TV Companies to AVC without conditions or modifications in the terms of Commission authorizations materially adverse to AVC and shall have extended the expiration dates of each of the construction permits referred to in Paragraph IV 5 so that each such date shall be at least ninety (90) days from Closing.

(a) *Performance.*—Overmyer shall have performed and complied with all agreements and conditions required to be performed or complied with by him prior to or at the Closing and all representations and warranties of Overmyer hereunder shall be true and correct as of the Closing Date.

(c) *Taxes and Expense.*—Overmyer shall have paid or have agreed to pay all transfer taxes payable in connection with the sale of his respective shares to AVC hereunder and all costs and expenses of his performance of and compliance with all conditions and agreements to be performed or complied with by him.

(d) *Resignations.*—Overmyer shall have furnished or caused to be furnished to AVC on or before the Closing, written resignations of the officers and directors of the TV Companies, expressed to be effective upon the Closing, together with releases of all claims that such officers and directors may have against the TV Companies.

(e) Overmyer shall have taken all necessary steps to satisfy the rights of Merrill C. Corwin under an Agreement between Overmyer and Corwin to sell certain of his stock in the California Company upon terms equally favorable to the terms of sale by Overmyer under this agreement and shall indemnify AVC from any liability to or claim of Corwin on account of his rights as aforesaid.

(f) *No Adverse Changes.*—There shall not have been since the date hereof any materially adverse changes in the financial condition or business of the TV Companies.

(g) *Counsel's Opinion and Officer's Certificate.*—Overmyer shall have delivered to AVC the following Opinion and Certificate, date the Closing:

(1) An Opinion of their Counsel, Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, confirming the matters set forth in Paragraph IV, 1, 2, 3, 4, 5, 7, 8 and 11.

(ii) A Certificate by Overmyer certifying to the accuracy of, as though given on the Closing date, or the absence of changes materially adverse to

AVC in, the representations and warranties contained in Paragraph IV hereof.

(2) The obligation of Overmyer to close hereunder shall be subject to fulfillment of the following condition:

(a) AVC shall have made the loans to Overmyer Inc. or its subsidiaries called for under the Loan Agreement provided that this condition shall not be applicable if the failure of AVC to make the requisite loans is due to a default by Overmyer, Overmyer Inc., or the latter's subsidiaries in the performance of any condition precedent to the making of said loans under the Loan Agreement. If this condition is applicable but AVC fails to meet it, Overmyer may refuse to close or in the event of loans due to be made prior to closing may within ten (10) days of the date of such failure terminate this Agreement by written notice to AVC; provided, however, that if Overmyer refuses to close or terminates the Agreement under this subparagraph the downpayment made by AVC under Paragraph IB and any loans made under the Loan Agreement must be repaid to AVC within ninety (90) days of the date of the failure to close or termination notice; a failure to make said repayments being a default upon the happening of which AVC can exercise all of its rights in the stock of the TV Companies pledged to it pursuant to Paragraph IB.

IX. RISK OF LOSS

The risk of any loss or damage to the property used in the operation of the TV Companies from fire, theft, strike or any other casualty, reasonable wear and tear excepted, shall be borne by Overmyer at all times prior to the Closing and adequate insurance to provide coverage for said risk shall be maintained by Overmyer throughout the period prior to Closing. In the event of such loss or damage, the proceeds of any claim for any loss payable under any insurance policy with respect thereto shall go to the individual TV Companies, which will repair, replace or restore any such property as soon as possible after its loss. If any event occurs which prevents regular television broadcast transmission in substantially the normal and usual manner, Overmyer shall give prompt written notice thereof to AVC. If Overmyer cannot restore such facilities so that operations can be resumed within fifteen (15) days or substantially complete restoration or replacement within thirty (30) days, AVC shall have the right, by giving written notice to Overmyer of its election to do so, to terminate any obligation to purchase hereunder, and upon written notice of said termination Overmyer shall repay to AVC within ninety (90) days the downpayment made by AVC under Paragraph IB hereof.

X. SURVIVAL OF WARRANTIES

The representation, warranties, covenants and agreements contained herein and any certificate or other instrument delivered pursuant to the provisions hereof, are and shall be deemed and construed to be continuing representations, warranties, covenants and agreements shall survive the delivery of the capital stock and the payment of the purchase price therefor.

XI. OVERMYER'S RIGHTS AS MINORITY STOCKHOLDER

1. In the event that any of the TV Companies shall, at a time when Overmyer continues to hold stock of such company, issue additional securities consisting of shares of its common stock or other securities convertible into its common stock, Overmyer shall have the same right to subscribe for such additional securities that he would have if the charter of such company made provision for pre-emptive rights in respect of its common stock.

2. AVC agrees that, in the event the option under the Loan Agreement shall expire unexercised, it will not thereafter sell, assign or transfer any of its shares of the capital stock of any of the TV Companies, except to a corporation of which it owns at least 50% of the outstanding voting stock, unless Overmyer is offered an opportunity to transfer all or any part of his shares in such Company, and

Overmyer shall elect, at the same price per share and upon the same terms and conditions as apply to such sale by AVC.

XII. NOTICES

All necessary notices, demands and requests required or permitted to be given under the provisions hereof shall be deemed duly given if sent by registered or certified mail, postage prepaid, or by telegram and addressed as follows:

- (a) If given to Overmyer—
- (b) If given to AVC—

D. H. Overmyer
D. H. Overmyer Co., Inc.
301 E. 42nd Street
New York, New York

A.V.C. Corporation
100 W. 10th Street
Wilmington, Delaware
Attention: President

XIII. PARTIES IN INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs and representatives. This Agreement and all rights of AVC hereunder may be assigned by AVC to another corporation (now or hereafter organized under the laws of any State of the United States); provided that, in the event of such assignment, (1) Overmyer's representations, warranties and obligations hereunder shall run to such assignee of AVC, (2) AVC shall guarantee performance of this Agreement by such assignee, and (3) performance by such Assignee of AVC's obligations hereunder (other than that referred to in the foregoing clause (2)) shall be deemed to be and shall be accepted by Overmyer as performance thereof by AVC.

XIV. ENTIRE AGREEMENT

This Agreement embodies the entire Agreement and understanding between Overmyer and AVC and there are no other agreements representations warranties, or understandings, oral or written, between them with respect to the subject matter of this Agreement.

XV. CONSTRUCTION

All agreements, documents, etc. made and entered into in connection with this Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

XVI. HEADINGS

The headings of the paragraphs of this document are for convenience of reference only, and do not form a part hereof and in no way modify, interpret or construe the meanings of the parties.

XVII. COUNTERPARTS

This Agreement may be signed in any number of counterparts with the same effect as if the signature to each counterpart were upon the same instrument.

In Witness Whereof, the parties hereto have executed this Agreement on the day and year first above written.

A.V.C. CORP.,
By F. H. REICHEL, Jr.,
President.

Attest:
[CORPORATE SEAL]

Assistant Secretary.

[SEAL]

D. H. OVERMYER.

LOAN AGREEMENT

Agreement made this 28th day of March, 1967, between A.V.C. Corporation, a Delaware corporation having offices at 100 West 10th Street, Wilmington, Delaware 19899 (hereinafter called "AVC"), of the one part, Daniel H. Overmyer, of 201 E. 42nd Street, New York, New York (hereinafter called "Overmyer"), D. H. Overmyer Co., Inc., an Ohio corporation having its principal office at 201 E. 42nd Street, New York, New York (hereinafter called the "Company"), and the wholly owned subsidiary companies of the Company listed in Exhibit "A" attached hereto (each of said subsidiary companies being hereinafter called the "Subsidiary Company" and collectively called the "Subsidiary Companies"), of the other part.

Witnesseth that: the parties hereto, in consideration of the covenants and conditions hereinafter stated, each party intending to be legally bound hereby, do mutually covenant, promise and agree as follows:

ARTICLE I

A. AVC shall have the right, at its election, subject to shareholder approval of a proposed change in its stated investment policy, to lend to the Subsidiary Companies on the date immediately following the day of the 1967 annual meeting of the shareholders of the AVC the sum of \$1,500,000 upon the terms and conditions hereinafter stated (said loan being herein called the "First Loan").

B. If AVC shall have made the First Loan, then AVC shall lend to the Subsidiary Companies on the date of the closing under the Stock Purchase Agreement (as that term is defined in Article I C hereof) the sum of \$1,500,000 (said loan being herein called the "Second loan").

C. The "Stock Purchase Agreement" as referred to in this Agreement shall mean that Agreement between AVC and Overmyer bearing even date herewith under which AVC has agreed to purchase from Overmyer, and Overmyer has agreed to sell to AVC, upon the terms and conditions therein set forth, 80% of the outstanding capital stock in the following Texas, Georgia, Ohio, Pennsylvania and California Companies (collectively called the "TV Companies"): D. H. Overmyer Broadcasting Company, Inc., a Texas corporation (hereinafter called the "Texas Company"); D. H. Overmyer Communications Company Inc., a Georgia corporation (hereinafter called the "Georgia Company"); D. H. Overmyer Broadcasting Company, Inc., an Ohio corporation (hereinafter called the "Ohio Company"); D. H. Overmyer Communications Company, Inc., a Pennsylvania corporation (hereinafter called the "Pennsylvania Company"); and D. H. Overmyer Communications Co., Inc., a California corporation (hereinafter called the "California Company").

ARTICLE II

A. In the event AVC shall elect to make the First Loan, then at the Closing of the First Loan: (1) the apportionment of the amount of the First Loan among the Subsidiary Companies shall be made by AVC as it, in its sole discretion, shall determine; (2) each Subsidiary Company to whom a portion of the First Loan shall be made shall make, issue and deliver to AVC: (i) a Note in the principal amount of the portion of the First Loan made to it, which Note shall be in the form specified in Exhibit "B" hereof; (ii) a Guaranty in the form set forth in Exhibit "C" hereof under and pursuant to which such Subsidiary Company shall guarantee the repayment of all other portions of the First Loan made to the other Subsidiary Companies, the repayment of the Second Loan made to other Subsidiary Companies and the observance and performance of the covenants and agreements contained in any Note, Mortgage, Guaranty, Assignment, Pledge Agreement (as that term is defined in this Paragraph A. (4) (ii)), or other instrument or document made pursuant to the terms of this Agreement; (iii) a Second Mortgage upon, subject to limitations stated in Paragraphs D. (3) and (4) of this Article II, the real property owned by such Subsidiary Company upon which AVC desires the lien of such Second Mortgage, securing the Note and Guaranty referred to in clauses (i) and (ii) of this Paragraph A. (2) in such form as is reasonably satisfactory to AVC and consistent with the requirements of the jurisdictions in which such real property is situated; and (iv) an Assignment of all rents, issues and profits with respect to the real property referred to in clause (iii) of this

Paragraph A. (2) securing the Note and Guaranty referred to in clauses (i) and (ii) of this Paragraph A. (2), subject to any prior conditional assignment rights of the first mortgagee therein, in form reasonably satisfactory to AVC but providing that the same shall not become effective until a default shall have occurred under this Agreement; (3) the Company shall make, issue and deliver to AVC a Guaranty in the form set forth in Exhibit "D" hereof under and pursuant to which the Company shall guarantee the repayment of the First Loan, the Second Loan and the observance and performance of the covenants and agreements contained in any Note, Mortgage, Guaranty, Assignment, Pledge Agreement or other instrument or document made pursuant to the terms of this Agreement; (4) Overmyer shall make, issue and deliver to AVC: (i) a Guaranty in the form set forth in Exhibit "E" hereof under and pursuant to which Overmyer shall guarantee the repayment of the First Loan, the Second Loan and the observance and performance of the covenants and agreements contained in any Note, Mortgage, Guaranty, Assignment, Pledge Agreement made pursuant to the terms of this Agreement; and (ii) the Stock Pledge and Escrow Agreement (in this Agreement called the "Pledge Agreement") which is to be executed and delivered by Overmyer, AVC and Girard Trust Company at the time of the execution and delivery hereof as collateral security, inter alia, for the repayment of the First Loan, the Second Loan and the observance and performance of the covenants and agreements contained in any Note, Mortgage, Guaranty, Assignment or other instrument or document made pursuant to the terms of this Agreement; and (5) then the Subsidiary Companies to whom the First Loan is to be made as designated by AVC as aforesaid agree to borrow from AVC the amounts so apportioned by AVC among them as aforesaid.

B. The Closing of the First Loan shall take place at the principal office of the Company on the date immediately following the day of the 1967 annual meeting of the shareholders of AVC, if AVC shall have elected to make such loan and its shareholders shall have approved said change in its stated investment policy as aforesaid.

C. Not later than ten (10) days prior to the Closing of the First Loan, Overmyer, the Company and the Subsidiary Companies shall deliver, or cause to be delivered, to AVC: (1) title insurance binders issued with respect to real properties of Subsidiary Companies satisfying the requirements of the provisions of Paragraph D. (3) of this Article II by reputable title insurance companies acceptable to AVC and qualified to do business in the States in which such real properties are located and to which Subsidiary Companies the First Loan is to be made; (2) appraisals made by independent appraisers satisfactory to AVC dated not earlier than April 1, 1966, stating the fair market value of each of the various real properties referred to in clause (1) of this Paragraph C, the aggregate of which values shall be not less than the sum specified in Paragraph D. (3) of this Article II; (3) letters from the holders of notes or other obligations secured by first mortgages on said respective properties of the Subsidiary Companies dated not earlier than fifteen (15) days prior to the Closing of the First Loan specifying the principal outstanding balance on said notes or obligations and whether or not said notes, obligations or first mortgages are then in default; (4) evidence reasonably satisfactory to AVC that as of a date not earlier than fifteen (15) days prior to the Closing of the First Loan the said respective properties of the Subsidiary Companies are in substantially the same physical condition as they were at the time of the respective appraisals thereof referred to in clause (2) of this Paragraph C; and (5) evidence reasonably satisfactory to AVC with respect to the amount of outstanding mechanics' and materialmen's liens encumbering said real properties.

D. In the event AVC shall elect to make the First Loan, then it shall not be obliged to do so unless the following conditions precedent to the making of such Loan shall have been fulfilled or waived by AVC at, or prior to, the time of the Closing of the First Loan: (1) the terms and conditions specified in Paragraphs A. and C. of this Article II shall have been fulfilled; (2) AVC shall have received a policy or policies of title insurance (or commitments to issue such policy or policies) issued by the title insurance companies referred to in Paragraph C. (1) of this Article II insuring the liens of the Mortgages referred to in Paragraph A. (2) (iii) of this Article II as valid liens on good and marketable titles to the real properties of the Subsidiary Companies encumbered thereby, subject only to said first mortgages, the lien of current real estate taxes not yet due or payable, inchoate or filed mechanics' and materialmen's liens, and such

other encumbrances and title objections as shall be reasonably acceptable to AVC; (3) the aggregate of all equities of the Subsidiary Companies in the real properties which are to be made subject to the liens of said Mortgages shall be not less than \$6,000,000, which equity shall be determined by subtracting the sum of: (i) the outstanding principal balance of any prior first mortgage or similar encumbrance thereon and (ii) the amount of any mechanics' or materialmen's liens multiplied by 2, from the appraised value thereof as shown on the appraisal referred to in Paragraph C.(2) of this Article II; (4) the total amount of mechanics' and materialmen's liens on any real property to be made subject to the lien of a Mortgage given pursuant to the provisions of Paragraph A.(2) (iii) of this Article II shall not exceed 20% of the result obtained by subtracting from the appraised value of such property the aggregate of: (i) the outstanding principal balance of any prior first mortgage or other similar encumbrances; and (ii) two times the amount of any inchoate or filed mechanics' or materialmen's liens thereon; (5) all representations and warranties herein made by Overmyer and the Company shall be true and correct; (6) there shall be no default by Overmyer in the observance or performance of any covenant, term or condition contained in the Stock Purchase Agreement on his part to be observed or performed; (7) AVC shall have been furnished with copies of resolutions of the Boards of Directors of the Company and the Subsidiary Companies, certified as true and correct by the respective Secretaries thereof, authorizing the execution and delivery of the Notes, Guaranties, Mortgages and Assignments referred to in Paragraph A of this Article II, in form and substance satisfactory to AVC; (8) the Company and the Subsidiary Companies shall have delivered to AVC an opinion of their counsel, Messrs. Cahill, Gordon, Reindel & Ohl, setting forth that: (i) the Company is a duly organized and validly existing corporation in good standing under the laws of the State of Ohio, and that the Subsidiary Companies are duly organized and validly existing corporations in good standing under the laws of the States of their respective incorporation; (ii) the Notes, Guaranties, Mortgages and Assignments referred to in Paragraph A of this Article II constitute legal, valid and enforceable obligations of the corporations delivering the same in accordance with their respective terms; (iii) the Company and the Subsidiary Companies have all requisite corporate power and authority to execute and deliver the Notes, Guaranties, Mortgages and Assignments referred to in Paragraph A of this Article II; and (iv) their opinion on such other matters incident to the transactions hereby contemplated as AVC may reasonably request; (9) no notes or obligations secured by first mortgages on the real properties of the Subsidiary Companies which are to be encumbered by the Mortgages to be given by such Subsidiary Companies as hereinafter provided shall be in default; (10) Overmyer shall have furnished to AVC an opinion of his counsel, Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, as to the due execution of the Pledge Agreement and stating the same is valid and enforceable in accordance with its terms; (11) the evidence referred to in Paragraphs C. (4) and (5) of this Article II shall be true and correct at the time of the Closing; (12) AVC shall have received from its counsel, Messrs. Morgan, Lewis & Bockius, an opinion with respect to the matters set forth in Paragraphs D.(8) (i) to (iv) inclusive and D.(10) of this Article II; and (13) no real property of a Subsidiary Company which is to be encumbered by a Mortgage to be given by such Subsidiary Company shall be subject to imminent sale under judicial proceedings to enforce the payment of a mechanic's or materialman's lien thereupon.

ARTICLE III

A. At the time of the Closing for the Second Loan: (1) the apportionment of the amount of the Second Loan among the Subsidiary Companies shall be made by AVC as it, in its sole discretion, shall determine; (2) each Subsidiary Company to whom a portion of the Second Loan shall be made shall make, issue and deliver to AVC: (i) a Note in the principal amount of the portion of the Second Loan made to it, which Note shall be in the form specified in Exhibit "B" hereof; (ii) a Guaranty in the form set forth in Exhibit "C" hereof under and pursuant to which such Subsidiary Company shall guarantee the repayment of all other portions of the Second Loan made to the other Subsidiary Companies, the repayment of the First Loan made to other Subsidiary Companies and the observance and performance of the covenants and agreements contained in any Note, Mortgage, Guaranty, Assignment, Pledge Agreement or other instrument or document made pursuant to the terms of this Agreement; (iii) if requested

by AVC, a Second Mortgage, subject to limitations as set forth in Paragraphs D. (3) and (4) of Article II and as hereinafter stated, upon the real property owned by such Subsidiary Company upon which AVC desires the lien of such Second Mortgage or a Supplement to any Mortgage given at the time of the Closing for the First Loan, securing the Note and Guaranty referred to in clauses (i) and (ii) of this clause (2) in such form as shall be reasonably satisfactory to AVC and consistent with the requirements of the jurisdictions in which such real property is situated; and (iv) an Assignment of all rents, issues and profits with respect to the real property referred to in the immediately preceding clause (iii) securing the Note and Guaranty referred to in this clause (2), subject to any prior conditional assignment rights of the first mortgagee therein, in form reasonably satisfactory to AVC but providing that the same shall not become effective until a default shall have occurred under this Agreement; (3) if requested by AVC, the Company shall make, issue and deliver to AVC a Guaranty in substantially similar form to that set forth in Exhibit "D" hereof under and pursuant to which the Company shall guarantee the repayment of the Second Loan as well as the observance or performance of the covenants and agreements contained in any Note, Mortgage, Guaranty, Assignment or other instrument or document made at the Closing of the Second Loan pursuant to this Agreement; and (4) if requested by AVC, Overmyer shall make, issue and deliver to AVC a Guaranty in substantially similar form to that set forth in Exhibit "E" hereof under and pursuant to which Overmyer shall guarantee the repayment of the Second Loan as well as the observance and performance of the covenants and agreements contained in any Note, Mortgage, Guaranty, Assignment or other instrument or document made at the Closing of the Second Loan pursuant to the terms of this Agreement.

B. Not later than ten (10) days prior to the date of Closing of the Second Loan, Overmyer, the Company and the Subsidiary Companies shall deliver, or cause to be delivered, to AVC: (1) title insurance binders issued with respect to real properties of Subsidiary Companies satisfying the requirements of the provisions of Paragraph D.(3) of Article II by reputable title insurance companies acceptable to AVC and qualified to do business in the States in which such real properties are located and to which Subsidiary Companies the Second Loan is to be made; (2) appraisals made by independent appraisers satisfactory to AVC dated not earlier than 45 days prior to the date of the Closing of the Second Loan, stating the fair market value of each of the various real properties referred to in Paragraph B.(1) of this Article III, the aggregate of which values shall be not less than the sum specified in Paragraph D.(3) of Article II; (3) letters from the holders of notes or other obligations secured by first mortgages on said respective properties of the Subsidiary Companies dated not earlier than fifteen (15) days prior to the Closing of the Second Loan specifying the principal outstanding balance on said notes or obligations and whether or not said notes, obligations or first mortgages are then in default; (4) evidence reasonably satisfactory to AVC that as of a date not earlier than fifteen (15) days prior to the Closing of the Second Loan the said respective properties of the Subsidiary Companies are in substantially the same physical condition as they were at the time of the respective appraisals thereof referred to in clause (2) of this Paragraph B; and (5) evidence reasonably satisfactory to AVC with respect to the amount of outstanding mechanics' and materialmen's liens encumbering said real properties.

C. AVC shall not be obliged to make the Second Loan unless the following conditions precedent to the making of such Loan shall have been fulfilled or waived by AVC at, or prior to, the time of the Closing of the Second Loan: (1) the terms and conditions specified in Paragraphs A and B of this Article III shall have been fulfilled; (2) AVC shall have received: (i) a policy or policies of title insurance (or commitments to issue such policy or policies) issued by the title insurance companies referred to in Paragraph B.(1) of this Article III insuring the liens of the Mortgages or Supplemental Mortgages referred to in Paragraph A.(2)(iii) of this Article III as valid liens on good and marketable titles to real properties of the Subsidiary Companies encumbered thereby, subject only to first mortgages, Second Mortgages given pursuant to Paragraph A.(1)(iii) of Article II, the lien of current real estate taxes not yet due or payable inchoate or filed mechanics' or materialmen's liens not to exceed in aggregate amount \$200,000 and subject to the provisions of Paragraph D.(4) of Article II, and such other encumbrances and title objections as shall be reasonably acceptable to AVC; (3) the aggregate of all equities of the Sub-

subsidiary Companies in the real properties which are to be made and are then subject to the liens of the Mortgages securing the First Loan and Second Loan shall be not less than as specified in Paragraph D.(3) of Article II; (4) all representations and warranties herein made by Overmyer and the Company shall be true and correct; (5) there shall be no default by Overmyer in the observance or performance of any covenant, term or condition contained in the Stock Purchase Agreement on his part to be observed or performed; (6) there shall be no default by Overmyer, the Company or the Subsidiary Companies under this Agreement; (7) AVC shall have been furnished with copies of resolutions of the Boards of Directors of the Company and the Subsidiary Companies, certified as true and correct by the respective Secretaries thereof, authorizing the execution and delivery of the Notes, Guaranties, Mortgages, Assignments and other instruments and documents referred to in Paragraph A of this Article III, in form and substance satisfactory to AVC; (8) the Company and the Subsidiary Companies shall have delivered to AVC an opinion of their counsel, Messrs. Cahill, Gordon, Reindel & Ohl, setting forth: (i) the Company is a duly organized and validly existing corporation in good standing under the laws of the State of Ohio and that the Subsidiary Companies are duly organized and validly existing corporations in good standing under the laws of the States of their respective incorporation; (ii) the Notes, Guaranties, Mortgages, Assignments and other instruments and documents referred to in Paragraph A of this Article III constitute legal, valid and enforceable obligations of the corporations delivering the same in accordance with their respective terms; (iii) the Company and the Subsidiary Companies have all requisite corporate power and authority to execute and deliver the Notes, Guaranties, Mortgages, Assignments and other instruments and documents referred to in Paragraph A of this Article III; and (iv) their opinion on such other matters incident to the transactions hereby contemplated as AVC may reasonably request; (9) no notes or obligations secured by first mortgages on the real properties of the Subsidiary Companies which are to be encumbered as security for the Second Loan shall be in default; (10) the evidence referred to in Paragraphs B. (4) and (5) of this Article III shall be true and correct at the time of the Closing; (11) AVC shall have received from its counsel, Messrs. Morgan, Lewis & Bockius, an opinion with respect to the matters set forth in Paragraph C.(8) (1) to (iv), inclusive, of this Article III; and (12) no real property of a Subsidiary Company which is to be encumbered by a Mortgage to be given by such Subsidiary Company shall be subject to imminent sale under judicial proceedings to enforce the payment of any mechanics' or materialmen's lien thereon.

D. The Closing of the Second Loan shall take place at the principal office of the Company.

ARTICLE IV

A. Overmyer hereby represents and warrants to AVC that: (1) the representations and warranties made by him and contained in the Stock Purchase Agreement are true and correct; (2) the Company is a duly organized and validly existing corporation in good standing under the laws of the State of Ohio, and that the Company has the power and authority, and all necessary corporate action has been taken to enable it, to enter into this Agreement and the transactions contemplated hereby; (3) the outstanding principal indebtedness as of February 28, 1967 of the California Company to Pacific National Bank of San Francisco, for which Overmyer has pledged his stock in the California Company (which stock is the subject of the Stock Purchase Agreement) is \$350,000; and (4) the outstanding principal indebtedness as of February 28, 1967 of the Georgia Company to Girard Trust Bank, for which Overmyer has pledged his stock in the Georgia Company (which stock is the subject of the Stock Purchase Agreement) is \$300,000.

B. The Company hereby represents and warrants to AVC that: (1) it is the owner of all of the issued and outstanding stock of the Subsidiary Companies; (2) the Subsidiary Companies are duly organized and validly existing corporations in good standing under the laws of the States of their respective incorporation; (3) the Subsidiary Companies have the power and authority, and all necessary corporate action has been taken to enable them, to enter into this Agreement and the transactions contemplated hereby.

ARTICLE V

A. The Notes given by the Subsidiary Companies to evidence the First Loan and Second Loan shall bear interest at the same annual rate at which AVC is able to borrow funds from third parties in order to make such loans or to refinance such borrowing; and in the event AVC elects not, or is unable, to borrow funds from third parties, such Notes shall bear interest at the highest prevailing prime rate being charged at the time of the making of the First Loan and the Second Loan, respectively, by banks having their principal offices located in Philadelphia, Pennsylvania, for loans in excess of \$1,000,000 and repayable after three years, plus in either case $\frac{1}{4}$ of 1% per year. In the event that AVC shall have borrowed funds from third parties in order to make the First Loan and/or the Second Loan, then, in such event, the interest payable under the Notes issued by the Subsidiary Companies shall be equal to the interest rate paid by AVC with respect to such borrowed funds, as the same may vary from time to time, plus $\frac{1}{4}$ of 1% per year. AVC shall notify the Subsidiary Companies issuing such Notes in writing from time to time of the applicable interest rates determined in accordance with the provisions of this Paragraph A. Interest shall be paid on the principal balance of any outstanding Note, as it accrues, on the first day of each and every month until paid in full and on the date of the maturity thereof.

B. Unless sooner due and payable because of the acceleration thereof as provided in Article VI hereof, the First Loan, with all accrued interest thereon, shall become due and payable without notice or demand on the earliest to occur of: (1) 90 days after the Federal Communications Commission shall have denied the approval of a transfer of the control of any of the TV Companies which is required to be obtained as in Paragraph III of the Stock Purchase Agreement provided; (2) 90 days after the last permissible date for the closing under the Stock Purchase Agreement if the Closing hereunder shall not occur for any reason whatsoever; (3) the effective date of termination if the Stock Purchase Agreement shall have been terminated by Overmyer pursuant to the provisions of Paragraph III B of the Stock Purchase Agreement; and (4) 90 days from the date of the receipt by Overmyer of AVC's election to terminate the Stock Purchase Agreement pursuant to the provisions of Paragraph III B thereof. If, however, the Closing under the Stock Purchase Agreement shall take place and settlement shall be fully consummated thereunder, then the First loan, and all accrued interest thereon, as well as the Second Loan, and all accrued interest thereon (if the same shall have been made by AVC), shall become due and payable on the date of the Closing for the purchase of the Stock (as that term is defined in Article VII hereof) under the option given pursuant to the provisions of Article VII hereof, and if said option to purchase the Stock shall not have been exercised by AVC, then the same shall become due and payable 90 days following the date upon which said option to purchase the Stock shall have expired.

ARTICLE VI

Any of the following occurrences or acts shall constitute a default by Overmyer or the Company and the Subsidiary Companies under this Agreement as well as under any Note, Guaranty, Mortgage, Assignment, Pledge Agreement or other instrument or document made or issued by Overmyer, the Company or any Subsidiary Company pursuant to the terms of this Agreement;

A. If Overmyer, the Company or any one of the Subsidiary Companies (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other legal or administrative proceedings which may prevent Overmyer, the Company or any of the Subsidiary Companies from complying with the terms of this Agreement, or any Note, Guaranty, Mortgage, Assignment, Pledge Agreement or other instrument or document made or issued by any of them hereunder) shall fail to perform any act or do any thing required by any of them to be done hereunder, including the execution and delivery of any Note, Guaranty, Mortgage, Assignment, Pledge Agreement or any other instrument or document required by the terms hereof and said such failure shall continue for a period of 10 days; or

B. If Overmyer, the Company or any one of the Subsidiary Companies shall default in making any payment of principal or interest when due on any Note

or Guaranty issued by any of them pursuant hereto and such default shall continue for a period of 10 days; or

C. If Overmyer, the Company or any one of the Subsidiary Companies shall default in the observance or performance of any covenant, agreement, term or condition contained in any Note, Guaranty, Mortgage, Assignment, Pledge Agreement or any other instrument or document made or issued pursuant to the terms of this Agreement and such default shall continue for a period of 30 days; or

D. If Overmyer, the Company or any one of the Subsidiary Companies shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to the Federal Bankruptcy Act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of his or its creditors or shall admit in writing his or its inability to pay his or its debts generally as they become due, or if a petition or answer proposing the adjudication of Overmyer, the Company or any of the Subsidiary Companies as a bankrupt or its reorganization under the Federal Bankruptcy Act or any similar federal or state law shall be filed and such petition or answer shall not be discharged or denied within 15 days after the filing thereof; or

E. If a receiver, trustee or liquidator of Overmyer, the Company or any one of the Subsidiary Companies or of all or substantially all of the property of Overmyer, the Company or any one of the Subsidiary Companies shall be appointed in any proceeding brought against Overmyer, the Company or any one of the Subsidiary Companies and if such receiver, trustee or liquidator shall not be discharged within 15 days after such appointment; or

F. If any representation or warranty herein made by Overmyer or the Company shall not be true and correct and the same shall not have been corrected within 30 days after notice by AVC; or

G. If Overmyer shall default in the observance or performance of any covenant, term or condition contained in the Stock Purchase Agreement and such default shall continue for a period of 30 days.

If a default shall occur as aforesaid, then: (i) the entire amount of the First Loan and Second Loan shall become immediately due and payable, without notice or demand, at the election of AVC, and thereupon AVC shall have the right to enforce payment thereof, with all accrued interest, by exercising all rights and remedies available at law or in equity, including without limitation the rights and remedies specified in any Note, Guaranty, Mortgage, Assignment, Pledge Agreement or other instrument or document made or issued by Overmyer, the Company or any one of the Subsidiary Companies pursuant to the terms hereof; (ii) AVC shall have no obligation to make any loan hereunder; and (iii) the rights of AVC under the Stock Purchase Agreement as well as under Article VII hereof shall not be affected thereby, but AVC shall have the rights therein granted as if AVC had made all loans provided for herein.

ARTICLE VII

In the event AVC shall have made the First Loan, or in the event AVC shall have elected to make the First Loan but the same shall not have been made by reason of failure on the part of Overmyer, the Company or the Subsidiary Companies to comply with the conditions precedent to the making of the First Loan or any of them otherwise shall be in default hereunder, then, and in either of such events, Overmyer gives and grants to AVC the exclusive right and option to purchase from Overmyer 20% of the outstanding capital stock of the Texas Company, 20% of the outstanding capital stock of the Georgia Company, 20% of the outstanding capital stock of the Ohio Company, 20% of the outstanding capital stock of the Pennsylvania Company and an option which Overmyer holds to purchase from Sherrill C. Corwin 20% of the outstanding stock of the California Company (which stock and option to purchase stock is herein collectively called the "Stock"), upon the following terms and conditions:

A. The option to purchase the Stock shall be irrevocable and may be exercised by AVC at any time within one year following that date which is three years subsequent to the date of the closing under the Stock Purchase Agreement; subject, however, to the condition that if, at any time during said one year period, Overmyer shall have notified AVC in writing to exercise its option to purchase the Stock and AVC, within 30 days following the receipt of such notice, shall have failed to exercise its option to purchase the Stock, the option to purchase the Stock shall terminate upon the expiration of said 30 day period

provided that at that time the First Loan and the Second Loan, with all accrued interest thereon, shall be repaid to AVC.

B. The option to purchase the Stock shall be exercised by AVC by giving written notice of such exercise to Overmyer, delivered in person or by registered mail, on or before 11:59 P.M. on the date upon which the option is to terminate, addressed to Overmyer at 201 East 42nd Street, New York, New York.

C. If the option to purchase the Stock shall be exercised, the price to be paid for the Stock shall be the fair market value thereof which for purposes of this Agreement shall be determined as follows:

(1) The price shall be fixed by multiplying 20% by five times the gross receipts of the TV Companies during the 12 full calendar months immediately preceding the date on which the option shall be exercised, provided that if any of the television stations of the TV Companies has not been continuously operating on a schedule of at least 112 hours per week throughout the 18-month period immediately preceding the date on which the option shall be exercised, or if the gross receipts of any of such stations cannot be or are not for any reason included in this computation, then the gross receipts for such 12-month period for such station shall be deemed to be that share of the "total broadcast revenues" in the latest report then available of TV Broadcast Financial Data published by the Federal Communications Commission for the several markets as indicated below:

	Percent
San Francisco.....	3
Houston (Rosenberg Station).....	5
Atlanta.....	5
Cincinnati (Newport Station).....	8
Pittsburgh.....	8

To the foregoing shall be added or subtracted, as the case may be, 20% of the net amount for all the TV Companies of the aggregate amount of cash on hand or on deposit, accounts receivable, prepaid expense and other current assets on the one hand, and of the aggregate of all debts and liabilities of the TV Companies, such amounts to be determined as of the last day of the 12-month period immediately preceding the exercise of the option provided that the aggregate of all debts and liabilities for any one of the TV Companies shall for purposes hereof be considered not to exceed \$500,000.

AVC shall cause to be made available to Overmyer all such information as he shall request in order to fix the purchase price as above provided and shall furnish him with a detailed statement of the price as fixed by AVC.

(2) If Overmyer shall not be satisfied with the purchase price for the Stock fixed pursuant to the terms of Paragraph C.(1) of the Article VII, then Overmyer may, within ten (10) days after delivery to him by AVC of the statement above referred to, give written notice to AVC that he wishes the fair market value of the Stock submitted to arbitration.

The arbitration shall be conducted as follows: AVC and Overmyer may agree upon one arbitrator. If they fail to agree upon such an arbitrator within thirty (30) days after notice has been served by Overmyer, either Overmyer or AVC may notify the other in writing of the name of an arbitrator selected by him or it, and within ten (10) days thereafter, the other party shall by written notice to the first party name a second arbitrator; and the said two (2) arbitrators shall name a third arbitrator, provided that if the third arbitrator shall not be selected by the other two (2) arbitrators within thirty (30) days after the naming of the second arbitrator, then such third arbitrator shall be selected by the American Arbitration Association in New York City. In the event Overmyer shall have failed to name a second arbitrator within ten (10) days after receipt of notice of the naming of the first arbitrator by AVC, Overmyer's right to arbitration shall terminate, and the purchase price for the Stock determined in accordance with Paragraph C. (1) of this Article VII shall be binding upon him; if AVC shall have failed to name a second arbitrator within ten (10) days after receiving notice of the naming of the first arbitrator by Overmyer, then AVC shall be obligated to pay and shall pay Overmyer immediately the fair market value as determined by the arbitrator named by Overmyer. When all three of such arbitrators are appointed, they shall proceed promptly to determine, by majority vote, the fair market value of the Stock (which shall be taken to be 20% of the fair market value of the total outstanding shares of the TV Companies). If the value determined by such arbitrators shall be in excess of

the amount determined pursuant to Paragraph C. (1) of this Article VII, AVC shall be obligated to pay and shall pay Overmyer immediately such larger amount; if, however, the value determined by such arbitrators shall be less than the amount determined pursuant to Paragraph C. (1) of this Article VII, AVC shall be obligated to pay and shall pay Overmyer immediately the amount determined pursuant to Paragraph C. (1) of this Article VII.

(3) It is understood that the price to be paid for the Stock shall not in any event exceed \$3,000,000.

(4) In any event there shall be deducted from the purchase price whether the same shall have been fixed as in Paragraph C. (1), C. (2) or C. (3) an amount equal to the price which is required to be paid to Sherrill C. Corwin for the purchase of his shares in the California Company.

D. The Closing for the purchase of the Stock shall be held at the office of Overmyer, 201 East 42nd Street, New York City, New York, within thirty (30) days following the exercise of the option to purchase the Stock upon at least five (5) days prior written notice given by AVC to Overmyer.

E. At the Closing and upon payment by AVC of the consideration provided for in Paragraph C of this Article VII, Overmyer will give the required notice under the Pledge Agreement to cause the delivery to AVC of: (1) certificates for Twenty percent (20%) of the outstanding capital stock of the Texas Company, the Georgia Company, the Pennsylvania Company and the Ohio Company, duly endorsed in blank for transfer with all required transfer tax stamps attached, free of all liens, encumbrances and charges of every nature; and (2) an Assignment of his option to purchase from Sherrill C. Corwin 20% of the outstanding stock of the California Company. The payment required to be made by AVC to Overmyer shall be made by certified or cashier's check.

F. Overmyer represents and warrants as follows:

(1) He has good, valid and unencumbered title to the Stock, except to the extent of the pledge of his shares in the California Company and the Georgia Company to secure the respective indebtedness of said Companies referred to in Paragraphs A. (3) and (4) of Article IV hereof, and the Stock as of the Closing for the purchase thereof will be free and clear of all other liens and encumbrances and charges.

(2) He is the holder of an irrevocable option to purchase from Sherrill C. Corwin 20% of the stock of the California Company upon the terms and conditions as are set forth in the agreement for the purchase thereof, a true and correct copy of which has been delivered to AVC, and that said agreement is in full force and effect, has not been amended or modified and is enforceable in accordance with its terms.

G. The obligations of AVC to consummate the purchase of the Stock shall be subject to the fulfillment prior to or at the Closing therefor or the waiver by AVC of each of the following conditions: (1) Overmyer, the Company and the Subsidiary Companies each shall have performed and complied with all agreements and conditions required to be performed or complied with by him and them under this Agreement prior to or at the Closing; Overmyer, the Company and the Subsidiary Companies shall not be in default under this Agreement; and (2) all representations and warranties of Overmyer under this Agreement shall be true and correct as of the date of the Closing for the purchase of the Stock.

ARTICLE VIII

If AVC shall have elected not to make the First Loan to the Subsidiary Companies and, in accordance with the provisions of the Stock Purchase Agreement Overmyer in turn properly refuses to close the sale of Stock therein provided for or properly terminates AVC's purchase rights in accordance with the Stock Purchase Agreement, then AVC shall have the right to require Overmyer:

(a) to deliver property to the Subsidiary Companies having a value not less than the sum paid by AVC to Overmyer under the Stock Purchase Agreement;

(b) to cause the Subsidiary Companies in consideration for such transfer to issue unto Overmyer Notes, Second Mortgages, Guaranties and Assignments meeting the requirements specified in Article II except that Article II D. (3) shall be modified in that the equities of the Subsidiary Companies in the real properties therein referred to shall not be less than \$2,000,000; and

(c) immediately thereafter to assign unto AVC all of the instruments referred to in clause (b) above. The Notes issued as hereinbefore provided shall become due and payable within ninety (90) days following the date upon which AVC shall have notified Overmyer of its election as hereinabove set forth, and shall bear interest at the annual rate of 5¼%, payable monthly and on the due date thereof.

ARTICLE IX

If AVC fails to exercise its option to purchase the stock on the date of expiration of the option granted to AVC in Article VII hereof, then the Subsidiary Companies, shall offer for sale each of the respective properties which are encumbered by the Second Mortgages given by the Subsidiary Companies to AVC pursuant to the terms of this Agreement at a price not in excess of the amount specified in the appraisals therefor delivered to AVC pursuant to the provisions of Paragraph C(2) of Article II and Paragraph B(2) of Article III hereof, and the lease back thereof from the purchaser for a term not in excess of twenty-five (25) years at an absolute net annual rental which will recover the purchaser's investment cost during the term of such lease and produce a return to such purchaser on his cash investment therein equal to an annual return of three per cent (3%) over the then prime interest rate as would be payable in New York City by a borrower of the amount of such cash investment. The remaining provisions of such leases shall be in all material respects the same as those of the form of lease to be agreed upon by AVC and the Subsidiary Companies prior to, and as a condition of, the Closing under the First Loan. Notwithstanding the foregoing, the Subsidiary Companies, by notice to AVC given not later than ten (10) days following the date of the expiration of AVC's option as aforesaid, shall have the right to elect not to offer their respective properties for sale as otherwise provided in this Article IX; but in such event, the First Loan and the Second Loan, together with all accrued interest thereon, shall be due and payable within thirty (30) days after the date of expiration of AVC's aforesaid option, rather than within ninety (90) days from said date as is provided in Article V hereof.

ARTICLE X

Notwithstanding the foregoing, the Subsidiary Companies, by notice to AVC given not later than 10 days following the date of the expiration of AVC's option as aforesaid, shall have the right to elect not to offer their respective properties for sale as otherwise provided in this Article X; but in such event, the First Loan and the Second Loan, together with all accrued interest thereon, shall be due and payable within thirty (30) days after the date of expiration of AVC's aforesaid option, rather than within 90 days from said date as is provided in Article V hereof.

A. If the Second Loan shall be made, thereafter any given Subsidiary Company shall have the right, on thirty (30) days' prior written notice to AVC, to have any given property or properties released from the lien of the Mortgage secured thereon and given pursuant to the terms hereof, if: (i) all other Subsidiary Companies, the Company and Overmyer, if requested by AVC, consent to such release in writing and confirm the continuance of each of their obligations hereunder and under all instruments and other documents executed and delivered by each of them hereunder (except those relating to the property or properties to be released) notwithstanding same; (ii) at the time such release is to be given there shall be no default hereunder or under any document or instrument associated herewith and (iii) the aggregate equity, determined in accordance with the provisions of Article 11(D) (3), of all Subsidiary Companies subject to Second Mortgages not to be released equals at least \$2,000,000.

B. At any time after the Closing of the Second Loan, upon at least thirty (30) days prior written notice to AVC, subject to the further provisions of this Article, any Subsidiary Company shall have the right to have any of its real property released from the lien of any Second Mortgage given by it to AVC pursuant to the terms of this Agreement provided that at the time the release (which shall be in appropriate recordable form and duly executed by AVC) is to be

given; (i) other real property of the Subsidiary Company requesting the release or another Subsidiary Company is substituted therefor, in which such Subsidiary Company then has an equity, determined in the same manner as provided by Article II D.(3) as the then equity of such Subsidiary Company, subject to the Second Mortgage, in the real property to be released; (ii) that a Second Mortgage in the substituted property is executed and delivered to AVC which meets all the conditions with respect to title and other matters as required for Second Mortgages under the provisions of Article II and provided also that such property shall be free and clear of all liens and encumbrances other than the first mortgage; (iii) without limiting the foregoing (ii), the applicable provisions, terms and conditions of Article II are fulfilled with respect thereto; and (iv) all other Subsidiary Companies, the Company and Overmyer, if requested by AVC, consent to such release and substitution in writing and confirm the continuance of each of their obligations hereunder and under all instruments and other documents executed and delivered by each of them hereunder (except those relating to the property or properties to be released) notwithstanding the same.

ARTICLE XI

All premiums and other charges made by the title insurance companies with respect to the insurance of the liens of the Second Mortgages to be given by the Subsidiary Companies to AVC, all appraisal fees, all recording and mortgage fees and taxes, all fees and expenses incurred by AVC in connection with releases and substitutions pursuant to Article X hereof and all incidental expenses relating thereto shall be borne solely, and paid by, the Subsidiary Companies.

ARTICLE XII

A. If all other conditions are satisfied and provisions fulfilled with respect to any Second Mortgage to be given by any Subsidiary Company hereunder, AVC shall accept a Second Mortgage on the real property of any Subsidiary Company if the equity of the Subsidiary Company therein, determined in accordance with the provisions of Article II and III exceeds (after deducting therefrom the amount of any filed mechanics' or materialmen's liens) by at least Twenty per cent (20%), the principal amount of the Note of the Subsidiary Company to be secured thereby.

B. Without in any way limiting the provisions hereof with respect to AVC's rights to be given Second Mortgages on the real properties of the Subsidiary Companies, the listing of real properties of some of the Subsidiary Companies on Exhibit "F" hereof is set forth and herein incorporated by reference as being all such properties as could be specifically identified and described by the date of execution hereof, submitted to AVC (subject to the provisions of Articles II and III) as appropriate to the purposes of this Agreement. Although AVC does not, by its execution and delivery hereof, accept such properties or any of them for the purposes of this Agreement, it is understood that AVC may specifically enforce at law or in equity its rights regarding Second Mortgages with respect to such listed properties as well as all other real property of the Subsidiary Companies which are subject to this Agreement.

ARTICLE XIII

If AVC exercises its option to purchase the Stock granted in Article VII hereof, then at the Closing of such purchase, AVC, at its election, shall have the right to require that the sum to be paid by it to Overmyer thereunder be applied by Overmyer first in repayment of the then outstanding principal balance of, and all accrued interest on, the First Loan and the Second Loan before any portion of such payment shall be retained or used by Overmyer for any other purpose.

ARTICLE XIV

The representations and warranties made and given herein and in any instrument or other document executed and delivered pursuant hereto are and shall be deemed and construed to be continuing representations and warranties which shall survive the Closings of the First Loan and the Second Loan and the closing of the purchase by AVC of the Stock.

ARTICLE XV

All notices, demands or requests required or permitted hereunder shall be in writing and sent by registered or certified mail, postage prepaid, or by telegram, and addressed as follows:

A. To the Company, any Subsidiary Company or to Overmyer, at 201 East 42nd Street, New York, New York; and

B. To AVC, at 100 West 10th Street, Wilmington, Delaware, Attention: President.

ARTICLE XVI

Neither this Agreement nor any rights hereunder shall be assigned, in whole or in part, by the Company, any Subsidiary Company or Overmyer; subject to such limitation, this Agreement and all provisions hereof, including but not by way of limitation, covenants, representations and warranties, shall be binding upon the successors and assigns of the Company and the Subsidiary Companies and upon their heirs, executors, administrators and assigns of Overmyer. This Agreement and all rights of AVC hereunder may be assigned by AVC and this Agreement and all provisions hereof, including but not by way of limitation, covenants, representations and warranties, shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of AVC; and if requested by AVC the Company, the Subsidiary Companies and Overmyer, or any of them, shall confirm in writing to any successor or assignee of AVC the foregoing and that performance by any successor or assign of the covenants to be performed by AVC hereunder shall be deemed to be and shall be accepted by them as performance hereunder by AVC.

ARTICLE XVII

This Agreement and various instruments and documents herein especially referred to constitute the entire agreement and understanding between AVC and the Company, the Subsidiary Companies and Overmyer and there are no other agreements, representations, warranties or understandings, oral or written, between them with respect to the subject matter of this Agreement or any other matter whatsoever.

ARTICLE XVIII

This Agreement and all documents and instruments referred to herein or to be executed and delivered hereunder shall be construed in accordance with the laws of the Commonwealth of Pennsylvania except that, with respect to the real property of the Subsidiary Companies to be made subject to Second Mortgages, the law of the jurisdictions in which such properties respectively are situated shall govern, but only to the extent required by law in supercedence of the laws of the Commonwealth of Pennsylvania.

ARTICLE XIX

In the event that AVC reasonably requests the Company, any Subsidiary Company or Overmyer to execute, acknowledge and deliver any further instruments or documents as may be reasonably required or deemed appropriate by AVC to more fully effectuate the full intent and meaning of this Agreement, consistent with the express provisions hereof, the Company, any Subsidiary Company, Overmyer, or any of them, shall promptly execute, acknowledge and deliver any such document.

ARTICLE XX

If any term or provision of this Agreement, or any instrument or document delivered pursuant to the terms of this Agreement, or the application thereof to any person, party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and said instruments and documents, or the application thereof to persons, parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement and such instruments and documents shall be valid and shall be enforced to the extent permitted by law.

This Agreement has been executed in counterparts, each of which shall have the same effect as an original document.

In witness whereof, the corporate parties hereto have caused this Agreement to be executed on each of their behalf by their duly authorized officers and their respective corporate seals affixed, each representing that the same constitutes full and complete corporate execution hereof and Overmyer has executed this Agreement under seal, all as of the date first above written.

[CORPORATE SEAL]

"AVC"
AVC CORPORATION,
By FRANK H. REICHEL, Jr.,
President.

Attest:

Assistant Secretary.

[SEAL]

"OVERMYER"
By DANIEL H. OVERMYER,

Witness:

[CORPORATE SEAL]

"COMPANY,"
D. H. OVERMYER Co., INC.,
(an Ohio corporation)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

"SUBSIDIARY COMPANIES"
D. H. OVERMYER Co., INC.,
(Alabama)

Attest:

By EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Arizona)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(California)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Delaware)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Florida)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Georgia)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Illinois)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Indiana)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Iowa)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Kansas)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Kentucky)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Louisiana)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Maryland)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Massachusetts)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Michigan)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Minnesota)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Mississippi)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Missouri)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Nebraska)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Nevada)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(New Jersey)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(New Mexico)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(New York)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(North Carolina)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(an Ohio Corporation)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Oklahoma)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Oregon)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Pennsylvania)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Rhode Island)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Tennessee)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Texas)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Utah)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Virginia)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Washington)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

[CORPORATE SEAL]

D. H. OVERMYER Co., INC.,
(Wisconsin)
By DANIEL H. OVERMYER,
Chairman.

Attest:

EDMUND M. CONNERY,
Secretary.

ITEM 11(h) (3)

STOCK PLEDGE AND ESCROW AGREEMENT

This agreement, dated March 28, 1967, by and among D. H. Overmyer ("Overmyer"), AVC Corporation, a Delaware corporation ("AVC"), and Girard Trust Bank ("Escrow Agent"),

Witnesseth

1. Overmyer represents that he is the owner of record of shares of capital stock of the following corporations in the amounts stated, such shares being hereinafter called the "Pledged Shares":

<i>Name of Corporation</i>	<i>Number of shares</i>
D. H. Overmyer Broadcasting Company, Inc., a Texas corporation-----	100
D. H. Overmyer Communications Company, Inc., a Georgia corporation---	10
D. H. Overmyer Broadcasting Company, Inc., an Ohio corporation-----	5
D. H. Overmyer Communications Company, Inc., a Pennsylvania corporation-----	10
D. H. Overmyer Communications Co., Inc., a California corporation-----	4,000

Overmyer further represents that the Pledged Shares above listed are all of the issued and outstanding shares of capital stock of said corporations, except that there are issued and outstanding 1,000 additional shares of D. H. Overmyer Communications Co., Inc., a California corporation, registered in the name of Sherrill C. Corwin. Overmyer further represents that the above-mentioned shares of the Georgia corporation are pledged to Girard Trust Bank to

secure certain indebtedness of and to be paid by the Georgia corporation, that the shares of Overmyer in the California corporation are pledged to Pacific National Bank of San Francisco to secure certain indebtedness of and to be paid by the California corporation, and that such shares of both corporations are included among the Pledged Shares only to the extent that they are not required to satisfy the respective indebtedness against which they are presently pledged.

2. In order to induce AVC to pay the sum of One Million Dollars (\$1,000,000) on amount of the purchase price stated in a certain Stock Purchase Agreement dated as of this date between AVC, as purchaser, and Overmyer, as seller, and in order to secure (a) the repayment of said \$1,000,000, or any part thereof, and (b) the repayment of loans made or to be made by AVC to certain corporations pursuant to a Loan Agreement, also dated as of this date, between AVC, as lender, Daniel H. Overmyer, D. H. Overmyer Co., Inc., an Ohio corporation wholly owned by Overmyer, and certain corporations wholly owned by D. H. Overmyer Co., Inc., and further to secure the faithful performance by each borrower under said Loan Agreement of its obligations, representations and warranties, Overmyer does hereby pledge, assign and transfer to AVC all of his right, title and interest in and to the Pledged Shares, free and clear of all liens and encumbrances other than the prior existing pledges referred to in Paragraph 1 above; provided, however, that the transfer of such rights hereunder shall in any case be subject to any required approvals of the Federal Communications Commission and the Commissioner of Corporations of the State of California.

3. Under default by Overmyer under the Stock Purchase Agreement or upon default by any borrower under the Loan Agreement in the performance of any representation, warranty or obligation and upon failure of Overmyer or such borrower, as the case may be, to cure such default within ten days following the receipt of notice of such default, delivered by AVC to the defaulting party, full power and authority is hereby given to AVC, at its sole and absolute election, subject only to the requirements of the Federal Communications Commission—

(a) To pursue, in addition to all other rights and remedies, the rights and remedies of a secured party under the Pennsylvania Uniform Commercial Code;

(b) To vote, use and control the Pledged Shares as its own for the purpose of electing new officers and directors, and otherwise control and manage the corporations issuing the Pledged Shares; and

(c) To sell the Pledged Shares and, at its election, to become the purchaser of them, or any of them, and to hold any and all of the Pledged Shares so purchased, free and clear of any right of redemption.

4. Acceptance by AVC of the rights of Overmyer in the Pledged Shares and exercise by AVC of the powers and authority granted by Overmyer in respect of the Pledged Shares shall not be deemed or treated as a discharge of the obligations of the borrowers under the Loan Agreement, unless AVC shall have so notified such borrowers and Overmyer, in writing, in accordance with the provisions of the Pennsylvania Uniform Commercial Code.

5. Contemporaneously with the execution and delivery of this Agreement, Overmyer has deposited with the Escrow Agent—

(a) Certificates, accompanied by stock powers endorsed in blank for all of the Pledged Shares, except for the above-mentioned shares of capital stock of the Georgia corporation and the California corporation presently pledged with Girard Trust Bank and Pacific National Bank of San Francisco, respectively; and

(b) An assignment of the existing right and option of Overmyer to acquire the shares of capital stock thereof issued to Sherrill C. Corwin. Such assignment shall name AVC as assignee and, upon exercise of such option, the said shares shall be added to and become part of the Pledged Shares, the receipt whereof is hereby acknowledged by the Escrow Agent.

Overmyer agrees to cause Girard Trust Bank and Pacific National Bank of San Francisco to lodge with the Escrow Agent the certificates for the above

mentioned shares of capital stock of the Georgia corporation and the California corporation presently pledged with Girard Trust Bank and Pacific National Bank of San Francisco, respectively, as soon as the certificates for such shares have been released from the pledges under which they are respectively presently held.

6. Until delivery to AVC of the Pledged Shares, or any of them, as hereinafter provided, all of the Pledged Shares in the custody of the Escrow Agent shall be and remain the property of Overmyer, and AVC shall have no right, title or interest therein except to have delivery thereof made as provided in this Agreement; and until AVC shall be entitled to delivery of the Pledged Shares hereunder, AVC shall have no right to manage or otherwise control the operations of any corporation issuing the Pledged Shares.

7. Any release by the Escrow Agent of Pledged Shares shall, to the extent of the release, constitute a pro tanto discharge of the escrow. The Pledged Shares theretofore delivered to the Escrow Agent as contemplated by Paragraph 6 hereof will be released by the Escrow Agent upon the occurrence of the following conditions:

(a) 80% of the shares of each corporation constituting the Pledged Shares will be released to AVC upon written notice from Overmyer that the Closing under the Stock Purchase Agreement has been consummated.

(b) After release of said 80% of the Pledged Shares, the remaining 20% of the Pledged Shares will be released to AVC upon written notice from Overmyer that the Closing upon the exercise of the option (granted to AVC under provisions of the Loan Agreement) to acquire such 20% has been consummated.

(c) 100% of the Pledged Shares (and the assignment by Overmyer referred to in Paragraph 5(b), if such option is then unexercised) will be released to Overmyer upon written notice from AVC that the \$1,000,000 deposit under the Stock Purchase Agreement has been repaid and that all loans made under the Loan Agreement have been repaid.

(d) Upon written notice from AVC, not objected to by Overmyer for a period of ten days after receipt thereof, that a default has occurred either in the repayment of the \$1,000,000 deposit under the Stock Purchase Agreement or in the repayment of any loan under the Loan Agreement, or both, the Escrow Agent will deliver the Pledged Shares to such transferee or transferees and in such amount or amounts as shall be named by the Federal Communications Commission in one or more consents issued by it approving such transfer.

8. The reasonable fees and expenses of the Escrow Agent in the performance of its duties hereunder will be shared equally by AVC and Overmyer. Overmyer agrees to pay any and all Federal and State stock transfer taxes which may be applicable in connection with the transfer of any of the Pledged Shares.

9. The Escrow Agent shall have no responsibility for the validity of any of the Pledged Shares or of the assignment deposited with it hereunder, or for the authority of Overmyer to make such deposits, or for the value or change in value of any of the Pledged Shares, or for the performance by any of the parties to the Stock Purchase Agreement or of the Loan Agreement of any of their obligations hereunder, the only responsibility of the Escrow Agent being to retain and release the Pledged Shares in accordance with the provisions of this Agreement. The Escrow Agent shall be protected in acting on the basis of any signature which it believes to be genuine and shall be liable only for its wilful default or gross negligence.

10. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid—

(a) if to Overmyer, at 201 East 42nd Street, New York, New York 10017;

(b) if to AVC, at 100 West Tenth Street, Wilmington, Delaware 19899; or

(c) if to the Escrow Agent, at Broad and Chestnut Streets, Philadelphia, Pennsylvania, 19101, Att: Corporate Trust Department, or to such other address as may be specified in writing by any party to each of the other parties.

changed circumstances which may arise, a rule of this nature must necessarily state the applicant's responsibility in general terms. However, in view of the objections expressed in the comments, we will undertake to clarify the intent of the rule and the general character of the information to be reported. In addition, we have also made two revisions in the wording of the rule in an effort to avoid the reporting of unimportant minute details of little or no significance to the public interest judgment. The second sentence in the rule has been revised by substituting "the information furnished in the pending application is no longer substantially accurate and complete in all significant respects" in place of the proposed language reading "the information furnished in his pending application is no longer accurate and complete in all material respects." In the third sentence, the words "there has been a substantial change as to any other matter which may be of decisional significance" have replaced the words "there has been a material change as to any matter of decisional significance."

5. The rule is thus intended to apply (i) where there has been a substantial change and (ii) where that substantial change may be significant to the Commission's consideration of an application and determination of the public interest. The information contained in the application itself is definite and the obligation to keep it substantially accurate and complete is akin to the duty of avoiding an initial misrepresentation or lack of candor. Moreover, the public interest factors pertinent to consideration of applications are either fairly well established or should be obvious in the case of a particular application involving special or novel circumstances. While appreciative of the fact that an applicant cannot always predict the exact basis of a Commission decision or the weight to be accorded any particular factor by the Commission, we do not anticipate that applicants will experience difficulty in recognizing the kinds of matters which may be decisionally significant. Indeed, most applicants are already complying with obligations here made express by rule.

6. As requested by Dow, Lohnes, we will give a series of examples to illustrate the intended application of the rule. Such examples have been selected at random; they are not to be viewed as exhaustive or as raising any implication that other changes need not be reported. In general, applicants should report any substantial change in circumstances pertaining to basic qualifications (legal, technical, financial, character), matters affecting service to the public or the nature of the proposed operations and factors urged as a basis for a grant or a comparative preference. In broadcast cases, for example, it is clear that an applicant should report any substantial change in ownership or legal status, such as a corporate merger (Huntington-Montauk, 24 RR 195); the death of a principal who is important to an application either as a ground for preference (Southland Television Co. v. Federal Communications Commission, 266 F2d 686, 687 [18 RR 2102] (CADC)); Tidewater Teleradio, Inc., 24 Pike & Fischer RR 653) or as a basis for demerit (Fleming v. Federal Communications Commission, 225 F2d 523 (CADC)); a substantial change in plans as to program proposals, studio facilities or integration of ownership with management (Butterfield Theatres, Inc. v. Federal Communications Commission, 237 F2d 552 [13 RR 2175] (CADC)); Tidewater Teleradio, Inc., 24 Pike and Fischer RR 653); or a change of circumstances affecting the diversification factor or sufficiently altering the financial status of an applicant as to be pertinent to financial qualifications (Enterprise Company v. Federal Communications Commission, 231 F2d 708 [13 RR 2033] (CADC)).

7. The rule is not intended to require the reporting of minor changes which would have no significance in the Commission's consideration of an application under the public interest standard. We recognize that some material matters may normally fluctuate on a day-by-day basis, such as the financial position of an applicant, the current business interests of its principals, etc. The rule does not contemplate the reporting of normal, foreseeable everyday changes unless they are substantial and might have a significant impact on the status of an application. The changes to be reported are those which are major or out of the ordinary—those which may make a difference from the standpoint of the public interest, and those which the Commission should be aware of in order to reach a realistic decision. See Eugene Ketring, 1 Pike & Fischer RR 2d 71; Walter Gaines, 17 Pike & Fischer RR 163.⁴

⁴ In view of the foregoing discussion (and see particularly par. 5), we do not believe that there is any merit to the argument advanced that penalties will be imposed under section 502 for honest mistakes in judgment as to the applicability of this rule.

8. Where the change is with respect to material set forth in the application, it should be reported by means of an amendment to, or request to amend, the application. Any other pertinent change should be reported by submission of a statement. As stated in the Notice of Proposed Rule Making, by requiring the filing of a request to amend an application in hearing status to reflect a changed circumstance with respect to material contained in the application, we are not in any way indicating whether such request will be granted. Our determination as to grant or denial would, of course, depend on the facts of the particular case. The proposed rule does not affect the rules governing amendment of applications in hearing status and is not intended as a means for applicants to improve their comparative positions vis-a-vis other applicants.

9. Meredith asserts that there is no need to require service of a statement furnishing additional or corrected information upon other parties of record to the proceeding, since the rules already require service of any petition to amend an application. We have decided to retain the service requirement because the statement might concern matters not set forth in the application. Where the report is in the form of a petition to amend the application, service of the petition will suffice to meet the service requirement.

10. Nor do we find substance in Meredith's objection that the requirement for service on the Commission's General Counsel where the matter is before any court for review constitutes an encroachment on the judicial jurisdiction. Service on the General Counsel does not affect the jurisdiction of the reviewing court or alter the record on appeal. Where the Commission believes that a changed circumstance affects the validity of a decision on appeal or should be incorporated in the certified record, it will seek a remand for this purpose or file some other appropriate pleading with the court. See *Ford Motor Co. v. NLRB*, 305 U.S. 364, 373-374.

11. Westinghouse challenges as ambiguous the provision for amending or requesting amendment "promptly" and urges substitution of a fixed time period, such as thirty days after knowledge of the change. We think the suggestion has merit and have accordingly provided in the rule that amendments, requests for amendments and statement shall be filed within thirty days unless good cause be shown. However, it is expected that changes will be reported as promptly as possible, and that applicants will not await the full thirty-day period where time is of the essence and the change is of nature which can and should be reported without delay, particularly where a grant or denial of an application is about to become final.

12. The Notice of Proposed Rule Making looked toward the addition of this rule as paragraph (c) of § 1.304 (now § 1.514). Section 1.514 applies only to broadcast application proceedings. Since the obligation to apprise the Commission as to changed circumstances pertains to all applicants and not merely to applicants for broadcast facilities, we consider it more appropriate to add the new provision as § 1.65, under the heading, "General Application Procedures".

In view of the foregoing and pursuant to authority contained in Sections 4(i), 303(r) and 308 of the Communications Act of 1934, as amended, 47 USC §§ 154(i), 303(r) and 308, it is ordered, effective December 22, 1964, that Part 1, Rules of Practice and Procedure, is amended as set forth in the attached Appendix.

ITEM 11(k)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 23, 1965.

HAPCT-352, WMOP-TV granted 3-10-65

D. H. OVERMYER BROADCASTING Co.,
41 East 42d Street,
New York, N.Y.

GENTLEMEN: Attached hereto you will find a copy of Form 726 notifying you of Commission consent to the assignment of license and/or construction permit there described. You will note that by the language of the form you are required to complete the assignment of license and/or construction permit within 45 days of the date thereof; and further, that the assignee is required to immediately notify the Commission, in writing, of the consummation of such assignment,

that is, after the acts necessary to effect the assignment of license and/or construction permit have been completed.

The assignee is further requested to report fully to the Commission, on FCC Form 323 (two copies are attached, only one need be filed), all changes in information relative to the ownership and control of the station(s) stemming from the consummation of the assignment of license and/or construction permit consented to. A completed form 523 should be filed within 30 days after the consummation of the assignment of license and/or construction permit in question.

Sections 1.613 and 1.615 (formerly Sections 1.342 and 1.343) of the Commission's Rules and Regulations concerning the filing of contracts and other instruments and the filing of information as to the ownership and control of broadcast stations are contained in FCC Form 323.

Since it is of the utmost importance that all Commission correspondence comes to the immediate attention of the licensee and/or permittee, it would be appreciated if you would notify this office at once of a permanent mailing address for correspondence, telegrams and other communications.

Very truly yours,

BEN F. WAPLE, *Secretary.*

ITEM 11(1) (1)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., December 15, 1964.

INTEROFFICE MEMORANDUM

Item No. AL & TC. agenda, Commission action, March 3, 1965.

For: AL & TC. agenda*.

To: The Commission.

From: Chief, Broadcast Bureau.

Subject: Application for assignment of the construction permit for Station WATL-TV, Atlanta, Ga., from Robert W. Rounsaville to D. H. Overmyer Communications Co. (BAPCT-351).

Recommended action: Grant the application.

SUMMARY

This application is presented to the Commission because it concerns a silent UHF construction permit. As the assignee represents that within 60 days of a grant of this application it will file an application for an improvement of facilities and, after grant of that application, "proceed promptly with construction and plans to be on the air within one year," a grant is recommended.

1. Assignor was granted this construction permit November 19, 1953. The station commenced commercial operations November 15, 1954 and suspended operations May 31, 1955. An application, BMPCT-4254, for "extension of time to complete construction" was filed on September 18, 1956 and is still pending.

2. Assignor states that he has \$16,186.44 invested in the station (remodeling the studio building, \$7,299.40; legal fees \$7,661.08; and engineering, \$1,225.96) and that during the period he operated the station he lost \$104,720. The assignor purchased fixed assets and spare parts worth \$171,145 when he commenced operations on this station. When he took the station off the air his principal equipment supplier, General Precision Laboratories, took the equipment back, retaining assignor's payments totaling \$23,607. Assignor later sold the television tower for \$17,500 (it had cost \$33,965) for a loss of \$16,465. These losses on the sale of assets were added to the operating losses sustained by assignor in computing his loss figure of \$104,720. He proposes to assign this construction permit and sell the books, records, and technical studies for \$100,000 cash. The estimated cost of construction is \$455,005, the estimated cost of operation for the first year after construction is \$300,000, and the estimated revenues for the first year of operation are \$200,000. The 100% stockholder of assignee, D. H. Overmyer, who states that his net worth is in excess of \$5,000,000, has agreed to guarantee all costs

¹ The studio is not being sold.

of constructing and operating this station. In addition, the assignee has been commitments for \$700,000.

3. Assignee stated in an amendment submitted that it will "proceed promptly with construction and plans to be on the air within one year" after having acquired a grant of its proposed application for an improvement of facilities.

4. Assignee is a newly organized Georgia corporation having authorized and outstanding 500 shares of no par value voting stock owned 100% by D. H. Overmyer, who is President and Director. He is sole or controlling stockholder of D. H. Overmyer Warehouse Company, Toledo, Ohio, and New York, New York, with affiliates in many other states, including Georgia; D. H. Overmyer Trucking Company (trucking); D. H. Overmyer Company (holding company); Toledo Business Research Institute, Incorporated (publisher of a weekly newspaper in Toledo); and a National Bank; all located in Toledo, Ohio. D. H. Overmyer has the following applications (including the subject application) pending before the Commission:²

BPCT-3173, channel 79, Toledo, Ohio (In hearing, Docket No. 15327)³

BPCT-3463, channel 29, Dallas, Texas (Pending)

BAPCT-351, channel 36, Atlanta, Georgia (WATL-TV)

BAPCT-352, channel 74, Newport, Kentucky (Cincinnati, Ohio—WNOP-TV)

BAPCT-354, channel 20, San Francisco, California (KBAY-TV)

BPCT-3443, channel 55, Stamford, Connecticut

Unassigned, channel 17, Rosenberg, Texas

5. The proposed programming is within the delegable standards. The assignee will also subscribe to the NAB Code.

6. Assignor was granted this Construction Permit November 19, 1953. He commenced operations November 15, 1954 and suspended service June 3, 1955. His operating loss during this period totalled \$104,720. In subsequent applications filed to keep the Construction Permit alive the assignor stated that he could not resume broadcasting in competition with Atlanta's three VHF network stations until some change occurred in UHF's competitive position. The assignee is financially qualified to build and operate this station and has represented that within 60 days of a grant of this application it will file an application for an improvement of facilities and after grant of that application "proceed promptly with construction and plans to be on the air within one year."

7. The Bureau believes that since the sales price of \$100,000 is less than the assignor's operating losses of \$104,720 there is no problem here of "trafficking". Accordingly, a grant of this application is recommended in the interests of the speedy restoration of UHF television service to Atlanta.

J. O. JUNTILLA,
For JAMES B. SHERIDAN,
Chief, Broadcast Bureau.

ITEM 11(1) (2)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 8, 1965.

INTEROFFICE MEMORANDUM

Item No. 4, AL & TC. Agenda, Commission action, March 10, 1965.

For: AL & TC. Agenda*.

To: The Commission.

From: Chief, Broadcast Bureau.

Subject: Assignment of the Construction Permit for Station WNOP-TV, Newport, Kentucky, from Tri-City Broadcasting Co. to K. H. Overmyer Broadcasting Company (BAPCT-352).

Recommended action: Assignor proposes to assign this CP to assignee for \$100,000. As the assignee has made a firm commitment to construct and

² D. H. Overmyer has also requested an assignment of Station WENS-TV, Channel 22, Pittsburgh, Pennsylvania. This would be the eighth UHF station and an item will be omitted shortly to the Commission recommending that the multiple ownership rule (Section 73.636) not be waived and the application be dismissed.

³ An initial decision was issued Jan. 19, 1965, looking toward a grant of BPCT-3173.

operate the station, a *grant* of this application is recommended. This application is presented to the Commission because it concerns a Construction Permit for an unbuilt UHF station.

1. Assignor, the licensee of Station WNOP-AM and permittee of WNOP-TV, proposes to assign this permit and sell a tract of land to assignee for \$100,000 payable \$10,000 in escrow and the balance at closing. As part of this agreement the assignor agrees not to compete for five years in the television business within 50 miles of Cincinnati.

2. Assignee is a newly formed corporation with one shareholder—D. H. Overmyer. He is sole or controlling stockholder of D. H. Overmyer Warehouse Company, Toledo, Ohio, and New York, New York, with affiliates in many other states; D. H. Overmyer Trucking Company, (trucking); D. H. Overmyer Company (holding company); Toledo Business Research Institute, Incorporated (publisher of a weekly newspaper in Toledo); and a National Bank, all located in Toledo, Ohio. D. H. Overmyer has the following applications (including the subject application) pending before the Commission:

BPCT-3173, channel 79, Toledo, Ohio (in hearing, Docket No. 15327).

BPCT-3463, channel 29, Dallas, Texas (Pending).

BAPCT-351, channel 36, Atlanta, Georgia (WATL-TV).

BAPCT-352, channel 74, Newport, Kentucky (Cincinnati, Ohio—WNOP-TV).

BAPCT-354, channel 20, San Francisco, California (KBAY-TV).

BPCT-3443, channel 55, Stamford, Connecticut.

Applicant also advises that he may file an application for transfer of Station WENS-TV, Channel 22, Pittsburgh, Pennsylvania. None of these stations will overlap.

3. The proposed programming for WNOP-TV is within the delegable limits. Assignee will subscribe to the NAB Code.

4. This construction permit was granted December 24, 1953. An application for an extension of time to construct is pending. The station was never operated nor was any construction actually undertaken. Assignor states that its expense in acquiring the CP was \$6340. The land being sold with the CP was acquired more than 10 years ago for \$7462. However, assignor submitted an appraisal giving the present value of this land as between \$90,000 and \$95,000. The appraisal was made by William S. Edgemon, a licensed real estate broker, who has handled, among other things, the acquisition of \$5,000,000 worth of real estate by the Cincinnati Metropolitan Housing Authority and has made appraisals for housing projects in other cities as well as for the United States government. He stated that the land, 6.2 acres on a hill overlooking the Ohio River, can be best used for "radio towers and high rise apartments." He listed five recent sales of similar sites, all for high rise apartments, with prices averaging \$.70 per square foot. As these sites are all across the Ohio River in Ohio (no one has bought any similar land on the Kentucky side recently) the appraiser, to compensate for this difference in location, halved the sales price to \$.35 per square foot in computing the value of this site.

5. In an amendment to this application, the assignee states that it intends to move this station to Cincinnati (the channel is allocated there) and that within 60 days after consummation of this assignment it will file an application for improvement of facilities. "When that application is granted, we will proceed promptly with construction and plan to be on the air within one year."

6. As the assignee's plans for commencement of broadcasting appear reasonably definite and the assignor's compliance with the "out-of-pocket" rule is demonstrated through his showing of the increased value of the land being sold, a *grant* of this application is recommended.

ROBERT W. ALFORD,
for JAMES B. SHERIDAN,
Chief, Broadcast Bureau.

ITEM 11(1) (3)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C. June 14, 1965.

INTEROFFICE MEMORANDUM

Item No. 7, AL. & TC. agenda, Commission action
July 28, 1965

For: AL. & TC. Agenda*

To: The Commission

From: Chief, Broadcast Bureau

Subject: Application for voluntary assignment of construction permit of Station WAND-TV, Channel 53, Pittsburgh, Pennsylvania, from Agnes J. Reeves Greer to D. H. Overmyer Communications Co. (BAPCT-364)

Recommended action: Grant the application for assignment of construction permit and adopt the attached by-direction letter advising assignee of expected construction schedule.

SUMMARY

Assignee has committed itself to construct the station expeditiously within the schedule as proposed, i.e., modification application to be filed within 60 days and construction to be completed within six months after the grant of the modification.

1. The assignor's application for an extension of time to construct the station (BMPCT-4205) was granted on June 16, 1965, after oral argument held in Docket No. 15890 on May 13, 1965. The assignee had initially proposed to construct the station and to be operational within one year from a grant of the pending assignment of construction permit. However, in view of the fact that the extension granted was only for six months, the assignee was given the opportunity to supplement the assignment application. Overmyer now proposes to file for a modification of facilities within 60 days of a grant of the assignment and thereafter to complete construction within six months of a grant of such modification of facilities. See the attached amendment and the attached by-direction letter to the assignee advising of the expected construction schedule.

2. This application was originally returned as unacceptable for filing pursuant to a Memorandum Opinion and Order adopted by the Commission on April 21, 1965, FCC 65-320, whereby a waiver of the multiple ownership rule was denied thus rendering the application an inconsistent application within Section 1.518 of the Rules. At that time this application would have been the eighth UHF grant to the assignee. On May 11, 1965, the assignee's application for a new UHF station in Stamford, Connecticut was dismissed pursuant to the assignee's request. The Pittsburgh application was then resubmitted and accepted for filing on May 18th.

3. D. H. Overmyer or a corporation controlled by Mr. Overmyer has been awarded the following three UHF grants:

	City	Channel	Market rank	Date
Atlanta	79	32	Finalized Mar. 10, 1965.
Cincinnati	36	23	May 12, 1965.
Newport	74	16	Mar. 10, 1965.

Four additional UHF applications (including the subject application) are now pending on behalf of the assignee.

City	Channel	Market rank	File No.
San Francisco, Calif.....	20	7	BAPCT-354 (prehearing letter sent).
Dallas, Tex.....	29	14	BPCT-3463.
Rosenberg, Tex. (Houston).....	17	25	BPCT-3518.
Pittsburgh, Pa.....	53	9	BAPCT-364 (subject application).

All of the above stations are in the top 50 TV markets. However, the interim "freeze" limiting an applicant to no more than three TV stations in the top 50 markets does not apply to Overmyer since all the applications were filed prior to the June 21, 1965, effective date of the "freeze", all such applications specifically being exempted from the "freeze" order, FCC 65-548, June 21, 1965.

4. The seller spent about \$300,000 to construct the station and lost approximately \$450,000 during the eleven months the station was in operation from July, 1953 to June, 1954, for a total loss of approximately \$750,000. A small amount of this was recouped through the sale of the station's equipment over the years. The seller is assigning the construction permit along with business records for \$28,000 of which \$13,000 is to be cash at closing and the balance of \$15,000 due December 31, 1965. The assignee will rent tower and studio space from the seller. The seller also covenants not to compete in television for two years within 30 miles of Pittsburgh. No consideration is being paid for this non-competitive covenant.

5. The assignee has the following first year costs and credits:

<i>Consideration and costs</i>	
Cash purchase price.....	\$28,000
Construction.....	505,500
Estimated operational cost first year.....	400,000
Total.....	933,500
First year equipment payment.....	97,650
Total.....	1,031,150
<i>Credits</i>	
Bank loan.....	350,000
Deferred equipment payment.....	315,000
Total.....	665,000

¹The bank loan is on an unsecured basis with the personal guarantee of Mr. Overmyer sufficing as security. Repayment does not start until two years after the station has commenced operation. Assumedly, interest payments would begin immediately (prevailing rates) which would mean an additional first year interest expense of \$21,000 on the bank loan.

Thus, \$366,150 is needed in addition to the above credits. Overmyer has stated that he anticipates revenues for the first year of operation in the amount of \$450,000. However, under the test specified in Ultravision, Docket No. 15254, this revenue cannot be relied upon to prove financial qualifications since no basis for these projected revenues is given. Turning then to the further assets of the assignee, the latest balance sheet (August 31, 1964) shows cash of approximately \$1,661,000 with current assets in excess of current liabilities by approximately \$1,000,000. Mr. Overmyer's personal financial statement shows a net worth of about \$5,900,000. Of course, these funds are not devoted exclusively to the assignee's proposed entrance into broadcasting. It is an unsegregated balance sheet covering all the assets of the assignee including its operations in trucking and warehousing. Included therein is a total of \$4,271,310 in unencumbered realty and personalty.

It should be kept in mind that Pittsburgh would be the fourth permit awarded to the assignee. Assuming that each station will cost \$500,000 to build, this would mean \$2,000,000 in construction costs for the four. It would also be realistic to assume a first year operational loss in each of these stations. Taking between \$100,000 to \$250,000 as a range of average losses, this would mean between \$400,000 to \$1,000,000 in losses for the first year, or a total of between \$2,400,000 to

\$3,000,000 for the four stations. If to this is added the same figure for the remaining three applications of the assignee (San Francisco, Dallas and Houston), an additional \$1,500,000 would be needed for construction and between \$300,000 to \$750,000 for operational losses the first year, for a sub-total of between \$1,800,000 to \$2,250,000 or a grand total of between \$4,200,000 to \$5,250,000 in construction costs and first year losses for all seven UHF stations. The approximate amount of \$4,270,000 in unencumbered physical assets of the assignee will be available as a credit source when needed.

The Bureau is of the opinion that we should confine our consideration of the assignee's finances to this application for Pittsburgh, plus the assignee's commitments to build and operate its UHF construction permits in Toledo, Atlanta and Cincinnati (Newport, Kentucky). On the basis of the foregoing, the assignee appears to be financially qualified to purchase, construct and operate WAND-TV.

6. The programming proposed is within delegable limits. The station will adhere to the N.A.B. Code.

7. It is recommended that the application be granted and the attached by-direction letter be adopted.

JAMES O. JUNTILLA
(For James B. Sheridan, Chief, Broadcast Bureau).

ITEM 11(1) (4)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 11, 1965.

INTEROFFICE MEMORANDUM

Approved by circulation to Commission acting as a board (RHH, KAC), August 12, 1965

For: Circulation

To: The Commission

From: Chief, Broadcast Bureau

Subject: Application (BPCT-3518) for a construction permit for a new commercial television broadcast station to operate on Channel 58, Rosenberg, Texas, filed by: D. H. Overmyer Broadcasting Company, 41 East 42nd Street, New York, New York. Date filed: February 8, 1965. Date amended: March 9, 1965; May 27, 1965; and July 16, 1965. Zone: III. Population: 9,698. Channels assigned to Rosenberg: 58; channels authorized: None; channel requested: 58; antenna height above average terrain: 1,434 feet ERP, visual: 1,038 kilowatts. Recommended action: Grant in accordance with attached specifications and subject to proposed condition.

1. THE APPLICANT

The applicant, D. H. Overmyer Broadcasting Company, is incorporated under the laws of the State of Florida with authority to issue 10,000 shares of stock at a par value of \$10.00 per share. The applicant has already issued 100 shares of stock. The officers, directors and stockholders of the applicant corporation, all of whom are citizens of the United States, are as follows: D. H. Overmyer, 100%, President and Director; sole or controlling stockholder, President and Director, D. H. Overmyer Warehouse Company and affiliates; D. H. Overmyer Trucking Company, D. H. Overmyer Company (holding company) and Toledo Business Research Institute Incorporated (publisher of weekly newspaper); Mrs. Shirley Clark Overmyer, Director; Robert F. Adams, Executive Vice-President; Robert W. Robinson, Vice-President and Director; Manager of Inventory Planning and Executive Vice-President, D. H. Overmyer Warehouse Company; Gray R. Silcox, Vice-President; Controller and Vice-President, D. H. Overmyer Warehouse Company; Director, Toledo Business Research Institute, Incorporated; Thomas J. Byrnes, Treasurer; Treasurer, Toledo Monitor; Treasurer, D. H. Overmyer Warehouse Company; Edmond M. Connery, Secretary; Secretary and General Counsel, D. H. Overmyer Warehouse Company; and Paul F. Emerson, Assistant Secretary and Assistant Treasurer; Office Manager, D. H. Overmyer Warehouse Company.

D. H. Overmyer or a corporation controlled by Mr. Overmyer has the following broadcast interests: permittee of Television Broadcast Station WDHO-TV,

Channel 79, Toledo, Ohio; permittee of Television Broadcast Station WATL-TV, Channel 36, Atlanta, Georgia; permittee of Television Broadcast Station WNOP-TV, Channel 74, Newport, Kentucky; grantee (assignment application (BAPCT-364) approved by Commission July 28, 1965) of Television Broadcast Station WAND-TV, Channel 53, Pittsburgh, Pennsylvania; applicant (BAPCT-354) for transfer of Television Broadcast Station KBAY-TV, Channel 20, San Francisco; and applicant for a new commercial television broadcast station to operate on Channel 29, Dallas, Texas.

2. PERSONNEL

The applicant indicates that personnel will be hired to fill the following staff positions: five Administrative, six Program, three Sales, five Engineers. The applicant states that additional staff personnel will be hired as the operating schedule increases. In addition, all employees will be citizens of the United States.

3. PROGRAM PLANS

The applicant proposes to operate from 4:00 p.m. to 12:35 a.m., Monday through Friday; from 4:00 p.m. to 5:05 a.m. on Saturday; and from 4:28 p.m. to 11:30 p.m., on Sunday, a total of 63 hours and 2 minutes per week, of which 78% will be commercial and 22% will be sustaining. It is proposed to devote 32% of total broadcast time to live programming. No network affiliation is proposed. There will be an estimated 390 spot announcements per week and 80 noncommercial spot announcements per week. The percentage analysis of the applicant's proposed program week is as follows:

	Percent
Entertainment -----	70.0
Religious -----	2.8
Agricultural -----	3.5
Educational -----	.8
News -----	10.3
Discussion -----	1.1
Talks -----	11.0

With respect to the number and length of spot announcements allowed in a given period, the applicant states that it will follow the provisions of the NAB Code.

4. FINANCIAL QUALIFICATIONS

Estimated cost of construction-----	\$1,147,744
Estimated annual operating expense-----	320,000
Estimated annual revenue-----	350,000

Cash requirements

Equipment -----	\$142,600
Land -----	82,000
Building -----	75,000
Other items-----	40,000
Annual operating expense-----	320,000

Cash in the amount of approximately \$660,000 will be required for the construction and first year operation of the proposed station. The applicant has a bank loan of \$550,000 and a loan from D. H. Overmyer Warehouse Company in the amount of \$250,000.

When the staff recently presented Mr. Overmyer's application to acquire the permit for Channel 53 in Pittsburgh (granted July 28, 1965, AL & TC Agenda Item No. 7, Mimeos 70517, 70518) we stated that we would present an overall assessment of Mr. Overmyer's financial position in connection with the present application. His position may be summarized as follows: In his application to build and operate UHF stations in Toledo, Atlanta, Newport and Pittsburgh, all of which have been granted, he reflected bank loans totalling \$1,700,000, and a loan from D. H. Overmyer Warehouse Company of \$340,000. The bank loans were guaranteed by Mr. Overmyer, whose personal balance sheet shows approximately \$4,270,000, in unencumbered physical assets. The loan from D. H. Overmyer Warehouse Company of \$340,000, is supported by its balance sheet which as of July 15, 1965, shows current assets of \$1,300,000 in excess of current li-

abilities and a net worth of approximately \$5,225,000. In addition, Mr. Overmyer has indicated that both his individual assets and those of D. H. Overmyer Warehouse Company will be used to the extent necessary to construct and operate the above stations.

Based upon the foregoing, it appears that the applicant has sufficient financial resources to meet his prior commitments and to construct and operate the proposed station based upon the Commission's new financial standard as set forth in *UltraVision Broadcasting Company*, FCC 65-851.

5. ENGINEERING CONDITIONS

The application meets all of the technical requirements of the Commission's Rules.

6. RECOMMENDATION

The Broadcast Bureau is of the view that the applicant is legally, technically, financially and otherwise qualified to construct, own and operate the proposed station; that a grant of the subject application would serve the public interest, convenience and necessity and that the application should be granted in accordance with the attached specifications and subject to the following condition:

1. That prior to licensing, acceptable data shall be submitted for type-acceptance of the proposed transmitter in accordance with the requirements of Section 73.640 of the Commission's Rules.

JAMES O. JUNTILLA
(For James B. Sheridan, Chief, Broadcast Bureau).

ITEM 11(1) (5)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., September 22, 1965.

INTEROFFICE MEMORANDUM

Commission action October 20, 1965. Applications granted. Commissioner Bartley dissenting.

For: AL & TC Agenda*

To: The Commission

From: Chief, Broadcast Bureau

Subject: Assignment of construction permit for KBAY-TV, (Channel 20) San Francisco, California, from Sherrill C. Corwin, Tr/as Bay Television to D. H. Overmyer Communications Co. (BAPCT-354) and application for additional time to construct KBAY-TV (BMPCT-5122).

Reference: Item No. 4, AL & TC Agenda, May 12, 1965, Mimeo No. 67076

Recommended action: Grant applications

SUMMARY

1. This item is being presented to the Commission to reflect the response of August 5, 1965, which the applicants submitted to the Commission's pre-hearing letter of May 12, 1965, which had stated that a hearing appeared necessary because (a) the proposed consideration for the assignor of the bare permit appeared in excess of Mr. Corwin's expenses; and (b) the assignee did not make a sufficient commitment to construct the station (FCC 65-409). The assignment contract has been revised so that Mr. Corwin will not receive consideration in violation of Commission policy; and the assignee has made a more specific commitment to construct. Accordingly, the Bureau recommends a grant of the applications.

THE REVISED TRANSACTION

2. The old assignment contract has been cancelled, and the new agreement provides that Mr. Corwin will acquire a 20% interest in the assignee and will assign the bare permit for no consideration. Mr. Corwin will pay \$10,000 for his 20% interest in the assignee, which is a newly formed corporation with no assets, and, as part of the agreement, he has obligated himself to loan the

assignee \$80,000,¹ with the provision that D. H. Overmyer pay \$40,000 for his 80% of the assignee and will provide loans of at least \$320,000.

3. The agreement also provides that the assignee corporation will have the option to acquire Mr. Corwin's 20% at any time from the 49th to 63rd month following the last day of the month in which the station will have initiated commercial broadcasting, for not less than \$10,000 and not more than \$140,000. The option price will be the sum of \$10,000, plus 20% of an amount equal to the sum of (a) the gross billings of a 24 month period,² (b) plus the corporation's current assets at the end of the 24 month period, (c) minus all liabilities (up to \$400,000) at the end of the period.

4. The Bureau believes that Mr. Corwin, who has expended \$7,360 on the station, will not receive consideration in excess of out-of-pocket expenses in violation of Commission policy, because (a) his capital contribution to the newly formed assignee corporation will be proportionate to that of Mr. Overmyer; and (b) the Commission has granted a similar application in which the assignee of a bare permit was not obligated to exercise an option for the balance of the stock even though it appeared that exercise of the option would allow the assignor to receive more than it had invested in the station. WOGO-TV, Chicago, Item No. 2, AL & TC Agenda, January 19, 1965.

FINANCIAL QUALIFICATIONS

5. The assignee proposes to obtain capital from the following sources: (a) stock subscriptions of \$50,000; (b) Mr. Corwin's loan of \$80,000; (c) a credit of \$340,000 from RCA for equipment; and (d) a loan of \$475,000 from the Bank of America, payable over a period of five to seven years, "with amortization to begin about two years after the station is in operation." The assignee lists the following expected expenses and resources available for the first year of operation.

<i>Expenses</i>	
Construction costs.....	\$475,000
First year expenses.....	400,000
16 monthly payments to RCA ¹	191,000
16 months' Interest to bank & RCA ¹	65,000
Total.....	1,031,000
<i>Resources</i>	
Stock subscriptions.....	50,000
Mr. Corwin's loan.....	80,000
Bank loan.....	475,000
RCA credit.....	340,000
Total.....	945,000

¹ Installment payments and interest would be due before the station began broadcasting. It is estimated that 16 monthly payments would cover the first year of broadcasting.

The assignee estimates that it can cover the difference of \$86,000 between expenses and the resources listed above from revenues which it estimated to be \$400,000 for the first year of operation. It does not give detailed reasons for the total estimated revenues but it estimates that 25% of the market will be converted to UHF by 1966, and it notes that it would need only a very small percentage of the total TV revenues in the San Francisco market to get \$86,000. (In 1964, the four San Francisco television stations reported total revenues of \$30,796,394.) In any case, in an amendment of February 5, 1965, Mr. Overmyer stated that he "... will use the resources not only of himself but of the Warehouse Company to whatever extent may be necessary to support and effectuate the instant as well as the other proposals in which he is interested.

6. Since March 10, 1965, Mr. Overmyer has already acquired permits to construct five new UHF stations and has applications pending for KBAY-TV and a new station in Dallas. In a balance sheet of August 31, 1964, the D. H. Overmyer Warehouse Company showed net current assets of \$1,300,000 and a net worth of \$5,225,000. Mr. Overmyer submitted a personal balance

¹ This loan will bear interest at the New York prime rate plus 1% and the principal will be repayable in not less than four years.

² If the option is to be exercised between the 49th to the 60th month after the commencement of programming, this 24 month period will be from the 25th to the 48th month after the commencement of broadcasting. If the option is to be exercised from the 61st to the 63rd month, the 24 month period will cover the 37th to the 60th month.

sheet of August 31, 1964, which showed unencumbered personal assets (consisting primarily of investments in wholly owned corporations) of approximately \$4,270,000. Mr. Overmyer was found financially qualified for the first three stations pursuant to three applications filed before the new Ultravision financial test was adopted in FCC 65-581, released on July 2, 1965, but acquired his last two (WAND-TV, Pittsburgh, Item No. 7, AL & TC Agenda, July 28, 1965 Mimeo No. 70517 and BFCT-3518 for Rosenberg, Texas, approved by circulation, August 12, 1965, Mimeo No. 71233) pursuant to applications granted after the new test became applicable. Although it is difficult to apply the Ultravision test to the aggregate requirements of the other five stations and KBAY-TV, because, among other things, the first years of operation for each of the stations will probably not coincide, it is estimated from the information submitted by Mr. Overmyer that the total cost of construction and first year operating expenses for the six stations will be \$8,229,470 and that the total credit available to him from banks, equipment suppliers, and Mr. Corwin,³ will be \$6,000,176. (See Appendix A.) In addition, Mr. Overmyer has made a commitment to use his personal assets of \$4,270,000. Even if he might have to use some of these assets to meet obligations as a guarantor of bank loans, he should still be able to provide personal capital because the bank loans for the six stations are approximately \$2,775,000. Furthermore it is not unreasonable to expect his six stations, all located in major markets, to generate total first-year revenue of \$1,000,000.⁴

CONSTRUCTION PLANS

7. The assignee now states that it plans to construct on Mt. Sutro on the new high tower as soon as the site becomes available. (On June 11, 1965, in Docket No. 12866, the Commission denied a petition for reconsideration of its grant of the application for this high tower, subject to a condition that the applicant submit a plan for use of the tower by other broadcasters in the area.)⁵ In any case, the assignee stated, on July 30, 1965, that "it will, if the new tower is not available, as expected, within a year, put the station on the air by using the existing ABC-TV tower."

THE RE-ORGANIZED ASSIGNEE

8. The assignee is to be re-organized so that D. H. Overmyer will own 80% and Merrill C. Corwin will own 20%.

9. D. H. Overmyer, whose qualifications have been examined by the Commission on several recent occasions, now is the individual permittee for a new UHF station in Toledo, and is the sole owner of five different corporations which are permittees of four other UHF stations and an applicant for another. The following table lists the permits held by Mr. Overmyer and his corporations, and KBAY-TV. (Mr. Overmyer had applications on file for these stations before the "front" on acquisitions in the top 50 markets became effective in FCC 65-147.)

Station	City and population	TV market	Competing commercial stations on air	Competing news-papers
WDFW-TV (channel 74).....	Newport, Ky. (Cincinnati) (502,550)	16	6 AM, 7 FM, 3 VHF.....	2
WDFW-TV (channel 79).....	Toledo (318,003).....	32	5 AM, 4 FM, 2 VHF.....	12
WDFW-TV (channel 36).....	Atlanta (487,455).....	23	10 AM, 6 FM, 3 VHF.....	12
WDFW-TV (channel 53).....	Pittsburgh (604,332).....	9	8 AM, 10 FM, 3 VHF, 1 UHF.....	3
WDFW-TV (channel 53).....	Rosenberg, Tex. (Houston) (938,219)	25	11 AM, 5 FM, 3 VHF.....	3
KBAY-TV (channel 20).....	San Francisco (742,855).....	7	13 AM, 16 FM, 4 VHF.....	3

and evening papers with same publisher.

Oakland stations.

morning and evening papers with same publisher, but not specialized papers nor west coast edition of Journal.

Mr. Corwin's balance sheet of September 30, 1964, showed current assets of \$826,326; liabilities of \$918,760 (there was no breakdown of the current liabilities); and a net worth of \$4,759,414).

The Commission can consider Mr. Overmyer's financial ability to build his seventh station (in Dallas) when it acts on BPCT-3463.

Attorneys for the assignee have advised the staff that they have been participating in efforts to find a satisfactory use of the tower for all stations which will use it. The assignee is generally satisfied with the proposal made by ABC.

He also has an application pending to build a new station in Dallas:
Station: BTCT-3463.

City and population: Dallas, (679,684).

TV market: 14.

Competing commercial stations: seven AM, eight FM, three VHF.

Competing newspapers: Two.

Sherrill Corwin has disposed of ownership interests in 8 AM, 5 FM, and 3 TV stations (which are listed in Appendix A of the reference item). His only other present ownership interests are as follows:

Station	Extent of interest (percent)	City and population	TV market	Competing stations	Competing newspapers
KGUD (AM and FM).....	100	Santa Barbara, Calif. (58,768)	(1)	4 AM, 3 FM, 1 VHF..	1
KAKE (AM and TV).....	15	Wichita, Kans. (254,698)...	52	5 AM, 3 FM, 2 VHF..	2
UPK-TV (channel 13).....	15	Garden City, Kans. (11,811)	(3)	2 AM, 1 FM.....	1

¹ No Corwin TV in market. Both with same publisher. Satellite of KAKE-TV.

CONCLUSIONS AND RECOMMENDATIONS

10. In view of the facts that (1) the proposed consideration presents no problems in view of the precedent of the recent assignment of WOGO-TV, Chicago;⁶ and (2) that the assignee has indicated that it will begin construction as soon as a new tall tower is available on Mt. Sutro or within a year in any case;⁷ the Bureau recommends a grant of the applications.

ROBERT W. ALFORD,
FOR JAMES B. SHERIDAN,
Chief, Broadcast Bureau.

APPENDIX A

ESTIMATED COSTS OF 6 OVERMYER STATIONS AND OUTSIDE FINANCING AVAILABLE

Costs	WNOP-TV	BPCT-3518 Rosenberg, Tex.	WATL-TV	WAND	WDHO	KBAY	Total
Cost of construction.....	\$860,000	1,147,744	455,005	505,000	1,098,078	475,000	4,541,827
: year expense.....	225,000	320,000	300,000	400,000	550,000	400,000	2,195,000
: months installments.....	149,619	215,529	80,010	106,680	249,495	91,000	892,423
: payments to sellers.....	100,000	-----	100,000	28,000	-----	-----	228,000
: interest ²	57,660	81,488	42,000	45,000	81,362	65,000	372,510
Total.....							8,229,400
Outside financing:							
Bank credit.....	400,000	550,000	400,000	350,000	600,000	475,000	2,775,000
Equipment credit.....	561,000	808,132	300,000	400,000	756,044	340,000	3,165,176
Contribution from Mr. Corwin.....	-----	-----	-----	-----	-----	-----	90,000
Total.....							6,030,176

Installments are for deferred payments on equipment.

² Interest estimated to be 6 percent of total credit in all cases but KBAY-TV, for which figures given by applicant were used.

⁶ This conclusion is consistent with the Commission's action in WOGO-TV, Chicago (AL & TC Agenda, January 19, 1965), when the WOGO assignee had an option for additional stock which, if exercised, would give the assignor total consideration in excess of out-of-pocket investment. In this KBAY case, the option price must be determined from the financial condition of the station in operation, and the price may or may not exceed Mr. Corwin's investment.

⁷ The Commission in several recent grants has taken six months as the benchmark within which purchasers would be expected to construct silent UHF station. KBAY-TV, however, was not designated for oral argument for failure to construct, because of the peculiar problem of securing a site on Mt. Sutro. Accordingly, the one-year commitment seems sufficient.

[* 51:613] § 1.613 Filing of contracts.—Each licensee or permittee of a standard FM, television, or international broadcast station (as defined in Part 73 of this chapter), whether operating or intending to operate on a commercial or noncommercial basis, shall file with the Commission copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations, within 30 days of execution thereof. The substance of oral contracts shall be reported in writing.

(a) Contracts relating to network service: All network affiliation contracts, agreements, or understandings between a station and a national, regional, or other network shall be filed. Transcription agreements or contracts for the supplying of film for the television stations which specify option time must be filed. This section does not require the filing of transcription agreements or contracts for the supplying of film for television stations which do not specify option time, nor contracts granting the right to broadcast music such as ASCAP, BMI, or AFMAC agreements.

(b) Contracts relating to ownership or control: Contracts, instruments, or documents relating to the present or future ownership or control of the licensee or permittee or of the licensee's or permittee's stock, rights, or interests therein, or relating to changes in such ownership or control. This paragraph shall include but is not limited to the following:

(1) Articles of partnership, association, and incorporation, and changes in such instruments;

(2) Bylaws, and any instruments effecting changes in such bylaws;

(3) Any agreement, document, or instrument (i) providing for the assignment of a license or permit or (ii) affecting, directly or indirectly, the ownership or voting rights of the licensee's or permittee's stock (common or preferred, voting or non-voting), such as: (a) Agreements for transfer of stock; (b) Instruments for the issuance of new stock; or (c) Agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation. Pledges, trust agreements, options to purchase stock and other executory agreements are required to be filed.

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of one year; and all proxies, whether or not running for a period of one year, given without full and detailed instructions binding the nominee to act in a specified manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee within 30 days after the stockholders' meeting in which the stock covered by such proxies has been voted: provided, however, that when the licensee or permittee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1% or more of the corporation's voting stock; in cases where the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are neither officers or directors nor hold 1% or more of the corporation's stock, the only information required to be filed is the name of any person voting 1% or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy;

(5) Mortgage or loan agreements containing provisions restricting the licensee's or permittee's freedom of operation, such as those affecting voting rights, specifying or limiting the amount of dividends payable, the purchase of new equipment, the maintenance of current assets, etc.; or

(6) Any agreement reflecting a change in the officers, directors, or stockholders of a corporation, other than the licensee or permittee, having an interest, direct or indirect, in the licensee or permittee as specified by § 1.615.

(7) Contracts relating to the sale of broadcast time to "time brokers" for resale.

(d) Contracts relating to Subsidiary Communications Authorization Operation, except contracts granting licensees or permittees engaged in SCA the right to broadcast copyright music.

(e) Time sales contracts: Time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs, and special events) broadcast pursuant to the contract is not under control of the station.

(f) Contracts relating to personnel:

(1) The following contracts, agreements, or understandings shall be filed: management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee station; management contracts with any persons, whether or not officers, directors, or regular employees, which provide for both a percentage of profits and a sharing in losses, or any similar agreements.

(2) The following contracts, agreements, or understandings need not be filed: agreements with persons regularly employed as general or station managers or salesmen; contracts with program managers or program personnel; contracts with chief engineers or other engineering personnel except those contracts required to be filed under the provisions of §§ 73.93(c), 73.265(c), and 73.565(c) of this chapter; contracts with attorneys, accountants, or consulting radio engineers; contracts with performers; contracts with station representatives; contracts with labor unions; or any similar agreements.

NOTE.—Source: former §1.342, as amended effective September 14, 1953, 18 FR 4953, see 9 RR 1547.

Introductory text of subsection (b) and (b)(3) amended by order effective June 18, 1958, 23 FR 3719.

Subdivision (f)(2) amended, effective January 1, 1964, by order adopted October 16, 1963 in Docket No. 14746, 28 FR 11270.

See also Section 308(a) of the Communications Act § 10:308(a), supra, and § 50:417.

ITEM 11(n)

(FCC Rule 1.615)

[§ 51:615] § 1.615 Ownership reports.—(a) Each licensee of a TV, FM or standard broadcast station (as defined in Part 73 of this chapter), other than noncommercial educational stations, shall file an Ownership Report (FCC Form 323) at the time the application for renewal of station license is required to be filed: provided, however, that licensees owning more than one TV, FM, or Standard broadcast station need file only one Ownership Report at 3-year intervals. Ownership Reports shall give the following information as of a date not more than 30 days prior to the filing of the Ownership Report:

(1) In the case of an individual, the name of such individual;

(2) In the case of a partnership, the names of the partners and the interest of each partner;

NOTE.—Any change in partners or in their rights will require prior consent of the Commission upon an application for consent to assignment of license or permit. If such change involves less than a controlling interest, the application for Commission consent to such change may be made upon FCC Form 316 (Short Form).

(3) In the case of a corporation, association, trust, estate, or receivership, the data applicable to each:

(i) The name, residence, citizenship, and stock-holdings of officers, directors, stockholders, trustees, executors, administrators, receivers, and members of any association;

(ii) Full information as to family relationship or business association between two or more officials, and/or stockholders, trustees, executors, administrators, receivers, and members of any association;

(iii) Capitalization with a description of the classes and voting power of stock authorized by the corporate charter or other appropriate legal instrument and the number of shares of each class issued and outstanding; and

(iv) Full information on FCC Form 323 with respect to the interest and identity of any person having any direct, indirect, fiduciary, or beneficiary interest in the licensee or any of its stock;

For example:

(a) Where A is the beneficial owner or votes stock held by B, the same information should be furnished for A as is required for B.

(b) Where X corporation control the licensee, or holds 25% or more of the number of issued and outstanding shares of either voting or non-voting stock of the licensee, the same information should be furnished with respect to X corporation (its capitalization, officers, directors, and stockholders and the amount of stock [by class] in X held by each) as is required in the case of the licensee, together with full information as to the identity and citizenship of the person authorized to vote licensee's stock, in case of voting stock.

(c) The same information should be furnished as to Y corporation if it controls X corporation or holds 25% or more of the number of issued and outstanding shares of either voting or non-voting stock of X, and as to Z corporation if it controls Y corporation or holds 25% or more of the number of issued and outstanding shares of either voting or non-voting stock of Y and so on back to natural persons.

(4) In the case of all licensees:

(1) A list of all contracts still in effect required to be filed with the Commission by § 1.613 showing the date of execution and expiration of each contract; and

(2) Any interest which the licensee may have in any other broadcast station.

(b) A permittee shall file an Ownership Report (FCC Form 323) within 30 days of the date of grant by the Commission of an application for original construction permit. The Ownership Report of the permittee shall give the information required by the applicable portions of paragraph (a) of this section.

(c) A supplemental Ownership Report (FCC Form 323) shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report shall include without limitation:

(1) Any change in capitalization or organization;

(2) Any change in officers and directors;

(3) Any transaction affecting the ownership, direct or indirect, or voting rights of licensee's or permittee's stock, such as:

(i) A transfer of stock;

(ii) Issuance of new stock or disposition of treasury stock;

(iii) Acquisition of licensee's or permittee's stock by the issuing corporation or

(4) Any change in the officers, directors, or stockholders of a corporation other than the licensee or permittee such as X, Y, or Z corporation described in the example in paragraph (a)(3) of this section.

NOTE.—Before any change is made in the organization, capitalization, officers, directors, or stockholders of a corporation other than licensee or permittee, which results in a change in the control of the licensee or permittee, prior Commission consent must be received under Section 310(b) of the Communications Act and § 1.540. A transfer of control takes place when an individual, or group in privity, gains or loses affirmative or negative (50%) control. See instructions on FCC Form 323 "Ownership Report."

(4) Exceptions: Where information is required under paragraphs (a), (b), or (c) of this section with respect to a corporation or association having more than 50 stockholders or members, such information need be filed only with respect to stockholders or members who are officers or directors of the corporation or association, or to other stockholders or members who have 1% or more of either the voting or non-voting stock of the corporation or voting rights in the association.

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FCC Form 233
7(a) Capitalization

Class of stock (preferred, common or other)	Voting or non-voting	If per, show per value	If no par, show stated value or value assigned	Number and class of stock		Number of shares issued and outstanding	Number of shares		Number of stockholders
				Common	Preferred		Authorized	Treasury	
(b) Officers, directors and stock held by each: (See Instructions 3, 4, 5, 6, 7 and 8.)									
Name and residence of officers and directors	Citizenship	Office held and date elected	Director - date elected	Number and class of stock		Percentage of voting stock held	Name of person employed, if any		
				Common	Preferred				
Remarks concerning family relationship, qualifying shares, etc.: (See Instructions 5 and 6.)									

Page 3

FCC Form 233

8. List transactions concerning the ownership of stock. (If transaction includes more than one class of stock, the following should be answered with respect to each class.)

NOTE: (Read carefully) The numbered items below refer to line numbers in the following table. Lines 1 thru 17 should be filled out completely when this form is filed to report stock transactions pursuant to Instruction 1(c). Lines 1 thru 8, inclusive, should be filled out when the form is used to report ownership after receipt of original construction permit, or consummation, pursuant to Commission consent, of a transfer of control, or assignment of license, pursuant to Instruction 1(b). Lines 1 thru 6, inclusive, should be filled out when the form is used to report pursuant to Instruction 1(b). Use one column per stockholder. (Attach additional pages if necessary.)

Line	1 - Name and residence of transferee, purchaser, or stockholder (if other than an individual also show race, address, and citizenship of natural person authorized to vote the stock acquired.)	Line	11 - Total number of shares of stock held by purchaser or transferee subsequent to this transaction
2	Citizenship	12	Percentage of issued stock in corporation held by purchaser or transferee subsequent to this transaction
3	Number of shares	13	From whom stock acquired
4	Number of votes	14	Number of shares of stock held by seller or transferor prior to this transaction
5	Type of stock (Common CM; Preferred PF; Other)	15	Percentage of issued stock held by seller or transferor prior to this transaction
6	Par or stated value	16	Number of shares of stock held by seller or transferor subsequent to this transaction
7	Total consideration paid (if other than cash, describe fully.)	17	Percentage of issued stock held by seller or transferor subsequent to this transaction
8	Date of consummation		
9	Number of shares of stock held by purchaser or transferee prior to this transaction		
10	Percentage of issued stock in corporation held by purchaser or transferee prior to this transaction		

1	(a)	(b)	(c)
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2			
3			
4			
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17			

9999: (See Instructions 3, 7 and 8.)

10000: The purpose of the above computation is to assist the licensee or permittee in determining whether the transaction in question involves a transfer of control. If such is the case, the transaction cannot be authorized until prior Commission consent has been obtained.

INSTRUCTIONS

(To accompany Ownership Report (FCC FORM 323))

1. This report is to be filed by Standard, FM, International or Television broadcast stations as follows:
 - (a) By licensees with the application for renewal of station license. (See §1.343 (a))
 - (b) By licensees or permittees within 30 days after the consummation, pursuant to Commission consent, of a transfer of control, or an assignment of license or the grant of an original construction permit.
 - (c) By licensees or permittees within 30 days after any changes in the information called for by this form.
 - (d) File one copy with the Federal Communications Commission, Washington 25, D. C. If information submitted is equally applicable to each station above listed, one report may be filed for all such stations; otherwise a separate report shall be filed for each station.
 - (e) Partnerships and individuals are to fill out Paragraphs 1, 2, 3, 5, and 6. Corporations and associations are to fill out Paragraphs 1, 2, 3, 4, 6, 7, and 8. This form is to be filled out completely when filed pursuant to (a) and (b) above. When filled out pursuant to (c), changes only need be noted.

Any contract or modification of contract relating to the ownership, control, or management of the licensee or permittee or its stock must be filed with the Commission, as required by Section 1.342 of the Rules. Attention is directed to the fact that Section 1.342 requires the filing of all contracts of the types specified and is not limited to executed contracts but includes options, pledges, and other executory agreements and contracts relating to ownership, control, or management.

This form should be used to report all types of transactions concerning stock, agreements, voting control, trusts, etc., including an acquisition or sale by a corporation of its stock:

 - (a) Where a corporation sells its own stock an explanation of the character of the shares sold (such as authorized but unissued, treasury stock, etc.) should be given under "Remarks", Paragraph 8, Page 3.
 - (b) Where a corporation acquires its own stock an explanation of the disposition made or proposed (such as cancelled, held as treasury stock, etc.) should be given under "Remarks", Paragraph 8, Page 3.
4. If the licensee or permittee is directly or indirectly controlled by another corporation, or, if another corporation has a 25% or greater ownership interest, direct or indirect, in such licensee or permittee (whether or not such interest constitutes control of the licensee or permittee), a separate Form 323 should be submitted to report changes in the officers, directors, or stockholders of such corporation or corporations.
5. Where report is required as to stock interests, it should include beneficial as well as legal interests. In reporting the beneficial interests of a person not a stockholder of record or who has any other direct or indirect interest in the licensee or permittee, use the space provided for "Remarks", Paragraph 7, Page 2, or separate sheets to give a full explanation.
6. Under "Remarks", Paragraph 7, Page 2, give full information as to any family relationship (e.g. father-son, man-wife, brothers, sisters, uncle-nephew, cousins, etc.) or as to any business association (e.g. partners in other business enterprises, etc.) between one or more officers, directors, or stockholders of the licensee or permittee and any other officer, director, or stockholder who is the subject of this report.
7. Where information is required with respect to stockholders in corporations having more than 50 stockholders, such information need be filed only with respect to stockholders who are officers and directors or who have 1% or more of the stock of the corporation.
8. THIS FORM IS NOT TO BE USED TO REPORT OR REQUEST A TRANSFER OF CONTROL OR ASSIGNMENT OF LICENSE OR CONSTRUCTION PERMIT (except to report a transfer of control or assignment of license made pursuant to prior Commission consent). The appropriate forms for use in connection with such transfers or assignments are FCC Forms 314, 315, and 316. It is the prime responsibility of the licensee or permittee to determine whether a given transaction constitutes a transfer of control or an assignment. However, for purposes of example only, and for the convenience of interested persons, there are listed below some of the more common types of transfers concerning which doubt exists in the minds of many broadcasters.

A transfer of control takes place when:

 - 1) An individual stockholder gains or loses affirmative or negative (50%) control. (Affirmative control consists of control of more than 50% of voting stock; negative control consists of control of exactly 50% of voting stock.)
 - 2) Any family group or any individual in a family group gains or loses affirmative or negative (50%) control. (See also Instruction 6.)
 - 3) Any group in privity gains or loses affirmative or negative (50%) control.

The following are examples of transfers of control or assignments of licenses requiring prior Commission consent:

 - 1) A, who was 51% of the licensee's or permittee's stock, sells 1% more thereof to B. A transfer has been effected.
 - 2) X corporation, wholly owned by Y family, reduces outstanding stock by purchase of treasury stock which results in family member A's individual holdings being increased to 50% or more. A transfer has been effected.
 - 3) A and B, man and wife, each own 50% of the licensee's or permittee's stock. A sells any of his stock to B. A transfer has been effected.
 - 4) A is a partner in the licensee. A sells any part of his interest to newcomer B or existing partner C. An assignment has been effected.
 - 5) X partnership incorporates. An assignment has been effected.
 - 6) Minority stockholders form a voting trust to vote their 50% or more combined stockholdings. A transfer has been effected.
 - 7) A, B, C, D, and E each own 20% of the stock of X corporation. A, B, and C sell their stock to F, G, and H at different times. A transfer is effected at such time as C sells 10% or more of his stock. In other words, a transfer is effectuated at such time as 50% or more of the stock passes out of the hands of the stockholders who held stock at the time the original authorization for the licensee or permittee corporation was issued.
9. The official title of the respondent must be the individual licensee or permittee, a partner in the licensee or permittee partnership, or an officer in the licensee or permittee corporation.

SECTION 1.342 OF THE COMMISSION'S RULES AND REGULATIONS

§1.342 Filing of contracts. Each licensee or permittee of a standard, FM, television, or international broadcast station (as defined in Part 3 of this chapter), whether operating or intending to operate on a commercial or noncommercial basis, shall file with the Commission copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations, within 30 days of execution thereof. The substance of oral contracts shall be reported in writing.

(a) Contracts relating to network service: All network affiliation contracts, agreements, or understandings between a station and a national, regional, or other network shall be filed. Transcription agreements or contracts for the supplying of file for television stations which specify option time must be filed. This action does not require the filing of transcription agreements or contracts for the supplying of file for television stations which do not specify option time, nor contracts granting the right to broadcast music such as ASCAP, BMI, or SESAC agreements.

(b) Contracts relating to ownership or control: Contracts, instruments, or documents relating to the present or future ownership or control of the licensee or permittee or of the licensee's or permittee's stock, rights, or interests therein, or relating to changes in such ownership or control. This paragraph shall include but is not limited to the following:

(1) Articles of partnership, association, and incorporation, and changes in such instruments;

(2) Bylaws, and any instruments effecting changes in such bylaws;

(3) Any agreement, document, or instrument (i) providing for the assignment of a license or permit or (ii) affecting, directly or indirectly, the ownership or voting rights of the licensee's or permittee's stock (common or preferred, voting or non-voting), such as:

(a) Agreements for transfer of stock; (b) Instruments for the issuance of new stock; or (c) Agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation. Pledges, trust agreements, options to purchase stock and other executory agreements are required to be filed.

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of one year; and all proxies, whether or not running for a period of one year, given without full and detailed instructions binding the nominee to act in a specific manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee within 30 days after the stockholders' meeting in which the stock covered by such proxies has been voted; *Provided, however*, That when the licensee or permittee is a

corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1 percent or more of the corporation's voting stock; in cases where the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are neither officers or directors nor hold 1 percent or more of the corporation's stock, the only information required to be filed is the name of any person voting 1 percent or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy.

(5) Mortgage or loan agreements containing provisions restricting the licensee's or permittee's freedom of operation, such as those affecting voting rights, specifying or limiting the amount of dividends payable, the purchase of new equipment, the maintenance of current assets, etc.; or

(6) Any agreement reflecting a change in the officers, directors, or stockholders of a corporation, other than the licensee or permittee, having an interest, direct or indirect, in the licensee or permittee as specified by §1.343.

(c) Contracts relating to the sale of broadcast time to "time brokers" for resale.

(d) Contracts relating to Subsidized Communications Authorization Operation, except contracts granting licensee or permittee engaged in SCA the right to broadcast copy-right music.

(e) Time sales contracts: Time sales contracts with the name sponsor for 4 or more hours per day, except where the length of the event (such as athletic contests, musical programs, and special events) broadcast pursuant to the contract is not under control of the station.

(f) Contracts relating to personnel:

(1) The following contracts, agreements, or understandings shall be filed: management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee station; management contracts with any persons, whether or not officers, directors, or regular employees which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

(2) The following contracts, agreements, or understandings need not be filed: agreements with persons regularly employed as general or station managers or salesmen; contracts with program managers or program personnel; contracts with chief engineers or other engineering personnel; contracts with attorneys, accountants, or consulting radio engineers; contracts with performers; contracts with station representatives; contracts with labor unions; or any similar agreements.

§1.343 *Ownership reports.* (a) Each licensee of a standard, FM, or television station (as defined in Part 3 of this chapter), whether operating or intending to operate on a commercial or non-commercial basis, shall file an Ownership Report (FCC Form 323) at the time the application for renewal of station license is required to be filed. *Provided, however,* That licensee owning more than one standard, FM, or television broadcast station need file only one Ownership Report at three-year intervals. Ownership Reports shall give the following information as of a date not more than 30 days prior to the filing of the Ownership Report:

(1) In the case of an individual, the name of such individual;

(2) In the case of a partnership, the names of the partners and the interest of each partner;

NOTE: Any change in ownership or in their rights will require prior consent of the Commission upon an application for consent to assignment of license or permit. If such change involves less than a controlling interest, the application for Commission consent to such change may be made upon FCC Form 318 (SUPPORT FORM).

(3) In the case of a corporation, association, trust, estate, or receivership, the data applicable to each:

(i) The name, residence, citizenship, and stock-holdings of officers, directors, stockholders, trustees, executors, administrators, receivers, and members of any association;

(ii) Full information as to family relationship or business association between two or more officials and/or stockholders, trustees, executors, administrators, receivers, and members of any association;

(iii) Capitalization with a description of the classes and voting power of stock authorized by the corporate charter or other appropriate legal instrument and the number of shares of each class issued and outstanding; and

(iv) Full information on FCC Form 323 with respect to the interest and identity of any person having any direct, indirect, fiduciary, or beneficiary interest in the licensee or any of its stock;

For example:
(a) Where A is the beneficial owner or voting stock held by B, the same information should be furnished for A as is required for B.

(b) Where X corporation controls the licensee, or holds 25 percent or more of the number of issued and outstanding shares of either voting or non-voting stock of the licensee, the same information should be furnished with respect to X corporation (the capitalization, officers, directors, and stockholders and the amount of stock [by class] in X held by each) as is required in the case of the licensee, together with full information as to the identity and citizenship of the persons authorized to vote licensee's stock, in case of voting stock.

(c) The same information should be furnished as to Y corporation if it controls X corporation or holds 25 percent or more of the number of issued and outstanding shares of either voting or non-voting stock of X, not as to Z corporation, if it controls Y corporation or holds 25 percent or more of the number of issued and outstanding shares of either voting or non-voting stock of Y and so on back in several persons.

(4) In the case of all licensees:

(i) A list of all contracts still in effect required to be filed with the Commission by §1.342 showing the date of execution and expiration of each contract; and (ii) Any interest which the licensee may have in any other broadcast station.

(b) A permittee shall file an Ownership Report (FCC Form 323) within 30 days of the date of grant by the Commission of an application for original construction permit. The Ownership Report of the permittee shall give the information required by the applicable portions of paragraph (a) of this section.

(c) A supplemental Ownership Report (FCC Form 323) shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report shall include without limitation:

(1) Any change in capitalization or organization;

(2) Any change in officers and directors;

(3) Any transaction affecting the ownership, direct or indirect, or voting rights of licensee's or permittee's stock, such as:

(i) A transfer of stock;

(ii) Issuance of new stock or disposition of treasury stock; or

(iii) Acquisition of licensee's or permittee's stock by the issuing corporation; or

(4) Any change in the officers, directors, or stockholders of a corporation other than the licensee or permittee such as X, Y, or Z corporation described in the example in paragraph (a)(3) of this section.

NOTE: Before any change is made in the organization, capitalization, officers, directors, or stockholders of a corporation other than licensee or permittee, which results in a change in the control of the licensee or permittee, prior Commission consent must be received under §1.319 (that the Communications Act and §1.322). A transfer of control takes place when an individual, or group in private, gains or loses affirmative or negative (50 percent) control. See instruction on FCC Form 323 "Ownership Report".

(d) Exceptions: Where information is required under paragraphs (a), (b), or (c) of this section with respect to a corporation or association having more than 50 stockholders or members, such information need be filed only with respect to stockholders or members who are officers or directors of the corporation or association, or to other stockholders or members who have 1 percent or more of either the voting or non-voting stock of the corporation or voting rights in the association.

F.C.C. - WASHINGTON, D. C.

Agreement, made the 8th day of June, 1967, by and among A.V.C. Corporation, a Delaware corporation (AVC); U.S. Communications Corporation, a Delaware corporation (Communications) (formerly named Communications, Incorporated), wholly owned by AVC; Philadelphia Television Broadcasting Company, a Pennsylvania corporation (WPHL); and William A. Banks, Aaron J. Katz, Leonard B. Stevens, Donald Heller and Joseph L. Castle, stockholders of WPHL (the Stockholders).

The background of this agreement is as follows:

A. AVC is a party to the following Agreements, conformed copies of which have been furnished to WPHL and the Stockholders:

(1) Stock Purchase Agreement (the Stock Purchase Agreement) dated March 28, 1967, by and between AVC and D. H. Overmyer, a resident of New York City, New York (Overmyer), providing for the purchase by AVC from Overmyer, upon the terms and conditions therein set forth, of 80% of the outstanding capital stock of the following corporations (the Overmyer TV Companies):

D. H. Overmyer Broadcasting Company, Inc., a Texas corporation, holding a construction permit (BMPCT 6263) for the construction and operation of Television Station KJDO-TV in Rosenberg, Texas.

D. H. Overmyer Communications Company, Inc., a Georgia corporation holding a construction permit (BMPCT 6223) for the construction and operation of Television Station WBMO-TV in Atlanta, Georgia.

D. H. Overmyer Broadcasting Company, Inc., an Ohio corporation holding a construction permit (BMPCT 6390) for the construction and operation of Television Station WSCO-TV in Newport, Kentucky.

D. H. Overmyer Communications Company, Inc., a Pennsylvania corporation holding a construction permit (BMPCT 6412) for the construction and operation of Television Station WECO-TV in Pittsburgh, Pennsylvania.

D. H. Overmyer Communications Co., Inc., a California corporation holding a construction permit (BMPCT 6487) for the construction and operation of Television Station KEMO-TV in San Francisco, California.

(2) Stock Pledge and Escrow Agreement (the Stock Pledge and Escrow Agreement) dated March 28, 1967, by and among Overmyer, AVC and Girard Trust Bank, as Escrow Agent, under which Overmyer has pledged, subject to the limitations set forth therein, his interest in 100% of the outstanding capital stock of the Overmyer TV Companies as collateral for the repayment to AVC of the \$1,000,000 down payment made by AVC to Overmyer pursuant to the Stock Purchase Agreement and the repayment of loans made or to be made by AVC to certain corporations pursuant to the Loan Agreement hereinafter referred to.

(3) Loan Agreement dated March 28, 1967, between AVC, Overmyer, D.H. Overmyer Co., Inc., an Ohio corporation, and the wholly owned subsidiaries of said D. H. Overmyer Co., Inc. listed in Exhibit A thereto, as amended and supplemented by the Supplemental Loan Agreement dated May 3, 1967 (said Loan Agreement and Supplemental Loan Agreement being collectively called the "Loan Agreement"), providing, upon the terms and conditions therein set forth, for a First Loan (the First Loan) in the principal amount of \$1,500,000 to said D. H. Overmyer Co., Inc. and certain of its subsidiaries, a Second Loan (the Second Loan) in the principal amount of \$1,500,000 to said D. H. Overmyer Co., Inc. and certain of the subsidiaries and an option on the part of AVC to purchase from Overmyer his interest in the remaining 20% of the outstanding capital stock of the Overmyer TV Companies.

B. On March 28, 1967, AVC made the \$1,000,000 down payment under the Stock Purchase Agreement and Overmyer lodged with Girard Trust Bank, as Escrow Agent, the certificates for certain shares of the outstanding capital stock of the Overmyer TV Companies as recited in the Stock Pledge and Escrow Agreement.

C. On May 3, 1967, AVC made the First Loan under the Loan Agreement.

D. On June 6, 1967, AVC assigned to Communications all of its right, title and interest in, to and under the Stock Purchase Agreement. It also assigned all of its right, title and interest in, to and under the Stock Pledge and Escrow Agreement, but only insofar as the same relates to and secures the repayment by Over-

myer of the \$1,000,000 paid by AVC to Overmyer on March 28, 1967, pursuant to paragraph I B of the Stock Purchase Agreement. In consideration of such assignments, Communications has issued or will issue to AVC prior to the merger called for hereunder 364,838 shares of Common Stock, 10¢ par value, of Communications, representing all of the issued and outstanding capital stock of Communications.

E. WPHL owns and operates Television Station WPHL-TV in Philadelphia, Pennsylvania.

F. The authorized capital stock of WPHL consists solely of 50,000 shares divided into 20,000 shares of Preferred Stock, without par value, of which 12,000 shares are outstanding, and 18,000 shares of Class A Common Stock, without par value, and 12,000 shares of Class B Common Stock, without par value, all of which are issued and outstanding. All issued and outstanding shares are fully paid and non-assessable.

G. Southeastern Pennsylvania Development Fund holds certain debentures of a face amount of \$75,000 which are convertible into Class A Common Stock and Class B Common Stock of WPHL in the ratio of 3 shares of Class A to 2 shares of Class B at a price of \$59 per share, which it has informed WPHL of its intention to exercise. For purposes of this Agreement, it is assumed that such conversion privilege will have been exercised prior to the Closing hereunder and that WPHL will have authorized and issued to Southeastern Pennsylvania Development Fund thereunder 763 shares of Class A Common Stock and 508 shares of Class B Common Stock of WPHL.

H. The parties are desirous of arranging for the Overmyer TV Companies and WPHL to become subsidiaries of Communications, upon the terms and conditions and in the manner set forth in this Agreement.

Now, therefore, the parties hereto, intending to be legally bound hereby, hereby agree as follows:

1. *Merger of WPHL into Communications.*—Contemporaneously with the Closing provided for in Paragraph II of the Stock Purchase Agreement, subject to the satisfaction of all of the conditions set forth in Section 2 of this Agreement, WPHL will be merged with and into Communications as the surviving corporation, in accordance with the Plan and Agreement of Merger between WPHL and Communications dated June 8, 1967 and attached hereto as Exhibit A, and in accordance with the following terms and conditions:

(a) The capital stock of Communications issued and outstanding and owned by AVC will remain outstanding.

(b) The 20,000 outstanding shares of Preferred Stock, without par value, of WPHL will be converted into \$240,000 principal amount of 6% Subordinated Debentures of Communications maturing six years from the effective date of the merger and bearing interest at 6% payable semi-annually. Said Debentures will be subject to prepayment at any time, but will not be entitled to the benefit of any sinking, amortization or purchase fund. Each such debenture will provide for prepayment of 25% of the principal amount thereof, together with accrued interest, at the option of the holder thereof on April 1, 1968 or upon any interest date upon presentation by such holder not less than 10 days prior to such date.

(c) The 18,763 outstanding shares of Class A Common Stock, without par value, and the 12,508 outstanding shares of Class B Common Stock, without par value, of WPHL then outstanding will be converted into 156,355 shares of Common Stock, 10¢ par value, of Communications.

(d) The number of Directors of the surviving corporation will be not less than five nor more than seven and the initial Directors of the surviving corporation will be William A. Banks, Joseph L. Castle, Aaron J. Katz, Frank H. Reichel, Jr., and Leonard B. Stevens.

(e) The officers of the surviving corporation shall be Joseph L. Castle, Chairman of the Board; Frank H. Reichel, Jr., President and Treasurer; Aaron J. Katz, Vice President; Leonard B. Stevens, Vice President; and Thomas V. Lefevre, Secretary.

(f) The surviving corporation shall have an authorized capital stock consisting of 1,000,000 shares of Common Stock, 10¢ par value, of which, upon the consummation of the merger, 521,183 shares shall be issued and outstanding.

2. *Conditions precedent to merger of WPHL into communications:*

A. The obligation of WPHL to consummate the merger shall be conditioned upon the existence of the following at the time of the merger:

(1) AVC shall have approved the merger of WPHL with and into Communications in accordance with the requirements of the laws of the State of Delaware.

(2) AVC shall have assigned to Communications:

(a) All of the promissory notes representing the First Loan, in an aggregate principal amount of \$1,500,000 together with all of the Second Mortgages, Assignments and Guarantees securing the same.

(b) All of its right, title and interest in, to and under the Stock Pledge and Escrow Agreement.

(c) All of its right, title and interest in, to and under the Loan Agreement.

(3) AVC shall have either loaned to Communications or guaranteed a loan from a third party to Communications in the amount necessary to make the Second Loan under the Loan Agreement, if the Second Loan is to be made.

(4) All of the covenants contained in this Agreement, to be performed by AVC and/or Communications prior to the effective date of the merger, shall have been performed and they shall have complied with the terms of Section 3 of this Agreement.

(5) WPHL shall have received the favorable opinion of Messrs. Morgan, Lewis & Bockius, counsel for Communications, in form and substance satisfactory to WPHL, as to the due organization and existence of Communications, the due authorization, execution and legal effect of this Agreement upon Communications, and to the effect that when the merger becomes effective all liabilities and obligations of WPHL will become the liabilities and obligations of Communications without any further action by either constituent corporation, and that the WPHL capital stock will be converted automatically into securities of Communications as provided herein.

(6) The authorized capital stock of Communications, as of the date of the merger, shall consist of 1,000,000 shares of Common Stock with a par value of ten cents per share, of which 364,828 shares shall be issued and outstanding.

(7) AVC and Communications shall have issued a written commitment to Independence Broadcasting Company and the Stockholders (other than Castle) that no later than 18 months after the merger Independence and such Stockholders (and any collateral they may have pledged) will be released from, or they will be indemnified by AVC and Communications against, any liability under any guarantee agreement or indemnification to any banking institution the terms of which Independence and/or any of such Stockholders are liable in the event of a default in payment by WPHL.

B. The obligation of AVC and Communications to consummate the merger shall be conditioned upon the existence of the following at the time of the merger:

(1) The requisite majority of the stockholders of WPHL shall have approved the merger of WPHL with and into Communications in accordance with the requirements of the laws of the Commonwealth of Pennsylvania.

(2) No conversion privilege shall exist in any outstanding debentures of WPHL.

(3) All of the covenants contained in this Agreement, to be performed by WPHL prior to the effective date of the merger, shall have been performed and it shall have complied with the terms of Section 3 of this Agreement.

(4) Communications shall have received the favorable opinion of Messrs. Dilworth, Paxson, Kalish, Kohn & Levy counsel for WPHL, in form and substance satisfactory to Communications as to the organization and existence of WPHL, the due authorization, execution and binding effect of this Agreement upon WPHL, and to the effect that when the merger has become effective all of the properties and rights of WPHL will be transferred to and vested in Communications, without any further action except for the recording or filing of any instruments of conveyance.

(5) WPHL shall be the licensee of UHF Broadcast License No. BMPCT-0275 covering WPHL-TV (Channel 17), and such License shall be in full force and effect.

(6) WPHL shall have delivered to AVC and Communications an instrument evidencing the acceptance by and consent of The Fidelity Bank and the Southeastern Pennsylvania Development Fund to the terms and conditions of this Agreement.

(7) The authorized capital stock of WPHL, as of the date of the merger, shall consist of 62,000 shares, divided into 20,000 shares of Preferred Stock, without par value, 24,000 shares of Class A Common Stock, without par value, and 18,000 shares of Class B Common Stock, without par value, of which 20,000 shares of Preferred Stock, 18,763 shares of Class A Common Stock and 12,508 shares of Class B Common Stock shall be issued and outstanding.

C. The obligation of WPHL, AVC and Communications to consummate the merger shall be conditioned upon the existence of the following at the time of the merger:

(1) All of the conditions precedent to the Closing under the Stock Purchase Agreement shall have occurred and such Closing shall have occurred.

(2) The Federal Communications Commission (FCC) shall have issued its Order consenting to the merger of WPHL into Communications.

(3) No litigation or other proceeding shall be pending, or to the knowledge of either constituent corporation be threatened, to enjoin or dissolve the merger, or which would materially and adversely affect the financial condition, properties or business of either constituent corporation.

(4) Communications shall have delivered to AVC, in exchange for AVC's assignment of the promissory notes under subsection 2A(2)(a) above, its promissory note in the principal amount of \$1,500,000 and, in the event of a loan by AVC under subsection 2A(3) above, shall have delivered in exchange therefor its promissory note in the principal amount of \$1,500,000. Such note or notes shall mature six years from the date of issuance thereof or upon the date of payment of the promissory note evidencing the First Loan and/or the Second Loan, whichever is earlier. Such notes shall bear interest at the rate of 5% as to \$1,500,000 principal amount thereof and at the rate of interest of the Second Loan as to the remaining \$1,500,000 principal amount thereof and shall be secured by a reassignment by Communications to AVC as collateral of all of the promissory notes, Second Mortgages, Assignments and Guarantees delivered to AVC as security for the First Loan and by an assignment to AVC of all of the promissory notes, mortgages, Assignments and Guarantees delivered to Communications as security for the Second Loan. In the event Communications shall exercise the option to acquire the interest of Overmyer in the remaining 20% of the stock of the Overmyer TV Companies under article VII of the Loan Agreement and shall elect to require Overmyer to apply the sum payable to Overmyer for such interest toward repayment of the First Loan and Second Loan, AVC will release all of such collateral at the closing of such purchase.

3. *Conduct of the business of WPHL and Communications prior to the merger.*—Between the date of this Agreement and the effective date of the merger of WPHL with and into Communications, neither WPHL nor Communications will, without the prior written consent of Communications in the case of WPHL, or without the prior written consent of WPHL in the case of Communications, except as necessary or appropriate to effectuate the terms of this Agreement:

(a) Issue any securities other than as provided in paragraph G of the background of this Agreement, declare or pay any dividends, or make any distribution to any of its security holders in cash, property or otherwise, except that WPHL may, without the prior written consent of Communications, issue its promissory notes to evidence the principal amount of borrowings in the ordinary course of business otherwise permitted hereunder and except that WPHL may issue warrants to AVC as provided in Section 4 hereof.

(b) Enter into any contract or commitment or incur any expenses or indebtedness except in the ordinary and usual course of business.

(c) Make any changes affecting the wages, salaries or other compensation payments (other than in the normal and usual course of business or as required by union contracts) or make any changes affecting the Directors, officers or banking arrangements.

(d) Create, assume or permit to exist any mortgage, pledge or other lien or encumbrance upon any of its assets or properties hereafter acquired.

(e) Sell, assign, lease or otherwise transfer or dispose of any of its assets or properties whether now owned or hereafter acquired.

(f) Enter into any agreement for merger or consolidation into or with any other corporation.

(g) Conduct its business other than in the ordinary and usual course.

Between the date of this Agreement and the effective date of the merger of WPHL with and into Communications, WPHL will:

(h) Give to Communications and its representatives full access during normal business hours to all of the properties, books and records of WPHL and furnish Communications with all such information concerning the operations of WPHL as Communications may reasonable request.

(i) Furnish to Communications copies of all financial statements and other financial information which may be furnished by WPHL from time to time to its lending financial institutions.

(j) Use its best efforts to preserve the business organization of WPHL intact and to keep available the services of its present employees.

(k) Comply with all applicable laws, including but not limited to, the Federal Communications Act of 1934 and the Rules and Regulations of the FCC and do all things necessary to keep in full force and effect UHF Broadcast License No. BMPCT 6275 covering WPHL-TV (Channel 17).

(l) Prepare, execute and file with the FCC all applications and other instruments required of the transferor in requesting the FCC's written approval of the merger of WPHL into Communications and take all other steps that may be necessary or proper on its part to the expeditious, diligent prosecution of such application or applications to a favorable conclusion.

Between the date of this Agreement and the effective date of the merger of WPHL with and into Communications, Communications will:

(m) Give to WPHL and its representatives full access during normal business hours to all of the properties, books and records of Communications and furnish WPHL with all such information concerning the operations of Communications as WPHL may reasonably request.

(n) Furnish to WPHL copies of all financial statements and other financial information which may be furnished by Communications from time to time to its lending financial institutions, if any.

(o) Prepare, execute and file with the FCC all applications and other instruments required of the surviving corporation in requesting the FCC's written approval of the merger of WPHL into Communications and take all other steps that may be necessary or proper on its part to the expeditious, diligent prosecution of such application or applications to a favorable conclusion.

(p) Between the date hereof and the closing, Communications will refrain from exercising or attempting to exercise, any direct or indirect control, supervision or direction over the operations of WPHL, but such operation, including complete control and supervision of all programs, shall be the sole responsibility of WPHL.

4. *Interim financing.*—Between the date of this Agreement and the effective date of the merger, AVC agrees to enable WPHL to borrow, either directly from AVC or from a third party with a guarantee of repayment by AVC, from time to time, provided that such borrowings shall have a maturity of two years and that the amount of such borrowings at any one time outstanding shall not exceed \$500,000. To the extent that borrowings are made by WPHL pursuant to this Section 4, whether from AVC or with its guarantee, WPHL agrees to issue to AVC in respect of each \$1,000 so borrowed warrants to purchase 4 shares of Class A Common Stock and 2% shares of Class B Common Stock, without par value, of WPHL at the warrant price of \$60.00 per share, provided that the aggregate of the warrants so issued shall not exceed 3,475 shares. Such warrants shall be exercisable only upon the termination of this Agreement and for a period of five years thereafter. AVC agrees that any such warrants so acquired by it (and any shares of Common Stock of WPHL acquired by it upon the exercise of such warrants) will only be so acquired for investment purposes only and not with a view to any public distribution or resale and that at the time of issuance of any such warrants or stock AVC will deliver to WPHL a certificate to that effect acceptable to counsel for WPHL.

5. *Favorable vote of stockholders.*—WPHL and the Stockholders agree to call a meeting of the stockholders of WPHL to be held no later than July 15, 1967 to vote on the merger of WPHL with and into Communications provided for in Section 2 of this Agreement. The Stockholders severally agree to vote the shares of capital stock of WPHL owned by them, respectively, in favor of such merger.

6. *Post-merger financing.*—For a period of five years after the effective date of the merger, AVC agrees to enable Communications to borrow from time to time, either directly from AVC or from a third party with a guarantee of

repayment by AVC, upon terms no less favorable than AVC could obtain from outside lenders for loans to AVC and upon terms which will not require the issuance of capital stock or rights to acquire capital stock of Communications for the operations of Communications and the construction and operation by WPHL's successor and the corporations acquired by Communications under the Stock Purchase Agreement of their respective television stations; provided that the amount of such borrowings outstanding at any time shall not exceed \$4,000,000, less the amount of any interim financing extended to WPHL pursuant to Section 4 of this Agreement.

7. *Option of former stockholders of WPHL.*—During the period between the first and third anniversaries of the effective date of the merger, any former holder of Class A Common Stock or Class B Common Stock of WPHL shall have the non-transferable right to require AVC to purchase any portion not exceeding 80 percent of the shares of Common Stock of Communications received by such stockholder upon the consummation of the merger, and any additional shares of Common Stock issued with respect thereto as a result of stock splits or dividends, at the purchase price of \$12.79 per share, subject to appropriate adjustment for any stock splits or dividends. Such option may be exercised at any time during such period upon fifteen days' prior written notice by such stockholders to AVC.

This option shall not apply to the stock of Communications issued in exchange for the stock of WPHL owned as of the date of this Agreement or hereafter acquired by Aaron J. Katz, Leonard B. Stevens, Donald Heller, Joseph L. Castle and Southeastern Pennsylvania Development Fund. Each of the above-named parties (other than Southeastern Pennsylvania Development Fund) respectively represents that the number of shares of Common Stock of WPHL presently owned by him is as follows and that he will not dispose of any of such shares prior to the merger or the termination of this Agreement:

	Class A	Class B
Katz.....	4,350	2,350 ⁰
Stevens.....	4,350	2,350 ⁰
Heller.....	300	300 ⁰
Castle.....	200	200

8. *Additional post-merger financing.*—In addition to the \$4,000,000 which AVC agrees to make available to Communications under the provisions of Section 4 of this Agreement, it is anticipated that Communications and/or WPHL's successor and the corporations acquired by Communications under the Stock Purchase Agreement may borrow additional funds for the operations of Communications and the construction and operation of their respective television stations. In this event, AVC covenants, with respect to any such additional borrowing for such purposes not exceeding \$6,000,000; that no capital stock or rights to acquire capital stock of Communications will be issued in connection therewith.

9. AVC agrees that for a period of five consecutive years following the merger it will vote its shares of Communications for Aaron J. Katz and Leonard B. Stevens as directors of Communications; provided, however, that in each case, AVC shall be so obligated only so long as such party shall remain an employee of Communications and shall retain substantially all of the stock of Communications acquired by them in the merger.

10. *Butcher & Sherrerd.*—Immediately following the effective date of the merger referred to in Section 2 hereof, Communications will issue to Butcher & Sherrerd for its services 7,937 shares of Common Stock, of 10¢ par value, of Communications.

11. *Pennsylvania subsidiary.*—Immediately following the effective date of the merger referred to in Section 1 hereof, Communications will cause the former assets of WPHL to be transferred, subject to the former liabilities of WPHL, to a wholly owned Pennsylvania subsidiary corporation of Communications.

12. *Termination.*—If the FCC approval of the merger of WPHL with and into Communications and the transfer to it of the stock of the Overmyer TV Companies is not received within six (6) months following the filing of the application or applications for consent to such merger, either Communications or WPHL may at any time thereafter elect to terminate this Agreement by giving thirty (30) days written notice to the other. Anything in the preceding sentence notwithstanding, should the FCC approval be received prior to the

effective date of the termination of this Agreement, such termination shall not be effective and this Agreement shall continue in full force and effect.

13. *Notices.*—All necessary notices, demands and requests required or permitted to be given under the provisions hereof shall be deemed to have been duly given if sent by registered or certified mail, postage prepaid, or by telegram and addressed as follows:

(a) If given to AVC or Communications: 100 West Tenth Street, Wilmington, Delaware. Attention: President.

(b) If given to WPHL or the Stockholders: 230 South 15th Street, Philadelphia, Pennsylvania 19102.

14. *Parties in interest.*—This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and personal representatives. The rights of any party under this Agreement may not be assigned without the written consent of all other parties first had and obtained.

15. *Entire agreement.*—This Agreement embodies the entire agreement and understanding between the parties, and there are no other agreements, representations and warranties or understandings, oral or written between them with respect to the subject matter of this Agreement.

16. *Pennsylvania law.*—This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

17. *Headings.*—The headings of the Sections of this Agreement are for convenience of reference only and do not form a part hereof and in no way modify, interpret or construe the meanings of the Sections of this Agreement.

18. *Counterparts.*—This Agreement may be executed in any number of counterparts with the same effect as if the signature to each counterpart were upon the same instrument.

In witness whereof, the parties hereto, being thereunto duly authorized, have caused this Agreement to be executed and delivered the day and year first above written.

[CORPORATE SEAL]

Attest:

[CORPORATE SEAL]

Attest:

[CORPORATE SEAL]

Attest:

A.V.C. CORP.,
By FRANK H. REICHEL, Jr., *President.*
A. H. HAMMOND, *Secretary.*

U.S. COMMUNICATIONS CORP.,
By FRANK H. REICHEL, Jr., *President.*
THOMAS V. LEFEVRE, *Secretary.*

PHILADELPHIA TELEVISION
BROADCASTING CO.,
By AARON J. KATZ, *President.*
DONALD K. HELLER, *Secretary.*

WILLIAM A. BANKS,
AARON J. KATZ,
LEONARD B. STEVENS,
DONALD K. HELLER,
JOSEPH L. CASTLE,
Stockholders.
STEPHEN J. HARMELIN,
Witness.
THOMAS V. LEFEVRE,
Witness.

ITEM 12

FLY, SHUEBRUK, BLUME & GAGUINE,
Washington, D.C., September 11, 1968.

Wm. HARLEY O. STAGGERS,
Hayburn House Office Building,
Washington, D.C.

MY DEAR MR. STAGGERS: In accord with requests made by the Sub-Committee on Investigations of the House Committee on Interstate and Foreign Commerce in connection with recent hearings relating to the Federal Communications

Commission, I am pleased to submit the following information supplied to me by our client The Overmyer Company.

1. Who filed federal tax returns for the various Communications Companies? (Transcript p. 108): The tax return files indicate that a total of 22 federal income tax returns were filed for the various communications companies. They were signed by various officers of the company. Twelve of these returns were also signed by Arthur Young and Company, indicating that that firm was involved in the preparation and filing of those twelve returns.

2. How many Overmyer Communications Company insurance claims were handled by the insurance department? (Transcript p. 112) A review of the files indicates that in excess of 44 insurance claims were processed.

3. The number of loans and gross amount of loans serviced by the Treasurer's office for the Overmyer Communications Companies and for other Overmyer Companies. (Transcript p. 130): The annexed schedule sets forth the non-real estate bank loans from July 1964 through March 1967 serviced by the Treasurer's department, and the companies for which the services were rendered.

I believe that this leaves but one item of information requested by the Committee on which material has not yet been submitted. It is hoped that this material will be ready for submission by the 13th.

Very truly yours,

BENITO GAGUINE.

Nonreal estate bank loans, July 1964-March 1967

D. H. Overmyer Co.:	<i>Maximum amount</i>
1. The Arizona Bank, Phoenix, Ariz.....	\$250,000
2. Franklin National Bank, New York, N.Y.....	275,000
3. First American National Bank, Nashville, Tenn.....	250,000
4. Huntington National Bank, Columbus, Ohio.....	300,000
5. Industrial Valley Bank, Pittsburgh, Pa.....	200,000
6. Irving Trust Co., New York, N.Y.....	200,000
7. Ohio Citizens Trust Co., Toledo, Ohio.....	200,000
8. Pioneer Bank—Phoenix, Ariz.....	50,000
9. Western Pennsylvania National Bank, Pittsburgh, Pa.....	600,000
Subtotal	<u>2,325,000</u>

D. H. Overmyer Leasing Co.:	
1. Merchants National Bank, Allentown, Pa.....	100,000
2. National Bank of Malvern, Malvern, Pa.....	50,000
3. Raritan Valley National Bank, Edison, N.J.....	50,000
4. National Bank of Commerce, Memphis, Tenn.....	100,000
5. National Bank of Commerce, Reno, Nev.....	250,000
6. Nyhaco—New York, N.Y.....	200,000
7. Green Ridge Bank, Green Ridge, Pa.....	50,000
8. Union National Bank of Shenandoah, Shenandoah, Pa.....	60,000
9. Progress National Bank, Toledo, Ohio.....	90,000
Subtotal	<u>950,000</u>
Total	<u>3,275,000</u>

Communications companies:	
1. Barclay's Bank, San Francisco, Calif.....	80,000
2. Girard Trust Bank, Philadelphia, Pa.....	300,000
3. Pacific National Bank, San Francisco, Calif.....	350,000
4. U.S. Trust Co., New York, N.Y.....	600,000
Total	<u>1,330,000</u>

¹ Long-term loan secured by assignment of standby deposits.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., May 27, 1968.

Mr. DANIEL H. OVERMYER,
New York, N.Y.

DEAR MR. OVERMYER: In accordance with discussions held on Friday, May 24, 1968 between Mr. Russell Brown, your attorney and Mr. Robert W. Lishman, and the latter's letter to you of same date, the following documents are to be made available in your office to Mr. William Druhan of the Special Subcommittee staff:

—A copy of the federal corporate income tax returns for the fiscal years which include expenses recorded between July, 1964 and March 31, 1967 for:

- D. H. Overmyer Communications Company, Inc. (Calif.)
- D. H. Overmyer Communications Company, Inc. (Ga.)
- D. H. Overmyer Communications Company, Inc. (Pa.)
- D. H. Overmyer Broadcasting Company, Inc. (Texas)
- D. H. Overmyer Broadcasting Company, Inc. (Ky.)
- D. H. Overmyer Broadcasting Leasing Co., Inc. (Del.)
- D. H. Overmyer Broadcasting Company, Inc. (Ohio)

A copy of the federal corporate income tax returns for the fiscal years 1964 and 1965 for D. H. Overmyer Warehouse Co., Inc. (Ohio); and the personal federal income tax returns of Mr. Daniel H. Overmyer for the calendar years 1964, 1965, 1966 and 1967.

Mr. Druhan will examine these returns and copy only such information as he deems relevant and important to the Special Subcommittee's continuing investigation into broadcast station transfers.

Very truly yours,

HARLEY O. STAGGERS, *Chairman.*

ITEM 14

JUNE 19, 1968.

MEMORANDUM

To: Robert W. Lishman.

From: William T. Druhan

Subject: Verification of Overmyer's claimed out-of-pocket expenses.

As explained in another memorandum, included in Overmyer's claimed out-of-pocket expenses of \$1.3 million are charges amounting to \$666,514 for the cost of services of employees of The Overmyer Company, Inc. and the Overmyer Leasing Company who devoted a portion of their time to activities of the Communications Companies. The value of these services was computed based on the judgment of certain supervisory personnel as to the amount of time devoted to these activities by the various employees involved.

In an attempt to verify the accuracy of these charges, the Subcommittee staff sent a letter to a number of former employees of The Overmyer Co., Inc. requesting them to indicate the approximate percentage of time devoted to Communications Companies activities. This information was desirable in order to compare the employees' estimates with the estimates used in the Overmyer computation. The letter also requested dates of employment and a description of duties. A copy of the letter is attached.

The Overmyer Company, Inc. had 341 employees of record during the test period of September through December 1966 used in the computation of the charges. A letter was sent to 106, or 31%, of these employees. The employees selected to be queried were limited to those who were known to have terminated their employment. Most of these employees departed before March 31, 1967 (the

date Overmyer sold the construction permits). The selection was limited because it is believed that former employees would not have vested interest in the matter and could objectively give their best opinion. It is reasonable to assume that in order to protect their employment status some of Overmyer's current employees would be obliged to agree with the opinion of their supervisor. The sample of almost one-third of the total is considered more than adequate.

The computation of charges is based on the contention that 180 employees, or 52%, of the total number of record during the test period, devoted time to activities of the Communications Companies. A letter was sent to 39, or 21%, of these employees. It would have been preferable if the sample of persons involved in Communications Companies activities was the same percentage as the total sample rather than just 21%; however, this was not possible without querying persons presently employed by Overmyer. As stated, these persons may not be objective.

RESPONSES

Responses were received from 70 of the 106 requests sent—66%. However, 11 of the 106 letters were returned by the Post Office undelivered, therefore responses were received from 72% of the letters delivered. This is considered more than acceptable. Copies of the responses are attached.

Of the 70 responses received 33 were from employees included in the computation of charges because they supposedly devoted time to activities of the Communications Companies. This represents 18% of the total employees (180) contended by Overmyer to have been involved in these activities. Again, this is considered an acceptable sample. Only 39 (2 of which were returned undelivered) of the total of 106 letters sent were to persons supposedly involved in Communications Companies activities. The response from 33 of these letters represents 84% of this category and is greater than the overall response.

Of the 33 responses from employees included in the computation of charges, 23 indicated they did not perform any services for the Communications Companies and 10 indicated the time spent on Communications Companies activities was less than contended by supervisory personnel.

Significantly, no employees responded indicating that their estimate agreed with that of the supervisory personnel.

Six employees not included in the computation of charges responded indicating they did perform services for the Communications Companies. However, the amount of time was negligible and has very little effect on the amount of charges. For example, a secretary earned \$46 during the test period; she indicated 10–15% of her time was devoted to Communications Companies activities during one year.

Attached is a summary by department of the sample, the responses and their effect. The Finance and Development Department should be particularly noted. The charges for the services of employees of this department (\$307,715) represent 41% percent of the total charges for all departments. Almost half of the responses from employees included in the computation of charges were from employees of this department. Only three persons indicated they performed any services. No allocation was made for two; one indicated he spent 1% of his time for 11 months "seeking antenna and studio locations;" one indicated he spent less than 5% of his time on these activities for 10 months. This effort would have a negligible effect on the charges. The other, for whom an allocation of 20% was made, indicated he spent time on communications activities for a limited period but could not give a percentage of effort.

EFFECT

The out-of-pocket expenses include charges amounting to \$40,209 for services of employees who responded to our query denying they performed services for the Communications Companies and an excess of at least \$23,709 for services of employees who responded to our query contending their efforts were less than claimed by supervisory personnel—total overcharge of \$69,918.

CONCLUSION

The time estimates of the supervisory personnel were fallacious because many of the persons included in the computation of charges were either not involved in the activities of the Communications Companies or not involved to the extent contended. Consequently, the out-of-pocket expenses are considerably overstated.

(FORM LETTER SENT TO FORMER OVERMYER EMPLOYEES)

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964			
1965			
1966			

SUMMARY OF CONFIRMATIONS SENT TO SELECTED FORMER EMPLOYEES OF THE OVERMYER CO., INC.

Department	Total employees	Number of confirmations sent		Responses		Dollar effect for—				
		Total	Salary allocated	Total		Efforts less than allocated		No effort		
				Total	Salary allocated	But none allocated	Reported efforts		Less than allocated	None
The president's office.....	25	13	1	7	1	2	1	\$2,157	1	
Controller.....	71	29	2	13	2	2	2	14,951	1	
Purchasing.....	15	4	2	2	2	2	2	4,486	2	
Tax and insurance.....	15	4	2	2	2	2	2	1,505	1	
Personnel.....	22	13	1	6	1	1	1	3,646	1	
Auditing.....	23	13	1	6	1	1	1	(*)	1	
Legal.....	17	9	5	6	4	4	4	2,050	1	
Treasurer.....	13	2	1	2	1	1	1	691	1	
Advertising and public relations.....	6	2	1	1	1	1	1	13,104	1	
Finance and development.....	61	15	5	8	4	2	4	6,369	4	
New York.....	65	23	18	18	14	6	13	23,709	13	
Field.....	37	23	18	18	14	6	23	46,209	23	
Total.....	341	106	39	70	33	6	23	69,918	69	
Grand total.....	180	106	39	70	33	6	23	69,918	69	

* Represents opinion of former supervisor.
 † Data not available to make computation.

HOUSE OF REPRESENTATIVES,
 SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
 COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
 Washington, D.C., February 12, 1968.

Ms. FRANCINE LOUNI,
 New York, N.Y.

DEAR Ms. LOUNI: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
 Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	10 percent.....	None.....	Secretary.

HOUSE OF REPRESENTATIVES,
 SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
 COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
 Washington, D.C., February 12, 1968.

Mr. LEWIS MARCY,
 Huffern, N.Y.

DEAR Mr. MARCY: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D.H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
 Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
.....	None.....	None.....	Not employed.
.....do.....do.....do.....	Do.
.....do.....	100.....	Employed Sept. 1, 1966 to Dec. 31, 1966, as executive vice president of Overmyer network.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. THOMAS J. McMAHON,
Tenafly, N.J.

DEAR Mr. McMAHON: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	None	For first month of work, I was sole employee of network. Under direction of Oliver Treyz, I explored program possibilities, met with A.T. & T. regarding line and relay costs, and finally specialized in developing sports possibilities as vice president and director of sports. My association terminated early in 1967, prior to the network's going on the air. I would say that I generally was a sort of jack of all trades until other personnel were added for specific jobs. I was in no way associated with the development of, the preparation of, the engineering of, or any other phase of application for station licenses. I did meet with a number of station managers with regard to affiliation with the network and the use of the programs proposed for the network. I trust this gives you adequate information. It is a bit difficult to do anything but generalize when your specific interest outside the application for station licenses is not indicated. I cannot be of much aid with regard to the licenses, for these had been generally granted prior to my association with the group in 1966.
1965	do	do	
1966	do	Approximately 60 percent.	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. WILLIAM B. MORSE,
Flushing, N.Y.

DEAR Mr. MORSE: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966	June to October		Yacht captain.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. THOMAS S. NICHOLSON,
New York, N.Y.

DEAR Mr. NICHOLSON: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966	None	25 percent	Assistant to executive vice president.

HILLSDALE, N.J., February 20, 1968.

Mr. WILLIAM T. DRUHAN,
House of Representatives,
Rayburn House Office Building.

DEAR Mr. DRUHAN: In reply to your letter dated February 12, 1968 which requested information pertaining to (1) television construction permits of Overmyer affiliates, and (2) the Overmyer Network—the following should be of interest:

(1) I know very little re the construction permits but it is possible that Mr. Lemuel Schofield, Esq. who represented Mr. Overmyer, may be able to enlighten you on facts pertaining to the sale, etc. . . .

(2) I was hired by Mr. Overmyer on July 12, 1966 although my formal employment did not start until July 18, 1966. I was given the title of "Manager of Long Lines Communications of the Overmyer Tv Network". This subsequently was changed to "Director of Station Relations of the Overmyer Tv Network". Mr. Oliver Treyz, the President of the ON Net, recommended I be hired. My duties mainly consisted of designing the layout of the proposed network. This included routing of facilities between cities, interconnection of ON facilities (rented from AT&T) to private customer-owned facilities. Also, I had to authorize loop installations to various TV stations receiving the "Las Vegas Show". Mr. Treyz also gave me the added responsibility of leasing station contracts and clearing stations (which finally totaled 106 in number) to take the ON "Las Vegas Show".

I was hired on the pretext that Mr. Overmyer had \$15,000,000.00 to spend in order to "put over" the ON Fourth Network. In October of 1966 something happened to cause panic in the higher ranks and Mr. Overmyer decided to disband the network. Through the efforts of Mr. Treyz the plans for the Fourth Network were kept going and by February 19, 1967, Mr. Treyz had lined up fourteen stockholders to buy out Mr. Overmyer. The sale was based on the number of signed contracts which I had with stations to take the "Las Vegas Show" once it was put on the air. (Tentative air date was April 1, 1967 but was delayed until May 1, 1967). I was told that Mr. Overmyer received no monies from the sale of the ON Net to the United Network stockholders but that he did retain approximately 20 percent interest in the United Network. (This figure was based on the amount of money that Mr. Overmyer had already spent on the ON Net as compared with that sum the new stockholders put up.) The United Network came into existence on March 4, 1967 and folded on May 30, 1967 although the United Network retained offices at 144 E. 44th St., NYC.

My term of employment ended with United Network on June 9, 1967.

I could fill a book describing the hard work; heartaches; disappointments; and also some of the rare good accomplishments that came forth from the "rise and fall of the Fourth Network". Should you desire any additional information please contact me.

I would like to add that I have six dependents (including myself) and since I am now employed by AT&T that I will not be paid if I should lose any time appearing before anyone on inquiries pertaining to the United Network or the Overmyer Network. Please be guided accordingly.

Sincerely yours,

CHARLES W. SHOOP.

P.S.—You might be interested in the fact that I was one of the original five persons hired by Mr. Overmyer to start the Overmyer Network.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. LAWRENCE SULLIVAN,
Manhasset, N.Y.

DEAR MR. SULLIVAN: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965.....	Less than 10 percent.	None.....	Administrative assistant to DHO.
1966.....			

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. MARK ROCK,
Dover, N.J.

DEAR MR. ROCK: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965.....	None.....	None.....	
1966.....	do.....	do.....	
1967.....	do.....	do.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mrs. CHRISTINE DOMENICA BROOKS,
New York, N.Y.

DEAR Mrs. BROOKS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits. (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965.....	None 1.....	None 1.....	Payment of loans, etc., for the Warehouse Co.
1966.....			
1967.....			

1964 absolutely no work whatever regarding the television stations, etc., in fact, I did not know they existed.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. WILLIAM J. COUROY,
Bayside, N.Y.

DEAR MR. COUROY: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964.....	None.....	None.....	
1965.....	do.....	do.....	
1966.....	do.....	do.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mrs. GERTRUDE A. EDWARDS,
New York, N.Y.

DEAR MRS. EDWARDS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964.....	None.....	None ¹	
1965.....	Late 1965.....	do.....	
1966.....	10 to 15 percent.....		Secretary, legal department.

¹ Not at Overmyer.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. ANTHONY J. GRONDAZZA,
Indianapolis, Ind.

DEAR MR. GRONDAZZA: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	All duties were related to warehouse activities.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mrs. HELEN HARVEY,
Amherst, N.Y.

DEAR MRS. HARVEY: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	None of my duties were involved with D. H. Overmyer, Inc. I was the New York bookkeeper for Merchants & Manufacturers Warehouse of Ohio and Texas Union Warehouse Co.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. GEORGE E. KINSLEY, JR.,
Peekskill, N.Y.

DEAR MR. KINSLEY: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D.H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	None	Assistant controller.
1965	1 to 5 percent	do	Controller.
1966	1 to 5 percent	do	Controller to Nov. 19, 1966.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. JOHN J. MONTI,
North Floral Park, N.Y.

DEAR MR. MONTI: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	None	
1965	do	do	
1966	do	do	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mrs. BARBARA R. NELSON,
Chicago, Ill.

DEAR MRS. NELSON: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	None	I was employed from September 1964 to October 1966. I was hired as a payroll clerk and later promoted to payroll supervisor. I had no contact whatsoever with TV construction permits. If I remember correctly the Overmyer network did not have a payroll until shortly before I left the company and it consisted of only the officers and their secretaries—probably about 10 people. Preparation of their paychecks, therefore, took only a very small percentage of men out of a total payroll which fluctuated between 800 and 1,000 employees.
1965	do	do	
1966	do	do	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss HELENE OVADIA,
Washington, N.Y.

DEAR MISS OVADIA: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	None	I worked in budgets from June and I knew nothing about the Overmyer network until it was publicly announced. All that I knew about communications at all was that the 1965 budget projected a loss (this was before the Aug. 17 companywide firing).
1965	do	do	
1966	do	do	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. ALBAN E. OWENS,
Jackson Heights, N.Y.

DEAR MR. OWENS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	1	1	I went to work for Overmyer in the summer of 1966 as an accountant for their 7 radio stations (Overmyer Communications Co.). They just started their TV station in Toledo and I was involved in setting up amortization schedules for their film features. After approximately 1 month after I started work they discharged about half their working force. About 2 weeks later I left for another position. The only thing I remember about TV tower construction was some discussion about property they had purchased that wasn't suitable for construction unless they used concrete in lower foundation as a fill (location was WECO Pittsburgh, Pa.).
1965	None	None	
1966	1	1	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. CHARLES ROBERTS,
Douglaston, N.Y.

DEAR MR. ROBERTS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction

permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

I was associated with The Overmyer Co. (originally The Overmyer Warehouse Co.) from Mar. 1965 to Aug. 1966. My position was Asst. Controller. I was concerned only with the warehouse operation, and none of my time was spent on the Overmyer network operation or TV construction permits. As far as I know, these duties were handled by The Overmyer Communications Co. or The Overmyer Network itself.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. BERNHARD W. TOLLAISEN,
Brooklyn, N.Y.

DEAR MR. TOLLAISEN: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	Less than 0.01 percent.	My duties were all in the accounting field but dealt almost entirely with the warehousing operations. In 1964 I completed 1 projection report approximately 1 hour. I also handled the petty cash from which communication men sometimes drew an advance later reimbursed.
1965	do	do	
1966	do	None	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. ELLIS B. WILSON,
New York, N.Y.

DEAR MR. WILSON: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe

the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	Very little	During the period under question I was the supervisor of the general accounting section of the D. H. Overmyer Warehouse Co.—later known as the D. H. Overmyer Co. During 1966 I also had the duties of supervisor of the accounts payable section ¹ . For a brief period during August and September, 1966 I was the supervisor of the Green & White Construction Co.'s accounts payable department.
1965	do	do	
1966	do	do	

¹ One of my clerk-typists prepared the D. H. Overmyer Communication Co.'s vouchers and checks. This was a simple typing function. Also, on occasion, any one of my bookkeepers may have "helped out" the bookkeeping section of the communication company.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 8, 1968.

MR. PETER R. FLAHERTY,
College Point, N.Y.

DEAR MR. FLAHERTY: On February 12, 1968, we sent you the following letter:

"We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

"It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

"A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated."

To date we have not received a reply. It is essential that a response be received this week.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

DEAR SIR: I was employed by the Overmyer Co. in 1966, as an office clerk. And to the best of my knowledge I did no work for the network.

PETER FLAHERTY

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MS. BERNADETTE VARRONE,
Maspeth, N.Y.

DEAR MS. VARRONE: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

I did not work on the Network, I worked in Accounts Payable & Accts. Receivable, and on switchboard.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MS. EMMA GRAETZ,
New York, N.Y.

DEAR MS. GRAETZ: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966	None	None	Insurance analyst, primarily workmen's compensation and general liability coverages.—Eunice H. Gray.
Employee April 1966 to August 1966.			

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MRS. FRANCES J. CARROLL,
Hookway Park, N.Y.

DEAR MRS. CARROLL: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	None	
1965	do	do	
1966	do	do	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 8, 1968.

Mrs. EARNESTINA CASTRO,
New York, N.Y.

DEAR MRS. CASTRO: On February 12, 1968, we sent you the following letter:

"We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

"It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

"A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated."

To date we have not received a reply. It is essential that a response be received this week.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964	None	None	
1965	do	do	
1966	10 percent during September.		June to December 1966, tax and insurance department.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. JOHN J. WOODLOCK,
Bronx, N.Y.

DEAR MR. WOODLOCK: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D.H. Overmyer Company show that you

were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966	None	None	Employed by Overmyer from Jan. 17, 1966 to Sept. 17, 1966. Did not perform any activities in the communications divisions.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss PRISCILLA MARAGH BENNETT,
7 West 14th St. Apt. 2-0,
New York, N.Y.

DEAR MISS BENNETT: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966	None	None	Clerk in personnel office.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss MARY ANN BERG,
117 Riverdale Ave.,
Bronx, N.Y.

DEAR MISS BERG: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an

employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	Personnel trainee—General office work, some interviewing.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MISS GERALDINE F. BURKE,
Briarwood, N.Y.

DEAR MISS BURKE: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964.....	None.....	None.....	} handled only the insurance for employees and also claims for benefits.
1965.....	None.....	None.....	
1966.....	None.....	None.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 8, 1968.

MR. BYRON JORDON,
Freeport, N.Y.

DEAR MR. JORDON: On February 12, 1968, we sent you the following letter:

"We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, New

port; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

"It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

"A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated."

To date we have not received a reply. It is essential that a response be received this week.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965 (to November).	100 percent.....	None.....	} Recruiting and screening personnel for local TV stations and headquarters offices in New York City.
1966 (to November). ¹	do.....	do.....	

¹ Payroll shows resignation September 23.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MISS JOAN O'CONNOR,
New York, N.Y.

DEAR MISS O'CONNOR: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
.....	Secretary to personnel manager and later to personnel director.
.....	Did not work on TV construction permits.
.....	Only connection with Overmyer Network was related to the hiring of some of the network's personnel.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss JOAN WEISS,
55 Chapel Hill Drive,
Brentwood, N.Y.

DEAR MISS WEISS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

I was employed for about 5 weeks in 1966 and did *not* spend any time on work connected with the Overmyer Network or construction permit activities.

Miss J. WEISS.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss MARY E. WILHELM,
41 Buchnell Drive,
Hazlet, N.J.

DEAR MISS WILHELM: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964.....	None.....	None.....	Secretary to the executive recruiters in the personnel department
1965.....	do.....	do.....	The only contact I would have had with network activities would have been processing personnel applications for persons involved with the network.
1966.....	do.....	0.01 percent.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss MARY E. ZANE,
Flushing, N.Y.

DEAR MISS ZANE: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Worked in personnel department—no actual contact with network—except regular personnel department.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss RACHEL A. HEARN,
Cambria Heights, L.I., N.Y.

DEAR MISS HEARN: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964.....	None.....	None.....	
1965.....	do.....	do.....	
1966.....	do.....	do.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 8, 1968.

Miss VIRGINIA MARY BRENT,
Veterans Administration Hospital,
Montrose, N.Y.

DEAR MISS BRENT: On February 12, 1968, we sent you the following letter:
"We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

"It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

"A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated."

To date we have not received a reply. It is essential that a response be received this week.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	70.....	30.....	} Secretary to general counsel, February 2, 1966, through February 2, 1967
1967.....	5.....	95.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 8, 1968.

Miss MARY W. BYRNE,
Bronx, N.Y.

DEAR MISS BYRNE: On February 12, 1968, we sent you the following letter:
"We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

"It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

"A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated."

To date we have not received a reply. It is essential that a response be received this week.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

From August 22, 1966 to January, 1967, I worked exclusively (100%) on secretarial matters related to television construction permits.

Since I have kept no records, any estimate as to my percentage of time spent prior to such time would only be a rough guess.

I entered the employ of the D. H. Overmyer Company in September, 1964 and left in March, 1967.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C. February 12, 1968.

Mr. THOMAS M. HEALY,
Rye, N.Y.

DEAR Mr. HEALY: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964.....	Not applicable..	None.....	
1965.....	do.....	do.....	
1966.....	do.....	do.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. LEMUEL B. SCHOFIELD,
Scarsdale, N.Y.

DEAR Mr. SCHOFIELD: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	70 percent.....	30 percent.....	General, legal, and administrative.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MISS MERLE H. TOM,
Fresh Meadows, N.Y.

DEAR MISS TOM: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

From August 22, 1966 to January 1, 1967, I worked exclusively (100%) on legal matters related to television construction permits.

Since I have kept no records, any estimate as to my percentage of time spent prior to such time would only be a rough guess.

I entered the employ of the D. H. Overmyer Company in December, 1964 and left in January, 1967.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MR. DICK VREELAND,
New York, N.Y.

DEAR MR. VREELAND: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	10 hours.....		Associate house counsel.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MR. EDWARD HALVAJIAN,
Teaneck, N.J.

DEAR MR. HALVAJIAN: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1.....	None.....	None.....	None.
2.....	do.....	do.....	Do.
3.....			April 1966 to April 1967 employed by various Overmyer companies. Approximately 25 percent spent with TV CP work as controller, etc.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

MR. WILLIAM MAUCERI,
Westbury, N.Y.

DEAR MR. MAUCERI: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

FEBRUARY 19, 1968.

DEAR SIR: I was employed with Overmyer Co. from the beginning of July 1966 to mid-September 1966. During that brief time I did no work pertaining to the TV stations or network.

My position there was assistant to the Vice President of Advertising, Terry Rice.

I hope this information is of help to you, and if I can supply any further information please contact me.

Yours very truly,

WILLIAM MAUCERI.

TED BATES & Co.,
New York, N.Y., February 19, 1968.

Mr. WILLIAM T. DRUHAN,
Special Consultant,
Subcommittee on Investigations,
Washington, D.C.

DEAR MR. DRUHAN: In reply to your letter of February 12th, please be advised that I was indeed employed by the D. H. Overmyer Company during the periods that you are interested in. At that time, I was Vice President in charge of advertising and sales promotion. Although I did very little work in regard to the actual acquisition of TV construction permits. I spent considerable time developing advertising and sales promotion programs for WDHO-TV, Toledo, which is also owned by Mr. Overmyer.

Our theory was that we would develop prototype advertising and promotion programs which would then be applied to his other construction permits as the stations were built.

In regard to the Overmyer Network, I was asked to develop printed materials covering everything from stationery to trade ads, and to develop an advertising and promotional strategy in anticipation of the day the network commenced operation.

Mr. Overmyer's interests, as you know, are and were, varied. I spent considerable time on his warehouse, banking and leasing companies with the emphasis on the warehouse operation.

It would be impossible for me to give you an accurate percentage of time spent in regard to his broadcasting activities. At the onset of any such operation, the prototype programs required an inordinate amount of time, but which later settle down. I would say that approximately 15% of my efforts and time were devoted to broadcasting activities. My relationship with the Overmyer Company was, and continues to be, a pleasant one and I hope that these remarks will assist you in conducting an accurate and fair review.

Very truly yours,

T. R. RICE.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. LOUIS J. BASTONE,
Brooklyn, N.Y.

DEAR MR. BASTONE: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965 ¹	None	None	
1966	do	do	

¹ Commenced employment December 1965.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss PEGGY M. BRENNAN,
Queens Village, N.Y.

DEAR MISS BRENNAN: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WMBO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Description of duties: Secretarial duties.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. ALEXANDER R. DITTS, Jr.,
11971 Wallings Ford Road,
Los Alamitos, Calif.

DEAR MR. DITTS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WMBO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966	None	1 month	Director of market research parallel study concerning possible construction of a warehouse and office complex, to house Pittsburgh studios on other side of Pittsburgh.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss MARGARET W. MCKEE,
New York, N.Y.

DEAR MISS MCKEE: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	Routine secretarial; employed less than 3 months in the summer of 1966, and dictaphone transcriptions of routine letters was the balance of my work; knew nothing of the company's construction permits, etc.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 8, 1968.

Miss JUANITA MAGILL,
Brooklyn, N.Y.

DEAR MISS MAGILL: On February 12, 1968, we sent you the following letter:

"We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

"It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

"A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated."

To date we have not received a reply. It is essential that a response be received this week.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

APRIL 12, 1968.

I worked for the Overmyer Company approximately a year and a half, terminating the end of October, 1966.

I worked as Secretary in the Development Dept. and knew little of the Overmyer networks and had nothing to do with that field of business. Our Department was tied in with Finance Department.

I'm sorry for the tardy response.

Yours truly,

JUANITA MAGILL.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Mr. E. J. OTTOMANELLI,
Elmhurst, N.Y.

DEAR MR. OTTOMANELLI: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
64.....	None.....	None.....	All of my time was spent on obtaining land and buildings for the Overmyer warehouses. I don't believe I spent all time on the network.
65.....	do.....	do.....	
66.....	do.....	do.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 12, 1968.

Miss MARILYN A. SCHLOR,
Brooklyn, N.Y.

DEAR MISS SCHLOR: We are presently conducting a review of the D.H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D.H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction

permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 8, 1968.

MISS ADRIENNE SERRANO,
Laurelton, N.Y.

DEAR MISS SERRANO: On February 12, 1968, we sent you the following letter: "We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh, WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

"It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated."

To date we have not received a reply. It is essential that a response be received this week.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....			As far as I can remember I had nothing to do with the TV construction at the Overmyer network. I worked for a finance coordinator, as his secretary, and most of the work was connected with the Overmyer warehouses. August-November 1966.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

MR. HAROLD ALCORN,
Cleveland, Ohio.

DEAR MR. ALCORN: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were

an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Not employed in activities pertaining to television construction permits.

HAROLD D. ALCORN.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

MR. ARMIN BUCHTER,
New York, N.Y.

DEAR MR. BUCHTER: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Employment was mostly with the warehouse company and later the parent Co. Some work (about 15% to 20%) was done for the leasing Co. (Overmyer Leasing). The work done for the network or the stations was of an incidental nature, namely on the basis that they were mentioned in the line of our work. They were also a part of our training, but as far as my short, overall work at Overmyer was concerned ON and the stations played an insignificant part in my job and I could not attempt to ascribe a percentage to it. There were specific people assigned to work for those projects and I was not one of them.

A. P. BUCHTER.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

MR. HENRY C. BURBANK,
Norwalk, Conn.

DEAR MR. BURBANK: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction

permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	Negotiation of mortgages for warehouse facilities, February-August 1966.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. JAMES CARROLL,
Elk Grove Village, Ill.

DEAR MR. CARROLL: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1964.....	None.....	None.....	None.
1965.....			
1966.....			
1967.....			

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. JAMES FLOWERS,
Dallas, Tex.

DEAR MR. FLOWERS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were

an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965.....	1 percent.....		Employed July 1965 to August 1966. Located and negotiated land purchases for warehouses, spent minimum time seeking antenna and studio locations for TV.
1966.....			

PERINI LAND & DEVELOPMENT CO.,
Ajax, Ontario, Canada, May 3, 1968.

Mr. WILLIAM T. DRUHAN,
Special Consultant, Congress of the United States, House of Representatives, Washington, D.C.

DEAR MR. DRUHAN: I wish to acknowledge receipt of your letter dated April 29, 1968, regarding the D. H. Overmyer Company activities pertaining to television construction permits.

Please be advised that I was employed by the D. H. Overmyer Company as Assistant Vice-President Real Estate, North-East Region, from approximately November 15, 1965 to September 30, 1966. My duties in this capacity primarily involved the location of and obtaining of options for sites suitable for the construction of "Overmyer Warehouses". The territory covered by me stretched from Norfolk, Virginia to Buffalo, New York and Boston, Massachusetts.

With specific reference to any duties pertaining to television construction permits or the Overmyer Network, please be advised that less than 5% of my time, for the entire period of my employment, was in connection with this phase of the Overmyer organization.

Trusting this is the information you require,

I remain,

Respectfully yours,

DANA W. GRANT, *Managing Director.*

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Miss KATHERYN HOCHSTRASSER,
San Mateo, Calif.

DEAR Miss HOCHSTRASSER: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits

and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN, *Special Consultant.*

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965.....	None.....	None.....	Secretary, finance department, from October 1965 to October 1966.
1966.....	do.....	do.....	

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. RICHARD W. JACOBS,
El Cajon, Calif.

DEAR Mr. JACOBS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	Assistant vice president, real estate; was site selector for warehouse location activities.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. ROY E. MANN,
Garland, Tex.

DEAR Mr. MANN: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

My tenure with the Overmyer was brief—from June 66 through Sept. 66. During that time I called on banks on behalf of Overmyer Leasing Corp. and had very little contact with his TV interests.

R. E. MANN.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. BRUCE MCCOY,
Lincroft, N.J.

DEAR Mr. MCCOY: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	General equipment leasing, May 1966 to August 1966.

ENGINEERING EXPERIMENT STATION,
GEORGIA INSTITUTE OF TECHNOLOGY,
INDUSTRIAL DEVELOPMENT DIVISION,
Albany, Ga., May 13, 1968.

Mr. WILLIAM T. DRUHAN,
*Special Subcommittee on Investigations,
Rayburn House Office Building,
Washington, D.C.*

DEAR Mr. DRUHAN: I worked for the Overmyer Company or companies from about August 1965 until about August 1966. During this period some of us were appraised from time to time of the progress being made concerning the Overmyer television franchises and the proposed Overmyer Network.

The only work of any consequence that I remember concerning these ventures was in trying to locate a television antenna site in Atlanta and locate suitable

housing for the television studios, also in Atlanta. I am unable to give you any percentage of effort put forth on these projects, however, I believe considerable time was spent during the spring and summer of 1966 on these projects.

There were several of us in the Atlanta office working on this project from time to time including some people from communications who were working full time. I hope this information is suitable for your needs.

Very truly yours,

ERIC A. NEWSOM, JR.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. JOHN S. PETERS,
Bensenville, Ill.

DEAR MR. PETERS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	I was employed from March 1966 to August 1966. My activities were confined to the negotiations for mortgages on the warehouse portion of Overmyer operations.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. GEORGE ROUSSEAU,
San Carlos, Calif.

DEAR MR. ROUSSEAU: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	June 1966 to November 1966 real estate acquisition for warehouse only.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Ms. LUCILLE SCLAFANI,
Staten Island, N.Y.

DEAR Ms. SCLAFANI: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

GENTLEMEN: In regard to your inquiry concerning D. H. Overmyer Company, I am sorry that I cannot be of help to you. The department that I worked in dealt with warehouse leasing. I spent no time on duties related to television construction permits or the Overmyer network.

Sincerely,

LUCILLE SCLAFANI.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. ROBERT F. SMITH,
Indianapolis, Ind.

DEAR MR. SMITH: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	Negotiation of sites for construction of warehouses. Employed from July 1966 to October 1966.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. EDWARD TROTTA,
Mount Vernon, N.Y.

DEAR Mr. TROTTA: We are presently conducting a review of the D.H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	Site selector and negotiator, real estate, July-August 1966.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mrs. ELIZABETH WEBB,
Atlanta, Ga.

DEAR Mrs. WEBB: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	I was a secretary for one of the vice presidents (Doug Harris) in the construction part of the D. H. Overmyer Corp.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mrs. NANCY WUNROW,
Melrose Park, Ill.

DEAR Mrs. WUNROW: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

Year	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1966.....	None.....	None.....	(Secretary to regional vice president of finance, September 1965 to August 1966.

ITEM 15

OVERMYER CURRENT TV STATUS, JANUARY 19, 1967

TOLEDO

Poor studio facilities, laid off seven people within last four weeks. Manager and Sales Manager quit last week. Total employees 25-30, of which six are engineering. Operating costs approx. \$60,000 per month. Ordered to cut to \$45,000. Atlanta Manager was moved to Toledo. Station engineering signal excellent.

Need new studio location, experienced personnel, eliminate B&W cameras, need another color film chain at \$55,000, 2 plumbicon cameras ordered at \$145,000.

SAN FRANCISCO

San Bruno is site. Tall tower proposed approved for Mt. Sutro. San Bruno site leased by Croker Land Co. including building tower, Xmtr and land and a 152 ft tower. Tower complete with steel on ground waiting erectors. Tower built by Davis Metal Products on Coast. Xmtr building is complete. Xmtr in building and in process of being wired. Three people on staff. RCA dropped antenna four weeks ago while testing in New Jersey. Overmyer cancelled and gave contract to GE. RCA never met specs. GE promises to be completed by April 10. Hired Xmtr engineer last week at \$190 per week. Studio location is old STV building 2500 Marin St. Contractor is ready to start remodeling studio. Owners on lease back agreement at \$35,000. Highly directional antenna to achieve 5 million watts.

CINCINNATI

Purchase three to 5 acres of land with easements on terms for approx. \$75,000. Xmtr building constructed—cost approx \$36,000. Xmtr (30kw GE) is in building ready to complete wiring. Dual input antenna, tested but still at GE. Tower footings in, but Stainless won't deliver and erect until payment from Overmyer. Stainless also built the Pittsburgh tower which Overmyer has not paid for yet, instead he paid for the Cincinnati tower which was built after Pittsburgh which Stainless applied toward unpaid Pittsburgh bill. Stainless to put a lien on Overmyer. Only two broadcast personnel remaining in Cincinnati, Gen Mgr & Chief Eng. Studio located in an industrial complex, poor location, but landlord offered lease improvements. Overmyer committed \$5000 for electrical, trench work, plumbing, etc, but contract yet unsigned.

PITTSBURGH

Xmtr and studios proposed at old WENS site. FAA approved for maximum tower height. Owned by Pannier, metal stamping company. Pannier uses WENS studio for manufacturing. Good for studio—soundproofing, windows, etc. Plan to make this a combined transmitter studio/office site. North of Pittsburgh. At one time the WENS tower blew over falling between two houses. When Pannier took it over he agreed that a tower would not be built there again. Therefore, zoning would be required, which might be difficult. Originally discussed a lease arrangement. Pannier now wants to sell property—offer \$335,000. All equipment in Cincinnati warehouse except for \$25,000 in purchase orders for mobile switchers, two B&W cameras (cameras now being used in Toledo mobile unit). Planning one film change. No local financing yet available to Overmyer in Cincinnati or Pittsburgh. All activity stopped.

ATLANTA

Land not tied down yet. FAA/FCC approved Xmtr site. Originally had property on Feltman Building on lease back but owners changed mind. Xmtr property now selected owned by Shepard who is going to put up Xmtr building on lease back, provided 2-way radio antenna will be allowed on tower. Last year, the older Shepard died. Wife and son now want to move out of house on property and have offered to lease house for use as office at \$1000 per month. Shepard would contribute \$85,000 to add a prefab studio building. Overmyer would have to put up \$20,000 as good faith money. Site on 5 acres 300 feet outside city limits which would require they file with FCC for studio location outside city of assignment. All equipment ordered and delivered to local Overmyer Warehouse. Only two employees there. Lee Capit-chief engineer; Clark Davis-manager, who has just been sent to Toledo and a secretary. Another tower problem. Bob Bryan authorized Stainless by telegram to fabricate Atlanta tower. Stainless ordered steel although contract was not signed. Now Overmyer says he won't pay until delivered, erected and station transmitting. Needless to say, Stainless won't deliver without payment schedule being followed.

ROSENBERG

Nothing has been done here. There is a tentative site option for a tract of land owned by the Texaco Co. No people have been engaged, no equipment delivered.

ITEM 16

INVENTORY OF REAL PROPERTY, TANGIBLE PERSONAL PROPERTY, AND PROGRAMING CONTRACTS ACQUIRED FROM D. H. OVERMYER ON JANUARY 15, 1958, SUBMITTED BY U.S. COMMUNICATIONS CORP.

Furnished to the Committee on Interstate and Foreign Commerce of the House of Representatives pursuant to its request appearing at Page 180 of the Transcript of a Hearing on July 16, 1968.

1. The programming contracts acquired with respect to each construction permit, including the name of the lessor, the contract price and the payments made prior to January 15, 1968 are shown on Exhibits A-1 to A-5, inclusive, attached hereto.

2. The tangible personal property acquired with respect to each construction permit, including a description of the property, the name of the vendor, the contract price, the payments on the contract to December 31, 1967 and the balance, if any, due on the contract, are shown on Exhibits B-1 to B-4, inclusive.

3. The interests in real property acquired with respect to each construction permit are as follows:

~~K~~EMO-TV, San Francisco, California

Transmitter.—15-year lease dated November 15, 1966 from Crocker Land Company covering transmitter site and transmitter building and certain other improvements at current annual rental of approximately \$11,500. Transmitter building was completed, tower was erected and transmitter was in place but not wired.

Studio.—10-year lease dated February, 1968, from Arthur and Gladys Tudury and Norman W. and Marian Edwards covering land and building at approximately \$22,500 per year.

Station on air with test pattern 3/1/68 and with commercial programs on 4/1/68.

WXIX-TV, Newport, Kentucky-Cincinnati, Ohio

Transmitter.—Fee simple interest in land at Lehman Road and Jean Street, Cincinnati, acquired by Overmyer on December 28, 1965 at a total cost of \$58,087.91 on which transmitter building and other improvements had been erected at a cost of \$98,355.63. Transmitter building was completed and tower was erected.

Studio.—Overmyer had negotiated for a studio site in Queen's Gate Industrial Center; but these negotiations were abandoned by U.S. Communications in favor of another site.

The corporation holding this construction permit also owned a tract of land on 11th Street, Newport, Kentucky, valued at \$90,000, acquired as a studio site but not to be so used in view of grant of authority to place studio in Cincinnati.

Station is now on the air with a test pattern and will begin commercial operation on August 1, 1968.

WECO-TV, Pittsburgh, Pennsylvania

Transmitter and Studio.—Overmyer had conducted preliminary negotiations with Ralph Pannier for site, including existing studio and office building, at Troy Hill Road in the North Hills section of Pittsburgh. These negotiations have been continued and agreement in principle reached on a purchase for \$350,000 subject to resolution of certain zoning problems.

WBMO-TV, Atlanta, Georgia

Transmitter.—15-year lease dated February 6, 1967 from Mabel P. Shepherd covering site, with lessor to construct transmitter building, at a rental of \$7,500 a year plus 12% of the cost of improvements. Construction had not been commenced.

Studio.—None; however, lease has since been negotiated with Mabel P. Shepherd for construction and lease of studio on transmitter site.

KIDO-TV, Rosenberg, Texas

Transmitter.—Overmyer had conducted preliminary negotiations with Texaco, Inc. for purchase of site 3.4 miles Southeast of Missouri City, Fort Bend County, Texas. Shortly following the transfer, on January 25, 1968, a contract, together with a deposit of \$8,000, to purchase this property at a cost of \$102,313.80 were submitted by U.S. Communications to Texaco with the understanding that the

latter's representatives would submit such contract to its board of directors with a recommendation for approval.

Studio.—None.

EXHIBIT A-1

FILM SCHEDULE—STATION KEMO-TV, SAN FRANCISCO, CALIF., AS OF JAN. 15, 1968

Lessor	Contract price	Payments made
KTV, Inc.	\$7,500.00	\$1,562.50
Do.	4,000.00	833.27
Do.	4,000.00	833.27
TEC.	4,000.00	
TEC.	27,000.00	4,500.00
TEC.	52,000.00	8,666.60
Embassy Pictures Corp.	120,000.00	
Colorvision International	46,000.00	
Screen Gems	9,000.00	
Do.	20,592.00	
TV III, Inc.	47,106.30	
Do.	63,670.95	
Do.	30,420.00	
TEC.	20,000.00	6,666.72
Total	455,289.25	23,062.36

EXHIBIT A-2

FILM SCHEDULE—STATION WXIX-TV, NEWPORT, KY.-CINCINNATI, OHIO, AS OF JAN. 15, 1968

Lessor	Contract price	Payments made
Embassy Pictures Corp.	\$48,000.00	
Independent Television, Inc.	22,500.00	
Television Enterprises, Inc.	10,800.00	\$2,250.00
Do.	1,500.00	
Do.	13,000.00	2,708.27
KTV, Inc.	800.00	166.73
Do.	2,000.00	416.73
Do.	800.00	166.73
Screen Gems	194,000.00	
Colorvision International, Inc.	19,000.00	
Walter Schwimmer, Inc.	20,875.00	
Screen Gems	3,600.00	
Do.	17,400.00	
Do.	23,750.00	
Do.	15,912.00	
TV III, Inc.	12,168.00	
Do.	25,468.38	
Do.	20,188.35	
Television Enterprises, Inc.	12,000.00	4,500.00
Total	463,761.73	10,208.46

EXHIBIT A-3

FILM SCHEDULE—STATION WECO-TV, PITTSBURGH, PA., AS OF JAN. 15, 1968

Lessor	Contract price	Payments made
V, Inc.	\$2,400.00	\$550.00
Do.	2,500.00	520.77
Do.	2,400.00	500.00
TEC.	16,200.00	3,375.00
TEC.	3,500.00	
TEC.	12,000.00	4,500.00
TEC.	32,500.00	6,770.77
United Artists Corp.	37,500.00	2,082.00
United Artists Associated	8,000.00	444.00
United Artists Corp.	93,420.00	5,190.00
United Artists Associated	115,230.00	
Colorvision International, Inc.	31,000.00	
Screen Gems	15,912.00	
Do.	27,800.00	
Do.	6,000.00	
Walter Schwimmer, Inc.	20,875.00	
TV Hollywood, Inc.	42,447.30	
TV III, Inc.	20,280.00	
Total	489,964.30	23,882.54

EXHIBIT A-4

FILM SCHEDULE—STATION WBMO-TV, ATLANTA, GA., AS OF JAN. 15, 1968

Lessor	Contract price	Payments made
American International Television, Inc.	\$18,356.00	\$3,671.36
Do.	9,178.00	1,835.68
Do.	9,178.00	1,835.68
Do.	12,455.00	2,491.16
Do.	12,455.00	2,491.16
Do.	17,700.00	3,540.00
Do.	9,178.00	1,835.68
Embassy Pictures Corp.	48,000.00	
Do.	2,400.00	500.00
Do.	2,400.00	500.00
Do.	200.00	41.73
Independent Television Corp.	1,000.00	
Television Enterprises Corp.	15,000.00	
Do.	10,050.00	2,093.75
Do.	19,500.00	
Do.	2,000.00	
United Artists Associated	343,000.00	4,763.88
American International Television, Inc.	11,750.00	2,350.16
Colorvision International, Inc.	19,000.00	
Screen Gems	17,400.00	
Do.	15,912.00	
Do.	3,600.00	
TV III, Inc.	12,168.00	
Do.	20,188.35	
Do.	25,468.38	
Television Enterprises Corp.	16,000.00	6,000.10
United Artists Corp.	8,500.00	708.33
Do.	8,500.00	708.33
Walter Schwimmer, Inc.	19,875.00	
Total	710,411.73	35,367.00

EXHIBIT A-5

FILM SCHEDULE—STATION KJDO-TV, ROSENBERG, TEX., AS OF JAN. 15, 1968

Lessor	Contract price	Payments made
Embassy Pictures Corp.	\$64,000.00	
KTV, Inc.	1,000.00	\$208.27
Do.	2,000.00	416.73
Do.	900.00	187.50
Television Enterprises Corp.	5,500.00	1,145.77
Do.	2,000.00	
Do.	15,600.00	3,250.00
Colorvision International, Inc.	20,000.00	
Screen Gems	4,800.00	
Do.	22,600.00	
Do.	15,912.00	
TV III, Inc.	16,224.80	
Do.	26,917.80	
Do.	33,957.84	
Television Enterprises Corp.	12,000.00	4,500.00
Total	243,411.64	9,708.27

EXHIBIT B-1

EQUIPMENT—KEMO-TV, SAN FRANCISCO

Equipment	Vendor	Contract price	Payments on contract up to Dec. 31, 1967		Due on contract Dec. 31, 1967
			Principal	Interest	
Transmitter	General Electric	\$268,247.83	\$46,949.74	\$16,450.20	\$221,298.09
Antenna	do	106,002.37	2,120.06	3,264.87	103,882.31
STL	Raytheon	18,697.00	373.94		18,323.06
Studio and mobile:					
Miscellaneous:	RCA	261,907.51	4,604.99		257,302.52
Black and white cameras	Visual Electronics	105,388.20	1,515.06	98.52	103,873.14
Microwave equipment	Microwave Associates	11,026.00	2,216.22	427.50	8,809.78
Miscellaneous studio equipment:	Colortran	1,838.48	1,838.48		
Do.	Harvey Radio	351.13	351.13		
Do.	Sarkes Tarzian	1,500.00	1,500.00		
Do.	Tektronix	1,850.00	1,850.00		
Do.	Harvey Radio	1,812.95	1,812.95		
Do.	F & B Ceco	4,710.09	4,710.09		
Do.	Tektronix	1,400.00	1,400.00		
Do.	Ingersoll Products	339.20	339.20		
Do.	Tektronix	675.00	675.00		
Do.	General Electric	230.00	230.00		
Do.	Arrow Electronics	933.86	933.86		
Do.	General Electric	1,834.80			1,834.80
Ford van	Gotham Ford	4,101.21	4,101.21		
Total		941,172.43	80,488.47	20,303.59	860,683.96

EXHIBIT B-2

EQUIPMENT—WSCO-TV, CINCINNATI

Equipment	Vendor	Contract price	Payments on contract up to Dec. 31, 1967		Due on contract Dec. 31, 1967
			Principal	Interest	
Transmitter	General Electric	\$202,000.00	\$46,470.00	\$14,275.99	\$155,530.00
Antenna	do	110,720.94	2,214.42	3,897.36	108,506.52
STL	Raytheon	18,697.00	373.94		18,323.06
Tower	Stainless	115,975.00	113,775.00		2,200.00
Studio and mobile:					
Miscellaneous:	RCA	261,907.51	27,390.91		234,516.60
Black and white cameras	Visual Electronics	114,655.26	22,085.05	1,014.21	92,570.21
Color cameras	do	148,326.80	2,966.54		145,360.26
Microwave equipment	Microwave Associates	11,026.00	950.00	427.50	10,076.00
Miscellaneous:					
Office furniture	Green Kay	1,165.04	1,165.04		
Studio equipment:	Piclear	410.00	410.00		
Do.	Ingersoll Products	339.20	339.20		
Do.	Sarkis Tarzian	1,850.00	1,850.00		
Do.	Color Tran	1,718.40	1,718.40		
Do.	Arrow Electronics	824.15	824.15		
Do.	Harvey Radio	1,767.30	1,767.30		
Do.	F & B Ceco	12,594.35	12,594.35		
Do.	Piclear	205.00	205.00		
Do.	Tektronix	3,635.00	3,635.00		
Do.	Harvey Radio	152.13	152.13		
Do.	Visual Electronics	1,156.50	1,156.50		
Do.	F & B Ceco	68.00	68.00		
Do.	Tektronix	290.00	290.00		
Do.	General Electric	230.00	230.00		
Do.	Harvey Radio	161.00	161.00		
Do.	Trion	1,311.00	1,311.00		
Furniture	Green Kay	931.78	931.78		
Office equipment:	Olivetti	1,667.50	1,667.50		
Do.	do	390.00	390.00		
Do.	Montoe International	1,350.00	1,350.00		
Office furniture	Green Kay	1,321.80	1,321.80		
Office equipment	Olivetti	376.00	376.00		
Ford van	Gotham Ford	4,101.21	4,101.21		
Total		1,021,423.87	254,341.22	19,677.56	767,082.65

EXHIBIT B-3

EQUIPMENT—WECO-TV, PITTSBURGH

Equipment	Vendor	Contract price	Payments on contract up to Dec. 31, 1967		Due on contract Dec. 31, 1967
			Principal	Interest	
Transmitter	General Electric	\$202,000.00	\$53,880.00	\$15,998.01	\$148,120.00
Antenna	do	106,761.21	2,135.22	2,348.75	104,625.99
STL	Raytheon	18,697.00	2,430.60	1,198.94	16,266.40
Tower, engineering costs	Green & White	35,612.08	35,612.08		
Studio and mobile:					
Miscellaneous:	RCA	261,907.51	43,025.35	1,147.80	218,882.16
Black and white cameras	Visual Electronics	114,314.20	22,064.05	322.18	92,250.15
Color cameras	do	148,326.80	2,966.53		145,360.27
Microwave equipment	Microwave Associates	11,026.00	950.00	427.50	10,076.00
Miscellaneous:					
Studio equipment:	Piclear	410.00	410.00		
Do.	Tektronix	3,609.35	3,609.35		
Office equipment	Olivetti	339.50	339.50		
Office furniture	Green Kay	534.63	534.63		
Ford van	Gotham Ford	4,101.21	4,101.21		
Total		90,639.49	172,058.52	21,505.68	735,580.97

EQUIPMENT—WBMO-TV, ATLANTA

Equipment	Vendor	Contract price	Payments on contract up to Dec. 31, 1967		Due on contract Dec. 31, 1967
			Principal	Interest	
Transmitter.....	General Electric.....	\$268,247.83	\$42,029.74	\$16,499.46	\$226,218.09
Antenna.....	do.....	119,030.36	2,380.60		116,649.76
Tower.....	Stainless.....				
STL.....	Raytheon.....	18,697.00	1,869.70		16,827.30
Studio and mobile:					
Miscellaneous:	RCA.....	261,907.51	27,290.91		234,616.90
Black and white cameras.....	Visual Electronics.....	107,080.20	15,070.22	1,012.54	92,009.28
Color cameras.....	do.....	148,326.80	2,966.53	62.50	145,360.27
Microwave equipment.....	Microwave Associates.....	11,026.00	475.00	106.90	10,551.00
Miscellaneous:					
Studio equipment:	Color Tran.....	1,838.48	1,838.48		
Do.....	Ficlear.....	615.00	615.00		
Do.....	Sarkis Tarzian.....	1,500.00	1,500.00		
Do.....	Tektronix.....	3,250.00	3,250.00		
Do.....	Arrow Electronics.....	808.13	808.13		
Do.....	Harvey Radio.....	1,239.55	1,239.55		
Do.....	Visual Electronics.....	306.00	306.00		
Do.....	F & B Ceco.....	4,468.51	4,468.51		
Do.....	Ingersoll Products.....	339.20	339.20		
Do.....	F & B Ceco.....	3,116.68	3,116.68		
Do.....	Tektronix.....	675.00	675.00		
Do.....	Arrow Electronics.....	116.25	116.25		
Do.....	Visual Electronics.....	850.50	850.50		
Do.....	Harvey Radio.....	592.50	592.50		
Do.....	General Electric.....	230.00	230.00		
Do.....	Harvey Radio.....	575.00	575.00		
Ford van.....	Gotham Ford.....	4,101.21	4,101.21		
Total.....		1,104,067.71	116,704.71	17,681.40	987,363.00

ITEM 17

MEMORANDUM

JUNE 25, 1968.

To: R. W. Lishman.

From: William T. Druhan.

Subject: Review of Overmyer's Federal income tax returns.

A review has been made of the taxpayer's copies of the Federal income tax returns for the Overmyer Communications Companies, the Overmyer warehouse group, the Overmyer Leasing Company, and Overmyer personal for the years 1964 through 1966. The following observations were made.

1. The Federal income tax returns for the Communications Companies for 1964 and 1965 were prepared by Arthur Young & Co. This is significant because a sworn statement by the controller of all Overmyer Corporations, submitted to FCC with the application for transfer, stated that employees of The Overmyer Co., Inc., (taxes and insurance department) prepared these returns and a portion of their salary was allocated to the Communications Companies for these services. The returns for 1966 were prepared by Overmyer employees; however, the returns were not filed until August 1967, two months after the submission to FCC requesting transfer and itemizing out-of-pocket expenses incurred to March 31, 1967.

2. The balance sheet dated August 31, 1964, submitted to FCC to support the applications for three stations shows total assets of \$15.6 million. On the other hand, the balance sheet of the same date submitted with the Federal income tax return for the warehouse group shows total assets of only \$10.6 million.

Conceivably the difference between the two balance sheets could be a difference in the number of companies being reported. The balance sheet submitted to FCC

is titled "D. H. Overmyer Warehouse Co., & Affiliates," whereas the one submitted to IRS is titled "D. H. Overmyer Warehouse Company and Subsidiaries." The balance sheet submitted to IRS included:

D. H. Overmyer Warehouse Co. (Ohio)
 D. H. Overmyer Warehouse Co. (N.C.)
 D. H. Overmyer Warehouse Co. of Georgia
 D. H. Overmyer Warehouse Co. of Florida
 McCoy Commercial Warehouse Co.

Curiously, there is no indication as to what companies are included in the balance sheet submitted to FCC and apparently FCC made no attempt to find out. The Communications Companies and the Leasing Company had not been established at this time. However, at this time Mr. Overmyer owned or had a substantial interest in the following:

D. H. Overmyer Trucking Co., Inc. (Ohio)
 Toledo Business Research Institute, Inc. (Toledo Monitor) (Ohio)
 Progress National Bank (Ohio)

The value of these interests is not known. However, considering that warehousing is the main interest, it does not seem probable that these companies would account for one-third of Overmyer's wealth. Although a statement regarding earnings was not furnished FCC, because of the increase in surplus (\$3.2 million in 1964 to \$5.7 million in 1965), the impression is given that earnings were considerable. However, the Overmyer warehouse companies' submissions to IRS showed an operating loss for each year under review (\$29,000 in 1964 and \$94,000 in 1965). It does not seem reasonable that the interests other than warehousing account for the increase in surplus. Moreover, if these companies earned a profit, it is questioned why they were not consolidated on the tax return with the warehouse companies in order to reduce the tax.

A comparison of most individual items reported on the respective balance sheets cannot be made due to differences in accounting classification. However, a comparison was made for the cash account. Overmyer informed FCC that \$1,661,729 cash was available, whereas IRS was informed that \$312,155 was available—a difference of \$1,349,574.

It is also noted that FCC was informed that current assets exceeded current liabilities by \$1.0 million, whereas IRS was informed that current liabilities exceeded current assets by \$76,000.

These differences are very significant because Overmyer's liquidity is essential to acceptability by FCC. In determining Overmyer's acceptability for ownership of construction permits, FCC must have considered that Overmyer had considerable excess cash on hand which needed investing, whereas, in point of fact, Overmyer was in a weak position.

It is further noted that the balance sheet submitted to FCC shows the shareholders' equity as follows:

Common stock.....	\$2,016,800
Surplus	3,207,395

Total shareholders' equity.....	5,224,195
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On the other hand, the Federal tax return shows the shareholders' equity as follows:

Capital stock, common.....	\$2,011,600
Paid-in or capital surplus.....	2,139,185
Earned surplus (fiscal year 1964).....	(29,067)

Total.....	4,121,718
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A comparison of the balance sheet dated August 31, 1965, submitted to FCC with the one of the same date submitted to IRS raises the same questions as posed for the previous year. The balance sheet submitted to FCC shows assets

of \$34.8 million whereas the one submitted to IRS for the warehousing companies shows assets of \$23.5 million.

As was the case in 1964 discussed above, it was not possible to determine whether the difference in the balance sheets is due to a difference in the number of companies being reported. There is no indication as to what companies are included in the balance sheet submitted to FCC.

The balance sheet for the warehouse companies submitted to IRS included:

D. H. Overmyer Co., Inc. (Ohio)
 D. H. Overmyer Co., Inc. (Ala.)
 D. H. Overmyer Co., Inc. (Ariz.)
 D. H. Overmyer Co., Inc. (Colo.)
 D. H. Overmyer Co., Inc. (Del.)
 D. H. Overmyer Co., Inc. (Fla.)
 McCoy Commercial Warehouses, Inc.
 D. H. Overmyer Co., Inc. (Ga.)
 D. H. Overmyer Co., Inc. (Ind.)
 D. H. Overmyer Co., Inc. (La.)
 D. H. Overmyer Co., Inc. (Mich.)
 D. H. Overmyer Co., Inc. (Minn.)
 D. H. Overmyer Co., Inc. (Miss.)
 Servi-Center, Inc. (Del.)
 D. H. Overmyer Co., Inc. (Nebr.)
 D. H. Overmyer Co., Inc. (Nev.)
 D. H. Overmyer Co., Inc. (N.J.)
 D. H. Overmyer Co., Inc. (N.C.)
 D. H. Overmyer Co., Inc. (Okla.)
 D. H. Overmyer Co., Inc. (Tenn.)
 D. H. Overmyer Co., Inc. (Texas)
 D. H. Overmyer Co., Inc. (Va.)
 D. H. Overmyer Co., Inc. (Wis.)

The Communication Companies filed separate returns but showed no assets at August 31, 1965. The Leasing Company did not file a return as it was not established until 1965 and its first balance sheet is as of August 31, 1966 (assets of \$1.1 million).

For 1965 it is noted that again there is a significant difference in the cash account—\$1.3 million was reported to IRS whereas \$2.3 million was reported to FCC. Also, there is a significant difference in the overall liquidity. The balance sheet submitted to FCC shows current assets exceeding current liabilities by \$2.1 million, whereas the one submitted to IRS shows current assets exceeding current liabilities by only \$863 thousand. And further, the statement submitted to FCC shows shareholders' equity as:

Common stock	\$2,022,800
Surplus	5,688,544
Total	7,711,344

In the statement submitted to IRS, shareholders' equity is shown as:

Capital stock, common	\$2,027,600
Paid-in or capital surplus	1,876,479
Earned surplus (fiscal year 1965)	(93,692)
Total	3,810,387

This lack of credibility of the financial statement is significant because FCC's decision granting Overmyer licenses must have been based in large part on the mistaken belief that Overmyer had considerable liquidity and equity. FCC may have conceivably denied Overmyer's applications had it known that the cash position was considerably less than indicated, current liabilities were far in

excess of current assets in 1964 and current assets exceeded current liabilities in 1965 by considerably less than indicated, and the stockholders' equity was considerably less than indicated.

In this regard it is significant to note that the FCC denied, without comparative consideration, an application for a construction permit by the Walmac Co. (San Antonio, Texas, Docket No. 11001, file no. BPCT-1836, report no. 9-19, 5/30/56) because it misrepresented its financial condition. The lack of credibility of the applicant's financial statements was established by FCC in part by a comparison of data submitted to IRS with that submitted to FCC. Also, the FCC denied an application for a construction permit by Carbon Emery Broadcasting Co. (Price, Utah, Docket No. 10739, file no. BP-8797, report no. 10-10, 3/27/57) because it misrepresented its financial condition. In this case the alleged net worth was only \$19,100 and the lack of credibility was established by an FCC field examination.

Aside from the many questions this lack of credibility should raise in the forthcoming hearings, it should be recommended that FCC consider requiring the submission of the taxpayer's copies of Federal income tax returns to substantiate the financial position of applicants. The requirement to submit copies of tax returns could be accomplished by FCC regulation without additional legislation. The furnishing of copies of tax returns is a normal requirement of many lending institutions. Submission of these returns would not only have the advantage of ostensibly obtaining more accurate information but would also enhance the FCC review due to standardized accounting.

3. The Overmyer request to FCC for transfer stated that The Overmyer Co., Inc. was established September 1966. The Federal income tax return indicated the Overmyer Co., Inc. was incorporated March 28, 1966. The tax return also stated that expenses were recorded from January 1, 1966. (A footnote to the Consolidated Statement of Income and Deductions for fiscal year ended August 31, 1966, for The Overmyer Co., Inc. (Del.) and three other companies states, "Represents post-acquisition period from January 1, 1966 to August 31, 1966."). The difference in these dates is significant because the allocation of charges to the Communications Companies for the cost of services performed by employees of The Overmyer Co., Inc. is based on expenses incurred between September through December 1965, and applied to other periods during which the permits were held. Therefore, any difference between the actual expenses incurred between January and September 1966 and the estimate of these expenses based on a subsequent period has a direct bearing on the amount of charges allocated to the Communications Companies.

In view of the fact that the accounting for expenses for The Overmyer Co., Inc. may not have been complete at January 1, 1966, I considered the incorporation date of March 28, 1966, as the date the transfer was effective. This is a conservative approach because in determining the average monthly expenses, the total expenses are considered to have been incurred in a five-month period rather than an eight-month period.

The charges to the Communications Companies for April through August 1966 are based on estimated expenses of The Overmyer Co., Inc. amounting to \$1,450,200 (125% x \$1,160,160, the expense incurred between September through December 1966). Actually, according to the Federal income tax return, these expenses amount to \$847,569. Applying the same percentage of salary allocation as used in the Overmyer computation to the actual expenses for the period (11.143% x \$847,569) results in charges of \$94,445 or \$67,155 less than the \$161,600 (5/12 x \$887,843) claimed as out-of-pocket expenses by Overmyer. By the same token, since the warehouse operations expanded considerably in 1966 and expenses were much less before this time, it is reasonable to assume that the charges for the six months ended December 31, 1964 (\$38,784), the year ended December 31, 1965 (\$290,882) and January through March 1966 (\$96,960) are grossly overstated—assuming the same rate of overcharge as the period of April through August 1966 (\$94,445 divided by \$160,160=58.44%) the claimed out-of-pocket expenses for these periods are overstated by \$177,306.

Thus, the total overcharge is at least \$244,461 (total charge is \$666,154) not considering the overcharges noted in previous studies or the effect this overcharge has on previously noted deficiencies.

SUMMARY BALANCE SHEETS, AUG. 31, 1964

	Submitted to FCC (D.H. Overmyer Warehouse Co. and affiliates)	Submitted to IRS (D.H. Overmyer Warehouse Co. and subsidiaries)	FCC over IRS
Assets:			
Cash	\$1,662,000	\$312,000	\$1,350,000
Other current assets	531,000	674,000	(143,000)
Total	2,193,000	986,000	1,207,000
Fixed assets:			
Deferred charges	13,017,000		
Due from affiliates	160,000		
	274,000		
Total	13,451,000	9,805,000	3,646,000
Total, assets	15,644,000	10,791,000	4,853,000
Liabilities:			
Current	1,153,000	1,062,000	91,000
Long-term debt	8,761,000	5,592,000	3,169,000
Due to D. H. Overmyer	506,000	15,000	491,000
Shareholder's equity:			
Common stock	2,017,000	2,012,000	
Surplus	3,207,000	2,110,000	1,102,000
Total	15,644,000	10,791,000	4,853,000

SUMMARY BALANCE SHEETS, AUG. 31, 1965

	Submitted to FCC (D. H. Overmyer Warehouse Co. and affiliates)	Submitted to IRS (D. H. Overmyer Co., Inc., and subsidiaries)	FCC over IRS
Assets:			
Cash	\$2,262,000	\$1,300,000	\$962,000
Other current assets	1,418,000	2,586,000	(1,168,000)
Total	3,680,000	3,886,000	(206,000)
Fixed assets:			
Deferred charges	30,677,000		
Due from affiliates	217,000		
	273,000		
Total	31,167,000	19,628,000	11,539,000
Total assets	34,847,000	23,514,000	11,333,000
Liabilities:			
Current	1,550,000	3,022,000	(1,472,000)
Long-term debt	25,585,000	16,681,000	8,904,000
Shareholder's equity:			
Common stock	2,023,000	2,028,000	
Surplus	5,689,000	1,783,000	3,901,000
Total	34,847,000	23,514,000	11,333,000

D. H. OVERMYER WAREHOUSE CO. & AFFILIATES

Balance sheet with fixed assets at appraised valuation, Aug. 31, 1964

ASSETS		
Current assets:		
Cash		\$1,661,728.87
Accounts receivable	\$218,645.19	
Less provision for doubtful accounts	(13,500.00)	205,145.19
Prepaid expenses		46,094.64
Short-term returnable deposits		280,361.50
Total current assets		\$2,193,330.20
Fixed assets:		
Land		2,344,700.00
Buildings		9,142,800.00
Equipment		236,030.13
Leasehold improvements		2,147.25
Construction in progress		1,599,931.66
Less accumulated depreciation and amortization		(308,317.22)
Total fixed assets		13,017,291.82
Deferred charges:		
Cash surrender value of life insurance		19,341.31
Other assets		140,163.99
Total deferred charges		159,505.30
Due from nonconsolidated affiliates		274,206.41
Total assets		15,644,333.73

LIABILITIES AND SHAREHOLDERS EQUITY

Current liabilities:		
Accounts payable		\$661,924.38
Accrued expenses:		
Taxes (including provision for Federal taxes)	\$125,710.97	
Wages	22,817.94	
Interest	38,946.05	
Other	36,247.02	223,721.98
Current portion of long-term debt		267,183.86
Total current liabilities		1,152,830.22
Long-term debt:		
Real estate mortgages	8,719,129.97	
Notes payable	15,000.00	
Equipment mortgages	26,851.53	8,760,981.50
Due to D. H. Overmyer		506,327.44
Shareholders equity:		
Common stock	2,016,800.00	
Surplus	3,207,894.57	
Total shareholders equity		5,224,194.57
Total liabilities and shareholders equity		15,644,333.73

NOTE.—This balance sheet was submitted to FCC with Houston, San Francisco, and Atlanta construction permit applications.

D. H. OVERMYER CO., INC. AND SUBSIDIARIES

BALANCE SHEETS, AUG. 31, 1965

[Schedule L, submitted to IRS]

	Consolidated	D. H. Overmyer Co., Inc. (Ohio)	D. H. Overmyer Co., Inc. (Alabama)	D. H. Overmyer Co., Inc. (Arizona)	D. H. Overmyer Co., Inc. (Colorado)	D. H. Overmyer Co., Inc. (Delaware)	D. H. Overmyer Co., Inc. (Florida)	McCoy Commercial Warehouses, Inc.	D. H. Overmyer Co., Inc. (Georgia)	D. H. Overmyer Co., Inc. (Indiana)	D. H. Overmyer Co., Inc. (Louisiana)	D. H. Overmyer Co., Inc. (Michigan)
Assets:												
Cash	\$1,299,606.58	\$433,326.45		\$20,662.09	\$10,970.19	\$1,000	\$20,132.74	\$18,916.03	\$671.15	\$15,054.71	\$14,136.89	
Notes and accounts receivable	387,458.64	204,534.64		4,061.64	22,135.95		1,842.35	7,491.50		1,793.68	16,543.40	
Reserve for bad debts	(15,459.12)	(15,459.12)										
Inventories												
Investment in Government obligations												
Other current assets	2,150,152.55	789,216.52	\$258.61	993.23	249,867.02		2,331.56	65,915.79	420.40	63,602.07	8,288.22	
Loans to stockholders												
Other investments	64,181.56	6,500.00					7,681.56					
Buildings and other fixed depreciable assets	12,910,462.75	5,758,090.41		431,314.74	469,105.91		1,277,888.40	543.86	874,500.00	407,907.66	831,597.32	
Accumulated depreciation	(381,330.29)	(237,715.62)		(10,800.00)	(13,658.33)		(34,669.38)	(37.28)	(21,861.25)		(5,798.92)	
Depletable assets												
Less accumulated depletion												
Land	2,475,789.20	1,346,176.28		70,855.88	99,847.58		175,122.20		125,500.00	45,000.00	67,576.00	
Intangible assets												
Accumulated amortization												
Other assets	4,622,885.47	1,406,138.53	741.39	28,356.79	403,933.00		64,502.01		16,334.94	26,453.52	22,483.36	\$2,328.84
Total, assets	23,513,747.34	9,690,808.09	1,000.00	545,444.37	1,242,201.32	1,000	1,514,831.44	92,829.90	995,565.24	559,811.64	954,826.27	2,328.84
Liabilities and capital:												
Accounts payable	414,998.14	336,761.35		2,093.92	11,714.93		8,035.19	460.73		353.49	8,812.01	
Mortgages, etc., payable in less than 1 year	433,893.80	161,297.50		21,614.19	48,667.44		47,342.13		25,966.73		23,683.31	
Other current liabilities	2,173,608.76	1,436,405.61		37,693.06	6,263.16		37,137.51	37,285.64	142,159.88	4,178.01	325,942.06	1,328.84
Loans from stockholders												
Mortgages, etc., payable in 1 year or more	16,633,901.11	4,877,745.05		518,740.50	1,168,018.48		1,136,211.21		623,201.47	550,000.00	568,399.55	
Other liabilities	46,958.00	46,958.00										
Capital stock:												
(a) Preferred												
(b) Common	2,027,600.00	2,000,800.00	1,000.00	1,000.00	500.00	1,000	500.00	10,000.00	200.00	1,000.00	1,000.00	1,000.00
Paid-in or capital surplus	1,876,479.15	710,733.12					445,471.49		278,600.88			
Surplus reserve												
Earned surplus and undivided profits	(93,691.62)	120,107.46		(35,697.30)	7,037.31		(159,866.09)	45,083.53	(74,563.72)	4,280.14	26,989.34	
Total, liabilities and capital	23,513,747.34	9,690,808.09	1,000.00	545,444.37	1,242,201.32	1,000	1,514,831.44	92,829.90	995,565.24	559,811.64	954,826.27	2,328.84

D. H. OVERMYER CO., INC. AND SUBSIDIARIES—Continued

BALANCE SHEETS, AUG. 31, 1965—Continued

[Schedule L, submitted to IRS]

	D. H. Overmyer Co., Inc. (Minnesota)	D. H. Overmyer Co., Inc. (Mississippi)	D. H. Overmyer Co., Inc. (Delaware)	D. H. Overmyer Co., Inc. (Nebraska)	D. H. Overmyer Co., Inc. (Nevada)	D. H. Overmyer Co., Inc. (New Jersey)	D. H. Overmyer Co., Inc. (North Carolina)	D. H. Overmyer Co., Inc. (Oklahoma)	D. H. Overmyer Co., Inc. (Tennessee)	D. H. Overmyer Co., Inc. (Texas)	D. H. Overmyer Co., Inc. (Virginia)	D. H. Overmyer Co., Inc. (Wisconsin)
Assets:												
Cash	\$19,159.83			\$66,506.38		\$1,000	\$15,551.85	\$51,785.34	\$136,861.02	\$223,825.88	\$249,946.03	
Notes and accounts receivable	30,721.92			100.00			82,473.23	991.82	869.02	9,655.72	4,243.77	
Reserve for bad debts												
Inventories												
Investment in Government obligations												
Other current asset	22,689.74	\$800.32		78,107.53	\$267.87		8,396.24	85,094.45	319,632.91	8,812.16	445,457.91	
Loans to stockholders												
Other investments											50,000.00	
Buildings and other fixed depreciable assets	519,591.36						824,500.00			872,585.53	642,837.56	
Accumulated depreciation	(9,830.00)						(30,231.67)			(16,727.84)		
Depletable assets												
Less accumulated depletion												
Land	148,461.63						70,500.00			251,884.40	74,865.23	
Intangible assets												
Accumulated amortization												
Other assets	45,422.73	299.68		189,984.74	761.45		171,514.54	425,307.90	539,329.64	1,238,280.46	37,738.97	\$2,972.98
Total assets	776,317.21	1,100.00		334,698.65	1,029.32	1,000	1,142,704.19	563,179.51	996,692.59	2,638,316.31	1,455,089.47	2,972.98
Liabilities and capital:												
Accounts payable	8,612.82	100.00		17,461.60	29.32		4,356.40	794.30	2,116.98	10,932.77	2,362.33	
Mortgages, etc., payable in less than 1 year	27,683.82			1,237.05			22,117.26	13,941.53	6,716.89	23,521.42	32,000.00	1,972.98
Other current liabilities	7,392.60						77,644.07			31,482.63	4,827.24	
Loans from stockholders												
Mortgages, etc., payable in 1 year or more	726,661.62			315,000.00			593,814.21	550,000.00	988,827.10	2,599,281.92	1,418,000.00	
Other liabilities												
Capital stock:												
(a) Preferred												
(b) Common	1,000.00	1,000.00		1,000.00	1,000.00	1,000	100.00	500.00	1,000.00	1,000.00	1,000.00	1,000.00
Paid-in or capital surplus							441,673.66					
Surplus reserve												
Earned surplus and undivided profits	4,966.35						2,998.59	(2,056.32)	(1,968.38)	(27,902.43)	(3,100.10)	
Total Liabilities and Capital	776,317.21	1,100.00		334,698.65	1,029.32	1,000	1,142,704.19	563,179.51	996,692.59	2,638,316.31	1,455,089.47	2,972.98

87-537-69-pt. 2-18

Balance sheet, Aug. 31, 1966

[Schedule L, submitted to IRS]

ASSETS	
Cash	\$285,085.02
Notes and accounts receivable	17,133.45
Reserve for bad debts	
Inventories	
Investment in Government obligations	
Other current assets	51,886.91
Loans to stockholders	
Other investments	
Buildings and other fixed depreciable assets	892,721.34
Accumulated depreciation	(149,219.78)
Depletable assets	
Less accumulated depletion	
Land	
Intangible assets	
Accumulated amortization	
Other assets	
Total assets	1,097,606.94
LIABILITIES AND CAPITAL	
Accounts payable	261,555.72
Mortgages, etc., payable in less than 1 year	160,000.00
Other current liabilities	6,691.45
Loans from stockholders	
Mortgages, etc., payable in 1 year or more	573,209.36
Other liabilities	11,412.84
Capital stock:	
(a) Preferred	
(b) Common	1,000.00
Paid-in or capital surplus	100,000.00
Surplus reserve	
Earned surplus and undivided profits	(16,262.43)
Total liabilities and capital	1,097,606.94

ITEM 18

SUBCOMMITTEE STAFF MEMORANDUM—REPORT ON REVIEW OF D. H. OVERMYER TRANSFER OF FIVE UHF TELEVISION STATION CONSTRUCTION PERMITS TO U.S. COMMUNICATIONS CORPORATION

SUMMARY OF FINDINGS

The review disclosed that the value of the Communications Companies and other items received by AVC at March 31, 1967, the date of the sales agreement, was \$7,678,195. Overmyer retained \$331,900 but also received a loan from AVC amounting to \$3 million. The following schedule shows these values in total and Overmyer's interest.

	Total	To Overmyer
Communications companies liabilities and capital stock	\$3,644,297	\$306,546
Leasing company equipment	3,367,384	358,840
Charges for staff services	666,514	666,514
Subtotal	7,678,195	1,331,900
Retained by Overmyer	331,900	331,900
Subtotal	7,336,295	1,000,000
AVC loan to Overmyer	3,000,000	3,000,000
Total	10,336,295	4,000,000

AVC was obliged to pay Overmyer \$4 million at the time of sale; the balance (\$6,336,295) is due over an extended period in accordance with existing terms agreed upon with banks, equipment manufacturers, and film distributors. These payments by AVC place it in the same position as Overmyer was at that time. It was not determined what additional costs are necessary to place the stations on-the-air.

The balance sheet of the Communications Companies, representing assets and liabilities transferred to AVC, was not audited by AVC or independent public accountants. The review of these items by the subcommittee staff was extremely limited. Nevertheless, it was noted in regard to the capitalized pre-operating expenses that the propriety of charges for professional services could not be determined with certainty in some instances because the invoices did not indicate whether the service was rendered for the Communications Companies or other Overmyer interests. It was determined that charges amounting to over \$20,000 are erroneously included in the pre-operating expenses because the professional service was rendered for the Overmyer network.

Overmyer failed to make an installment payment for two film contracts resulting in the contracts being terminated. Films, therefore, valued at \$128,800 are not available to U.S. Communications. Also, the net value of the broadcast rights computed by U.S. Communications is \$53,163 less than shown on the balance sheet. This difference was not accounted for.

As shown on the following schedule, Overmyer indicated in the applications for the five construction permits and subsequently that loans amounting to \$2,960,000 would be obtained whereas actually, loans amounting to only \$1,587,000 were obtained, resulting in the stations being under-financed by \$1,378,000.

FINANCING

Station	Source	Amount	
		Promised FCC	Actual
Cincinnati	Bank	\$400,000	
	DHO Warehouse Co.	100,000	
San Francisco	Former station owner		\$75,000
	Bank	475,000	1,350,000
	Former station owner	80,000	
Atlanta	Bank		80,000
	Private		47,000
	Bank	400,000	1,300,000
Pittsburgh	DHO Warehouse Co.	10,000	
	Former station owner		70,000
Houston	Bank	350,000	
	DHO Warehouse Co.	350,000	
All stations	Bank	550,000	
	DHO Warehouse Co.	250,000	
	DHO Leasing Co.		359,000
	DHO Co., Inc.		306,000
Total		2,965,000	1,587,000
Less "Actual"		1,587,000	
Underfinanced		1,378,000	

¹ Bank credit was for \$500,000.

All but \$45,000 of the \$1,378,000 under-financing was due to the bank loans originally considered necessary not being consummated. The loans were not consummated because Overmyer could not satisfy certain bank requirements such as submitting certified audited figures. FCC should not have accepted the bank loan commitment letters submitted by Overmyer because his inability to meet bank requirements should have been known. It is not known to what extent the under-financing was responsible for the stations not being completed in a timely manner.

Overmyer's claimed out-of-pocket expenses are as follows:

<i>Overmyer out-of-pocket expenses</i>	
Paid-in common stock-----	\$53, 500
Preoperating expenses-----	970, 783
Paid by loans and notes-----	717, 737
Paid by Overmyer-----	253, 046
TV equipment (downpayment)-----	289, 103
Land and construction (1 station)-----	69, 737
Charges for services by staff of affiliated companies-----	666, 514
Total-----	1, 331, 900

The charges claimed for services rendered by employees of The Overmyer Co., Inc. and the Leasing Company for the benefit of the Communications Companies are based on estimates of time expended applied to the individual's salary and overhead expenses. The review disclosed that these charges are grossly excessive because they are based on erroneous premises and fallacious assumptions. Specifically, it is noted with regard to the charges for services by employees of The Overmyer Co., Inc.:

(1) Overhead expenses, which are the basis for the charges to the Communications Companies, are over estimated. The computation of charges is based on a test period of September through December 1966 when expenses were at their highest whereas actual expenses were available for other periods. This results in excess charges of at least \$254,632.

(2) The charge for services rendered between July through December 1964 (\$38,784) is excessive because the construction permits had not been acquired and many of the services claimed could not have been rendered, such as auditing or bookkeeping.

(3) The charge for services rendered during 1965 (\$290,882) is excessive because it amounts to over 3 times as much as the direct expenses and many of the services claimed could not have been rendered in that there was a minimum of activity with regard to the newly acquired construction permits.

(4) The charge for services rendered between January through March 1967 (\$72,721) is excessive because there were considerably fewer employees in this period than in the test period and the principal activity was negotiating the sale of the stations—not advertising or acquiring real estate.

(5) Although only a limited number of former employees were queried, it was determined that the estimate by supervisory personnel of time devoted to these activities is considerably higher than the estimate by the employees who performed the service. The charges include \$46,209 for services of employees who deny performing services for the Communications Companies and an excess of at least \$23,709 for services of employees who contend their efforts were less than claimed by supervisory personnel—a total overcharge of \$69,918.

(6) Many of the services performed involved considerably less effort than claimed.

(7) Employees are considered to have been employed the entire time the construction permits were held, whereas many were employed for a limited period. In one instance an employee earned \$665 and the Communications Companies are charged \$5,428.

(8) The computation of charges fails to recognize that functions necessary to place stations on-the-air are performed in sequence. This results in charges for services during periods when they were not performed.

(9) The computation of charges fails to deduct the cost of services performed by employees of the Communications Companies for the benefit of affiliated Overmyer companies.

(10) The computation of charges for some departments should be based on a ratio of cost to perform similar services rather than on unsupportable time estimates.

(11) The deduction from charges for services rendered for the Toledo and Dallas stations and network activities is insufficient because with regard to Toledo alone, considerably more effort was required for some functions to place this station on-the-air than was expended on all other stations combined.

(12) The Communications Companies paid independent vendors for certain services claimed to have been performed by employees of The Overmyer Co., Inc.

With regard to the charge for services by the Overmyer Leasing Company the review disclosed it is not warranted because it appears the charge is already included in the out-of-pocket expenses through a transfer voucher.

The expenses of The Overmyer Co., Inc. improperly include items which have the effect of increasing the charges to the Communications Companies. The deficiencies consist primarily of recording costs applicable to affiliated companies, failure to deduct voided vouchers and failure to consider that sizeable expenditures should have been eliminated from consideration as they tended to inflate the allocation to the Communications Companies.

Due to the nature of the review and the fact that many of the deficiencies noted are questionable items rather than confirmed disallowances, it is not possible to accurately estimate what should be considered as allowable out-of-pocket expenses. Also, in those instances where a confirmed disallowance was noted no attempt was made to determine the effect this would have on other charges. Nevertheless, the review revealed excessive charges amounting to \$376,965 (out of a total of \$666,514). Considering this amount and the fact there were innumerable deficiencies which cannot be accurately costed, it can be concluded that the out-of-pocket expenses should be considerably less than claimed. In addition, Overmyer cannot substantiate with exactitude the amount of out-of-pocket expenses claimed, and consequently, the application for transfer of the stations should not have been approved by the FCC for the amount of out-of-pocket expenses claimed.

WILLIAM T. DRUHAN.

JUNE 25, 1968.

ITEM 19

SUBCOMMITTEE STAFF MEMORANDUM—REPORT ON REVIEW OF FEDERAL COMMUNICATIONS COMMISSION'S EXAMINATION OF LOANS MADE BY AVC TO D. H. OVERMYER

SUMMARY OF FINDINGS

FCC's justification of the loans is based in part on consideration of the genuineness of Overmyer's dedication to UHF. It is not believed that this is an accurate attribute nor a valid factor for consideration. FCC also considered Overmyer's losses attempting to establish a fourth network although such losses were not incurred.

FCC furnished no evidence to support its contention that the matter was given careful scrutiny.

FCC did not compute the estimated price to AVC for Overmyer's remaining 20% stock interest in the permittees. Apparently consideration was given to Overmyer's contention that the price may be substantially less than \$3 million whereas based on the formula provided in the agreement, there appears to be no way for the price to be less than \$3 million.

The price of Overmyer's remaining stock interest is to be based on gross receipts if the stations are on the air 112 hours a week, otherwise it will be based on a share of the applicable markets. The review revealed that AVC estimates that its gross receipts will be more than the maximum price and the stations will not be on the air the required hours. Also, the price based on a share of the applicable markets is far in excess of the maximum.

Despite the complexities of the loan agreement and the many provisions which

had to be mutually acceptable, both Overmyer and AVC contend that no records of the negotiations were maintained.

There appears to be no doubt that AVC will purchase the remaining stock and that the price will be \$3 million.

The appraisal reports used in computing the equity values for the warehouses offered as collateral for the loans contain a number of inconsistencies which place the final appraisal amount in question. Although AVC required the appraisals, it contends they were not relied upon in accepting the warehouses as collateral.

BACKGROUND

A condition precedent to Overmyer's agreeing to transfer an 80% interest in television station construction permits to AVC was the requirement for AVC to make two loans to Overmyer amounting to \$3 million. The first loan was made May 3, 1967, and the second, January 15, 1968, the date of the closing of the stock purchase agreement. A significant aspect of the loans is that they provide AVC an option to purchase Overmyer's remaining 20% stock interest.

One loan bears interest at 5¼% and the other at 6¼% (based on the then highest prevailing rate in Philadelphia). To date the interest payments are current.

The loans do not call for periodic principal payments. The principal is due April 15, 1972, at the latest, or as early as February 15, 1971, if Overmyer requests AVC to make a decision early regarding exercising its stock option and AVC opts not to purchase the stock. The price of the stock is to be determined based on gross receipts of the TV companies or on pre-determined shares of the applicable markets if the stations are not on the air 112 hours a week. In either case there is to be an adjustment for assets and liabilities. However, the price "shall not in any event exceed \$3,000,000." If the price is determined to be less than \$3 million, Overmyer must repay the difference.

The loans are secured by: (a) second mortgages on 23 specific Overmyer warehouse properties selected by AVC; (b) guarantees from the parent Overmyer company and each subsidiary company; (c) a personal guarantee by Overmyer; and (d) a pledge of Overmyer's remaining 20% stock interest in the permittees.

FCC JUSTIFICATION

FCC's analysis as to the propriety of the loans is contained in a memorandum from the Chief, Broadcast Bureau, to the Commission dated October 27, 1967. After supposedly careful scrutiny and recognition that loans of this nature present an unusual situation which should be approached with some skepticism, the Bureau concluded that it "is satisfied that they are consistent with the public interest." The Bureau considers the loans justified because they are fully collateralized and because they bear interest at the prevailing market rate. In addition, the Bureau memo states:

"Beyond these strictly, legal considerations, there are—in the particular factual setting here—certain equities which weigh in Overmyer's favor. We have in mind here his dedication to UHF and losses suffered in efforts to establish a fourth network. The genuineness of this dedication to UHF is unquestioned, and there is nothing to suggest that permits were acquired as mere paper speculations, with no intention of building."

It is not understandable what Overmyer's "genuineness" and "dedication to UHF" have to do with the matter nor why it should be given weight in considering the justification of loans. Contrary to the Bureau's contention, the genuineness of Overmyer's dedication to UHF may well be questioned since, in point of fact, he obtained six UHF construction permits in the top 25 markets with the belief that they would all be profitable; he kept one permit and transferred the remaining five for a price purported to be equal to total expenses. Regardless of the reasons or motives for his actions, does this constitute "genuineness"? Is "genuineness" weighted by the number of stations one attempts to control, or success in placing stations on the air.

It is also questioned how much weight was given by the Bureau for Overmyer's "losses suffered in efforts to establish a fourth network." In point of fact, losses were not suffered. Moreover, Overmyer informed FCC that a network was pursued to enhance programming but did not contend he suffered a loss. This is an assumption by FCC. The Overmyer network was sold to the United Network for a price ostensibly precluding a loss. The only loss Overmyer may suffer from his network efforts will be because of United's bankruptcy, but this

had not occurred at the time the Bureau memo was issued. The Overmyer network organization was formulated during the last half of 1966 and transferred to United early in 1967 (initially 80% and later the balance).

It is further questioned as to what FCC's "careful scrutiny" of the underlying loan agreements consisted of. The Bureau's conclusion is contained in a memo dated October 27, 1967, whereas clarifying information from Overmyer's attorney was not received until November 21, 1967. No explanation is given as to how FCC got over its "skepticism" of this "unusual situation."

PRICE OF 20 PERCENT INTEREST

Based on the method of determining the price of the stock provided in the loan agreement (copy attached) there appears to be no way for the price of the stock to be less than \$3 million.

The FCC memo states that the price of the stock "depends on a rather complex formula." The formula is not complex and obviously, FCC did not figure it out nor comprehend its implications.

The clarifying information received from Overmyer's attorney places emphasis on the fact that the option to obtain Overmyer's 20% stock interest "rests wholly within the control of AVC and not of Overmyer." In addition, emphasis is given to the fact:

"* * * Under the option, the price payable by AVC may be substantially less than \$3,000,000 but in no event can exceed such sum. In the event a price of less than \$3,000,000 is paid, Overmyer must repay the difference. * * *"

The agreement provides that the price of the stock shall be equal to the gross receipts of the TV companies for the 12 months preceding the date on which the option is exercised. Revenues of comparable UHF stations are not made available by FCC. Nevertheless, AVC informed FCC that it estimates that the revenues for the five stations for the first year of operation will amount to \$3,920,000. It must be assumed that it is expected that revenues will not decrease in the succeeding years. Therefore, if this provision is governing, the price for the stock will not be less than \$3 million.

The agreement also provides that gross receipts of the stations will not be used in determining the price for the stock of any station unless it has been "continuously operating on a schedule of at least 112 hours per week throughout the 18-month period immediately preceding the date on which the option shall be exercised."¹ A check of UHF stations in Boston, New York, Newark, Washington, Baltimore, Chicago and Los Angeles areas (21 stations) revealed that currently none are on the air 112 hours a week. Moreover, AVC's applications for the stations indicated they proposed to have 2 stations on the air 95 hours a week and 3 stations on the air 85 hours a week. Therefore, it does not seem reasonable that the parties seriously expected the subject stations to be on the air 112 hours a week, or consequently, that the price of the stock would be based on gross receipts. Rather, it must have been expected that the price of the stock would be determined in accordance with the following provisions:

"* * * if the gross receipts of any of such stations cannot be or are not for any reason included in this computation, then the gross receipts for such 12-month period for such station shall be deemed to be that share of the 'total broadcast revenues' in the latest report then available of TV Broadcast Financial Data published by the Federal Communications Commission for the several markets as indicated below:

	[In percent]
San Francisco-----	3
Houston (Rosenberg Station)-----	5
Atlanta-----	5
Cincinnati (Newport Station)-----	8
Pittsburgh-----	8'

It appears unrealistic for the parties to believe that the proposed stations would capture such high percentages of the markets in 3 or 4 years. Houston is the only area where a UHF television station is currently operating. AVC informed FCC, in its justification for transfer, that according to ARB reports for prime time the station has a 2% share of the audience.

¹ The FCC staff memo to the Commission dated 10/27/67 page 5, footnote 6, shows the hours on the air as twelve. This typographical error could easily have misled the Commissioners into thinking that stations would readily meet this requirement.

Based on the latest FCC data (published August 2, 1966) available at the time the agreement was made, the price of the stock in accordance with this provision would be \$5,230,222. This amount was computed as follows:

Market	Total broadcast revenues, 1965	Market share (percent)	Total
San Francisco.....	\$35,284,488	3	\$1,058,535
Houston.....	13,645,899	5	683,295
Atlanta.....	11,523,803	5	576,190
Cincinnati.....	12,847,183	8	1,027,774
Pittsburgh.....	23,555,347	8	1,884,428
Total.....			5,230,222

The total broadcast revenues for 1966 (published by FCC August 25, 1967) increased with the result that the price of stock would be \$5,758,860. In addition, industry predictions indicate that revenues will continue to increase. Therefore, again, if this provision is governing, the price of the stock will not be less than \$3 million.

The agreement further provides:

"To the foregoing shall be added or subtracted, as the case may be, 20% of the net amount for all the TV Companies of the aggregate amount of cash on hand or on deposit, accounts receivable, prepaid expense and other current assets on the one hand, and of the aggregate of all debts and liabilities of the TV Companies, such amounts to be determined as of the last day of the 12-month period immediately preceding the exercise of the option provided that the aggregate of all debts and liabilities for any one of the TV Companies shall for purposes hereof be considered not to exceed \$500,000."

There is no way to estimate what the assets and liabilities will be in 1971 or 1972. In addition, there is a question as to what is meant by "other current assets." A special committee on terminology of the American Institute of Accountants has defined current assets to include inventories (as well as the assets mentioned in the agreement.) It therefore would appear that in this instance Broadcast Rights would be considered as current assets. By the same token it is assumed that the "Pre-Operative Expenses" would not be considered current assets. Therefore, based on the balance sheets of the five TV companies as at March 31, 1967, approximately the date of the loan agreement, there would be deducted only \$208,000 from the foregoing price determination in accordance with this provision (\$466,000 if Broadcast Rights are not considered current assets). If AVC can improve the financial position of the companies, the deduction would be even less. In addition, the largest permissible deduction amounts to only \$500,000 ($\$500,000 \times 5 \times 20\% = \$500,000$).

Therefore, considering the maximum deduction for liabilities in excess of current assets, the price of the stock would still not be less than \$3 million regardless of whether it is based on gross receipts or share of the market as described above since the computation by each method exceeds \$3.5 million.

In analyzing the loan agreement to determine whether AVC is likely to exercise its option to obtain the outstanding Overmyer stock and what the price is likely to be, one poignant fact that cannot be overlooked is that both Overmyer and AVC contend that no records of the negotiations were maintained. Considering the complex nature of the agreement, it would seem that there must have been considerable give and take or else it is a facade.

AVC officials informally stated to the subcommittee staff that they are anxious to own 100% of the stations; however, Overmyer insisted that the loan agreement be a condition precedent to the sale of an 80% interest. On the other hand, AVC insisted upon the option to purchase the remaining stock interest as a condition precedent to the loan agreement. Therefore, it appears that the option conditions were drafted with a view that it would be exercised if at all possible. The only contingency appears to be whether AVC will have a pressing requirement for \$3 million or would prefer to have Overmyer as a minority stockholder, but in either case, not what the price will be.

It should be noted further, that the determination of the price of Overmyer's remaining stock interest discussed above was obtained from data published by FCC and data submitted to FCC by the parties concerned. Although this information was readily available and the determination of the price to be paid for the

stock is essential to understanding the propriety of the loan agreement. FCC did not make an analysis of the price formula. In fact, FCC furnished no evidence to support its contention that the matter was given "careful scrutiny."

COLLATERAL

The loans are primarily secured by second mortgages amounting to \$3 million on 23 specific Overmyer warehouse properties selected by AVC. The equity values of the 23 warehouses furnished the Subcommittee by FCC (copy attached) amount to \$6,130,000. The schedule does not indicate the effective date for this amount. A schedule furnished the Subcommittee by Overmyer (copy attached) indicates the equity value as \$6,145,000 on March 31, 1967, and \$6,465,000 on December 31, 1967. The equity values of the 23 warehouses are based on appraisal value of the property. The loan agreement provides that Overmyer is to furnish AVC appraisals by independent appraisers satisfactory to AVC stating the fair market value. The aggregate equities shall be not less than \$6 million.

A review of five appraisal reports revealed a number of inconsistencies and leads one to conclude that there was little concern for accuracy in preparing the reports and make the final appraisal amounts questionable.

Each warehouse was appraised at different times by the same appraiser—Property Administration Associates, Inc. Some of the warehouses were under construction, some were recently completed, and no construction dates were indicated for others. Land costs are shown in some instances but construction costs are not shown in any instance.

The Green and White Construction Co. constructed all of the warehouses. Records are maintained listing direct costs applicable to the individual warehouses; indirect costs allocable to the warehouses have not been distributed yet in all instances. These records were requested informally by the Subcommittee staff for the five warehouses selected for testing, but Overmyer officials refused to furnish the data contending that such records are not germane to the review. Overmyer officials stated that since the mortgages (1st and 2nd) on the property are based on appraisals, there is no reason to consider costs. None of the appraisal reports were requested by or made available to FCC. However, AVC officials contend that, although these appraisals were required as part of the agreement, they relied primarily on analysis made by their counsel. FCC did not make a review to support its conclusion that the loans are "fully collateralized." The clarifying information received from Overmyer's attorney (requested by FCC) mentioned above, did not indicate how the equity in the collateral warehouses was computed. The loan agreement contains a description of the various warehouses but the amount of Overmyer's equity and the amount of the first and second mortgages was not obtained by FCC until requested by the Subcommittee in its hearings on December 15, 1967.

The Subcommittee staff made a review of the appraisal reports for warehouses known as Pittsburgh No. 1, Birmingham No. 1, San Diego No. 1, Richmond No. 1 and No. 5.

Although a "cost approach," "income approach," "market data," and, in one instance, "rent data," are used in the appraisals, review attention was directed to the "income approach" since this estimate equals the amount of the appraisal (except in the case of Richmond No. 5 when the appraisal value didn't equal any method) and must be considered as the basis most significant to the appraiser—despite his contention that the amount of the appraisal was based on a composite of all the estimates used.

The various estimates in the "income approach" have innumerable inconsistencies. Some examples of these inconsistencies are as follows:

(1) In the case of Pittsburgh, a reduction from the estimated net annual income is not made for taxes, insurance, depreciation, maintenance, and vacancy allowance. (However, the estimated income is understated due to a mistake in arithmetic which somewhat offsets this omission.)

(2) Net income imputable to land is computed at 6.5% in the case of Pittsburgh and Birmingham, whereas 7% is used in the case of San Diego, and no deduction is made for this factor in the case of Richmond No. 1 and No. 5. (Note: the lower the percentage, the higher the total valuation.)

(3) Rental value is estimated at 80 cents per square foot in the case of Pittsburgh, Birmingham, and Richmond No. 1, whereas 90 cents is used in the case of San Diego, and 68 cents for Richmond No. 5. The estimate is only supported in one instance (Richmond No. 1) by actual experience.

(4) The vacancy allowance is computed at 5% in the case of San Diego and Richmond No. 1, whereas 3% is used in the case of Richmond No. 5 and Birmingham, and as stated above, this factor is not considered in the case of Pittsburgh.

(5) Maintenance expense is computed at 2¢ per square foot in the case of San Diego, Birmingham and Richmond No. 5, whereas 1¢ is used in the case of Richmond No. 1 and, as stated above, this factor is not considered in the case of Pittsburgh.

(6) Depreciation is considered as an increase of .0035 percent to the basic capitalization rate in the case of Richmond No. 1 and not considered as a factor in the case of San Diego, Birmingham, or Pittsburgh. Actually, it should be considered as a reduction from gross income.

(7) Cost of improvements are valued at \$6.75 per square foot in the case of Pittsburgh, whereas a value of \$6.25 is used for the warehouses in Birmingham, San Diego and Richmond #1, and \$6.00 for Richmond #5.

(8) No information is furnished regarding tax data in the case of Pittsburgh. Assessment value should be considered in the determination of market value because it is not likely that property would be purchased without knowledge of the real estate taxes.

(9) The appraisal report for Pittsburgh states, "The subject structure was completed in December 1966," which is obviously an error considering the report was dated May 18, 1966. Actually, the warehouse was completed November 1, 1965. This apparent discrepancy was not detected.

The appraisal values of the land for the five sites tested appear to be inflated and/or unsupported.

The land for the Birmingham site (7± acres) is said to have been purchased "in October of 1965 for \$51,932 or \$7,426 per acre." Without explanation, and admittedly with no comparable sales, the land is appraised at \$84,000 (\$12,000 per acre). This appears to be an unreasonable appreciation considering that the appraisal was made as of September 2, 1966—less than one year after purchase.

In the case of San Diego, the land (6.2± acres) "was purchased in December of 1965 for \$73,779.45 or \$11,899 per acre." The appraisal report values the land at \$124,000 or \$20,000 per acre as of June 15, 1966. The only explanation for this sizeable appreciation in six months time, at apparently no cost to Overmyer, was the conclusion:

"Taking into consideration the preparation of the site, extension of Marshall Avenue and extension of all utilities as well as the economic condition of the area, it is our opinion that the market value of the subject site is * * * \$124,000."

In the case of Richmond #1, the cost of the subject land is not considered in the appraisal but rather the appraisal on supposedly comparable property.

The appraisal report for Richmond #5 as of December 9, 1966, states that the subject land (6.57± acres) "was purchased in 1966 for \$26,280 or \$4,000 per acre." The land was purchased from the Atlantic Coast Line Railroad and it is stated that "the railroads generally sell land at 30% to 50% below the sales price of privately owned land." Nevertheless, this does not explain an appraisal value of \$78,840 or \$12,000 per acre.

In the case of Pittsburgh, the appraisal report as of February 28, 1966, states: "The subject property (land), consisting of 7,123 acres, was purchased in December of 1964 for \$241,000 or approximately \$33,500 per acre. It was necessary to spend \$100,000 in fill and grading to make the site usable."

The land is appraised at \$320,000. No support or further statements are made with regard to the \$100,000 cost to make the land usable. The comparable sales of land listed shows costs ranging from \$18,700 to \$65,000 per acre with no indication of the necessity to make expenditures in order that the land could be usable.

WILLIAM T. DRUHAN.

APRIL 26, 1968.

EXCERPT FROM LOAN AGREEMENT DESCRIBING COMPUTATION OF THE PRICE OF OVERMYER'S STOCK INTEREST OBTAINABLE AT AVC'S OPTION

C. If the option to purchase the Stock shall be exercised, the price to be paid for the Stock shall be the fair market value thereof which for purposes of this Agreement shall be determined as follows:

(1) The price shall be fixed by multiplying 20% by five times the gross receipts of the TV Companies during the 12 full calendar months immediately preceding the date on which the option shall be exercised, provided that if any of the

television stations of the TV Companies has not been continuously operating on a schedule of at least 112 hours per week throughout the 18-month period immediately preceding the date on which the option shall be exercised, or if the gross receipts of any of such stations cannot be or are not for any reason included in this computation, then the gross receipts for such 12-month period for such station shall be deemed to be that share of the "total broadcast revenues" in the latest report then available of TV Broadcast Financial Data published by the Federal Communications Commission for the several markets as indicated below:

[In percent]

San Francisco-----	3
Houston (Rosenberg Station)-----	5
Atlanta-----	5
Cincinnati (Newport Station)-----	8
Pittsburgh-----	8

To the foregoing shall be added or subtracted, as the case may be, 20% of the net amount for all the TV Companies of the aggregate amount of cash on hand or on deposit, accounts receivable, prepaid expense and other current assets on the one hand, and of the aggregate of all debts and liabilities of the TV Companies, such amounts to be determined as of the last day of the 12-month period immediately preceding the exercise of the option provided that the aggregate of all debts and liabilities for any one of the TV Companies shall for purposes hereof be considered not to exceed \$500,000.

AVC shall cause to be made available to Overmyer all such information as he shall request in order to fix the purchase price as above provided and shall furnish him with a detailed statement of the price as fixed by AVC.

(2) If Overmyer shall not be satisfied with the purchase price for the Stock fixed pursuant to the terms of Paragraph C.(1) of this Article VII, then Overmyer may, within ten (10) days after delivery to him by AVC of the statement above referred to, give written notice to AVC that he wishes the fair market value of the Stock submitted to arbitration.

The arbitration shall be conducted as follows: AVC and Overmyer may agree upon one arbitrator. If they fail to agree upon such an arbitrator within thirty (30) days after notice has been served by Overmyer, either Overmyer or AVC may notify the other in writing of the name of an arbitrator selected by him or it, and within ten (10) days thereafter, the other party shall by written notice to the first party name a second arbitrator; and the said two (2) arbitrators shall name a third arbitrator, provided that if the third arbitrator shall not be selected by the other two (2) arbitrators within thirty (30) days after the naming of the second arbitrator, then such third arbitrator shall be selected by the American Arbitration Association in New York City. In the event Overmyer shall have failed to name a second arbitrator within ten (10) days after receipt of notice of the naming of the first arbitrator by AVC, Overmyer's right to arbitration shall terminate, and the purchase price for the Stock determined in accordance with Paragraph C.(1) of this Article VII shall be binding upon him; if AVC shall have failed to name a second arbitrator within ten (10) days after receiving notice of the naming of the first arbitrator by Overmyer, then AVC shall be obligated to pay and shall pay Overmyer immediately the fair market value as determined by the arbitrator named by Overmyer. When all three of such arbitrators are appointed, they shall proceed promptly to determine, by majority vote, the fair market value of the Stock (which shall be taken to be 20% of the fair market value of the total outstanding shares of the TV Companies). If the value determined by such arbitrators shall be in excess of the amount determined pursuant to Paragraph C.(1) of this Article VII, AVC shall be obligated to pay and shall pay Overmyer immediately such larger amount; if, however, the value determined by such arbitrators shall be less than the amount determined pursuant to Paragraph C.(1) of this Article VII, AVC shall be obligated to pay and shall pay Overmyer immediately the amount determined pursuant to Paragraph C.(1) of this Article VII.

(3) It is understood that the price to be paid for the Stock shall not in any event exceed \$3,000,000.

(4) In any event there shall be deducted from the purchase price whether the same shall have been fixed as in Paragraphs C.(1), C.(2) or C.(3) an amount equal to the price which is required to be paid to Sherrill C. Corwin for the purchase of his shares in the California Company.

BUILDING EQUITY—AVC LOAN

State	City	Site No.	Appraisal	Original	1st mortgage		Net equity		2d mortgage
					Mar. 31, 1967	Dec. 31, 1967	Mar. 31, 1967	Dec. 31, 1967	
Alabama	Birmingham	1	\$840,000	\$600,000	\$593,803.23	\$582,218.40	\$246,196.77	\$257,781.60	\$124,000
California	San Diego	4	900,000	880,000	674,237.88	660,826.75	275,762.15	239,173.25	112,700
Florida	Jacksonville	5	850,000	850,000	566,156.88	554,323.94	283,843.12	295,676.06	400,000
	do	4	850,000	850,000	593,441.79	581,216.89	256,558.21	268,783.11	
	do	5	850,000	850,000	596,309.77	584,873.37	253,690.23	265,126.63	
Nevada	Las Vegas	1	825,000	825,000	545,341.65	534,499.64	279,658.35	290,120.09	140,000
North Carolina	Charlotte	2	860,000	860,000	582,602.47	569,879.91	277,397.53	290,120.09	124,000
Ohio	Atlanta	1	840,000	840,000	419,105.63	399,764.24	420,894.37	440,235.76	211,200
Oklahoma	Oklahoma City	1	835,000	835,000	577,637.77	515,680.90	307,362.23	319,319.10	308,000
	do	2	835,000	835,000	577,637.77	515,680.90	307,362.23	319,319.10	
Oregon	Portland	2	775,000	775,000	629,658.36	647,236.79	304,351.42	322,612.42	228,000
	do	3	775,000	775,000	629,658.36	647,236.79	304,351.42	322,612.42	
	do	2	775,000	775,000	629,658.36	647,236.79	304,351.42	322,612.42	
Pennsylvania	Pittsburgh	1	1,100,000	1,100,000	595,000.00	562,500.00	190,000.00	212,500.00	192,000
Texas	Dallas	1	835,000	835,000	557,949.21	544,063.77	277,050.79	290,936.23	883,300
	do	6	800,000	800,000	543,985.16	532,773.11	256,014.84	267,226.89	
	do	8	800,000	800,000	543,985.16	532,773.11	256,014.84	267,226.89	
	do	2	835,000	835,000	569,170.15	551,805.43	245,829.85	263,194.57	
	do	3	835,000	835,000	569,170.15	551,805.43	245,829.85	263,194.57	
	do	4	850,000	850,000	590,762.35	578,401.50	259,237.63	271,598.50	
Virginia	Richmond	1	850,000	850,000	593,424.57	581,167.57	256,575.43	268,832.43	276,800
	do	5	2,200,000	2,200,000	757,892.81	737,892.81	441,190.77	462,107.19	
	do		800,000	800,000	575,000.00	565,014.64	225,000.00	234,985.36	
Total			19,795,000	19,795,000	13,650,347.76	13,329,729.65	6,144,652.24	6,465,270.35	3,000,000

AVC-USCC LOAN

Corporation	Site	State equity	State loan amount	Site equity	Site loan amount
Alabama	Birmingham No. 1	\$247,456	\$62,000	\$247,456	\$62,000
California	San Diego No. 1	227,222	56,350	227,222	56,350
Florida	Jacksonville No. 4	797,909	200,000	285,132	71,500
	Jacksonville No. 5			257,783	64,500
	Orlando No. 4			254,994	64,000
Nevada	Las Vegas No. 1	280,838	70,000	280,838	70,000
North Carolina	Charlotte No. 2	246,267	62,000	246,267	62,000
Ohio	Atlanta No. 1	422,999	105,600	422,999	105,600
Oklahoma	Oklahoma City No. 1	615,004	154,000	308,664	77,300
	Oklahoma City No. 2			306,340	76,700
Oregon	Portland No. 1	455,217	114,000	115,803	29,000
	Portland No. 2			146,914	36,800
	Portland No. 3			192,500	48,200
Pennsylvania	Pittsburgh No. 1	383,181	96,000	383,181	96,000
Texas	Dallas No. 1	1,773,328	441,650	292,236	74,200
	Dallas No. 6			1,257,176	56,150
	Dallas No. 8			194,525	49,700
	El Paso No. 1			263,946	67,100
	El Paso No. 2			248,296	63,100
	San Antonio No. 3			259,238	65,900
	San Antonio No. 4			257,911	65,500
Virginia	Richmond No. 1	680,481	138,400	443,469	110,000
	Richmond No. 5			237,012	28,400
Total		6,129,902	1,500,000	6,129,902	1,500,000

¹ Per appraisal dated Jan. 10, 1967.
² Per appraisal dated Dec. 9, 1966.

ITEM 20

SUBCOMMITTEE STAFF MEMORANDUM

Review of Overmyer's formula for computing charges for services rendered by staff of affiliated companies for benefit of Overmyer's Communications Companies, \$666,514

METHOD

1. For each department of The Overmyer Co., estimate the percentage of time the applicable employees devoted to broadcasting activities during the period of September through December 1966.
2. Multiply this percentage by the salary charges of these employees during this period.
3. Divide the total of these charges by the total salaries of all employees in the department.
4. Multiply this percentage by the total expense of the department.
5. Multiply the total of all departments by 3 to obtain total for 1966.
6. Multiply 1966 total by 75% to obtain total for 1965.
7. Multiply 1966 total by 10% to obtain total for 1964.
8. Multiply 1966 total by 18.75% to obtain total for 1967.
9. From total of all periods deduct 20% as portion applicable to Toledo, Dallas and network activities.
10. Add portion applicable to Leasing Co. activities.

The Overmyer Company

Percentage of salaries allocated for time devoted to activities of Communications Companies during period of September through December 1966	11.143
Total salary and overhead expenses of company for period September-December 1966	\$1,160,160
<hr/>	
Year ended December 31, 1966 (11.143 percent \times \$1,160,160 \times 3)	387,843
Year ended December 31, 1965 (75 percent of charges for 1966)	290,882
6 months ended December 31, 1964 (20 percent of 1966 level which is equivalent to 10 percent of charges for 1966)	38,784
3 months ended March 31, 1967 (75 percent of 1966 level which is equivalent to 18.75 percent of charges for 1966)	72,721
<hr/>	
Total	790,230
Deduct portion applicable to Toledo, Dallas, and network activities 20 percent)	158,046
<hr/>	
Total	632,184
Overmyer Leasing Company	34,330
<hr/>	
Total charges	666,514

Deficiencies

(1) The charge for services rendered between July through December 1964 (\$38,784) is excessive because the construction permits had not been acquired and many of the services claimed could not have been rendered, such as auditing or bookkeeping.

(2) The charge for services rendered during 1965 (\$290,882) is excessive because it amounts to over 3 times as much as the direct expenses and many of the services claimed could not have been rendered in that there was a minimum of activity with regard to the newly acquired construction permits.

(3) The charge for services rendered between January through March 1967 (\$72,721) is excessive because there were considerable fewer employees in this period than in the test period and the principal activity was negotiating the sale of the stations—not advertising or acquiring real estate.

(4) Overhead expenses, which have a direct bearing on the charges to the Communications Companies, were over estimated for January through March 1967, whereas actual figures were available. This results in excess charges of \$10,171.

(5) The estimate by supervisory personnel of time devoted to these activities in some instances is considerably higher than the estimate by the employees who performed the service. Moreover, although only a limited number of former employees were queried, the charges include \$43,213 for employees who deny performing service for the Communications Companies.

(6) Many of the services performed involved considerably less effort than claimed.

(7) Employees are considered to have been employed the entire time the construction permits were held, whereas many were employed for a limited period. In one instance an employee earned \$665 and the Communication Companies are charged \$5,428.

(8) The computation of charges fails to recognize that functions necessary to place stations on-the-air are performed in sequence. This results in charges for services during periods when they were not performed.

(9) The computation of charges fails to deduct the cost of services performed by employees of the Communications Companies for the benefit of affiliated Overmyer companies.

(10) The computation of charges for some departments should be based on a ratio of cost to perform similar services rather than on unsupportable time estimates.

(11) The deduction from charges for services rendered for the Toledo and Dallas stations and network activities is insufficient because with regard to Toledo alone, considerably more effort was required for some functions to place this station on-the-air than was expended on all other stations combined.

(12) The Communications Companies paid independent vendors for certain services claimed to have been performed by employees of The Overmyer Co., Inc.

(13) The charge for services by the Overmyer Leasing Company is not warranted because it appears the charge is already included in the out-of-pocket expenses through a transfer voucher.

(14) The expenses of The Overmyer Co., Inc., improperly include items which have the effect of increasing the charges to the Communications Companies. The deficiencies consist primarily of recording costs applicable to affiliated companies, failure to deduct voided vouchers and failure to consider that sizable expenditures should have been eliminated from consideration as they tended to inflate the allocation to the Communications Companies.

ITEM 21

SUBCOMMITTEE STAFF MEMORANDUM

ANALYSIS OF FCC OPINION OF OUT-OF-POCKET EXPENSES CLAIMED BY D. H. OVERMYER

FCC Criteria and Definitions

1. Transferor of TV station construction permit is not entitled to compensation in excess of out-of-pocket expenses.
2. Out-of-pocket expenses have not been defined by Commission rule.
3. Commission allows expenditures incurred in obtaining a permit and expenditures obtaining necessary equipment and facilities.
4. Appreciated value of assets may be claimed if adequately documented.
5. Commission has no policy as to whether the value of depreciation can be recovered because it knows of no instance where the question has arisen.
6. Claimed out-of-pocket expenses must be listed in the application:
 - a. Detailed documentation must be furnished only for items appearing out of line or for unusual items.
 - b. Considerable reliance is placed on the honesty and integrity of the transferor.

FCC Opinion of Overmyer's expenses

"In the Bureau's view . . . out-of-pocket expenses (which are subject to a question of proof) have been proven adequately."

1. "Direct expenditures for down payments on equipment etc. are documented by attachments to Mr. Byrne's affidavit." (Mr. Byrnes is Executive Vice President, The Overmyer Co.)

Staff Note: Documentation consists of unaudited statements of the Overmyer Communications Companies and Overmyer Leasing Co.

2. *Charges for services by employees of affiliated Overmyer Companies.*
a. "Considering the enthusiasm of Overmyer's commitment to entering UHF, there is no question that substantial expenses were incurred. . . ."

Staff Note: Can Overmyer's enthusiasm be equated exactly or substantially with \$666,514?

b. "The extent of Overmyer's efforts . . . (which include putting the San Francisco and Newport stations in a position where they are almost ready to go on the air) is made clear by supporting exhibits."

Staff Note: The supporting exhibit indicates that equipment purchases, total assets, and pre-operating expenses are greater for Pittsburgh and Atlanta than San Francisco and Newport. Also, there was no factual information to indicate when any station would be ready to go on the air.

c. "And the supporting affidavits of the various department heads (General Counsel, etc.) who rendered staff services to the permittees reveal, on close reading, that every effort has been made to be completely fair and objective in appraising the value of departmental contributions to the permittees."

Staff Note: A "close reading" of the self-serving affidavits should have revealed:
1) charges are made for services supposedly rendered before the permits were issued.

2) charges are made for services rendered during periods which as FCC is aware, little activity occurred.

3) charges are based on estimated expenses for period when actual figures of lesser amounts are available.

4) a deduction is not made for services rendered by Communications Companies' employees for the benefit of The Overmyer Co.

5) it appears unreasonable that indirect labor costs should exceed direct costs.

SUBCOMMITTEE STAFF MEMORANDUM

Report on review of D. H. Overmyer transfer of five UHF television station construction permits to U.S. Communications Corp.

INTRODUCTION

On December 8, 1967, the Federal Communications Commission approved the transfer of five UHF television station construction permits in the top-fifty markets from D. H. Overmyer Communications Company, Inc., to U.S. Communications Corporation. U.S. Communications purchased an 80% interest in the stations and Overmyer retained a 20% interest.

FCC precedent provides that the transferor of television station construction permits is not entitled to compensation in excess of out-of-pocket expenses. Overmyer claimed total out-of-pocket expenses (investment) of \$1,331,900. Hence, the sales price for the 80% interest was limited to \$1,065,520. Actually, the sales price was \$1 million. The sales agreement provides for U.S. Communications to pay the out-of-pocket expenses approved by FCC up to a maximum of \$1 million.

The out-of-pocket expenses amounting to \$1,331,900 claimed by Overmyer are:

(1) Net worth of the five stations, \$53,500. This represents the paid-in common stock of the five stations.

(2) Cancellation of amounts payable by the five stations to affiliated Overmyer companies, \$253,046. This represents the amount of the pre-operating expenses paid by Overmyer (remainder was paid by loans and notes).

(3) Assets donated by affiliated Overmyer companies, \$358,840. This represents TV equipment on which the Overmyer Leasing Company made payments or deposits of \$289,103, a transmitter site acquired for the Cincinnati station at a cost of \$58,688, and a construction by the Green and White Construction Co., at the transmitter site at a cost of \$11,049.

(4) Charges for services performed by employees of affiliated Overmyer companies, \$666,514. This represents charges for the services of employees of The Overmyer Company and the Overmyer Leasing Company who devoted a portion of their time to activities of the Communications Companies.

The purchase of 80% of the Overmyer Communications Companies entitles U.S. Communications to a controlling interest in the assets and liabilities of the companies amounting to \$3,644,297 as at March 31, 1967. These consist primarily of broadcast rights (film contracts) the net value of which is indicated as \$155,392 (contract price, \$2,557,710 less amounts unpaid, \$2,402,318). Also, pre-operating expenses amounting to \$970,783 are capitalized and offset by bank loans and notes payable.

Aside from the consideration given U.S. Communications qualifications, FCC based its decision approving the transfer of the construction permits primarily on an application submitted by Overmyer. An exhibit attached to the application includes a narrative account of the financial difficulties Overmyer encountered in regard to its warehouse construction program which made it necessary to dispose of the stations. The exhibit also contains six financial schedules and a number of sworn statements by key employees purportedly supporting the out-of-pocket expenses pertaining to services performed by employees of affiliated Overmyer companies for the Communications Companies.

The Overmyer application for transfer of the construction permits did not support the claimed out-of-pocket expenses with detailed data indicating the types of expenditures involved—vendors dates of payment, employees involved, etc. Also, the financial statements were not audited by independent public accountants.

Consequently, the sub-committee questioned whether the amount of out-of-pocket expenses claimed by Overmyer should have been accepted by FCC. A limited review of the Overmyer records was made in an attempt to ascertain the validity of the amount of claimed out-of-pocket expenses and other aspects of the transfer of the construction permits.

BALANCE SHEET OF OVERMYER COMMUNICATIONS COMPANIES

The purchase of 80% of the stock of the Overmyer Communications Companies entitles U.S. Communications to a controlling interest in the assets and liabilities of the companies. The combined balance sheet as at March 31, 1967, approximately the date of the sales agreement, submitted to the FCC requesting transfer of the construction permits to AVC is as follows.

This balance sheet was not audited. The balance sheet presented to U.S. Communications in accordance with the provisions of the stock purchase agreement was as of February 28, 1967, and also unaudited. Overmyer officials explained that an audit was not undertaken because certified statements were not necessary in order to obtain financing nor were they required by stockholders since the corporations are closed.

Affiliated company account—\$253,046

Expenses for the individual stations were paid from bank and other loan proceeds or notes and from advances by the affiliated companies resulting in the Communications Companies owing the affiliated companies \$253,046 at March 31, 1967.

The net amount due The Overmyer Company consists primarily of \$413,239 due from the Communications Co., with offsetting credits from the Telecasting Company, Warehouse Company, Overmyer personal and the Overmyer network amounting to \$79,566. In addition, unpaid vouchers amounting to \$75,005 and invoiced invoices amounting to \$5,622 were also recorded as offsetting credits to the intercompany account. These vouchers and invoices represent amounts due affiliated companies rather than outside vendors and consequently, if valid, should not have been deducted from the amount due and the amount of out-of-pocket expenses would be increased by \$75,005. The validity of these credits was not tested.

The intercompany account operates as a clearing account for many of the transactions affecting the stations. The proceeds from bank loans were charged to this account because the cash was in the possession of the parent company. Thus, when an expenditure was made it was credited to this account rather than cash with the contra to pre-operating expenses.

Overmyer communications companies combined balance sheet as at
Mar. 31, 1967

Assets:

Current assets:	
Cash	\$15,883
Accounts receivable	1,397
Inventories	6,654
Total current assets	23,934
Land	90,000
Other assets:	
Broadcast rights	2,557,710
Preoperative expenses	970,783
Deposits	1,870
Total other assets	3,530,363
Total assets	3,664,297

Liabilities:

Current liabilities:	
Notes payable	88,997
Accounts payable	91,480
Broadcast rights	393,062
Accrued expenses	14,329
Accrued taxes	3,627
Total current liabilities	591,495
Long-term liabilities:	
Notes payable	737,000
Broadcast rights	2,009,256
Total long-term liabilities	2,946,256
Affiliated company accounts	253,046
Capital: Common stock	53,500
Total liabilities and capital	3,644,297

Pre-operating expenses are not claimed by Overmyer as out-of-pocket expenses because the only portion actually paid by Overmyer is represented by the balance in the "affiliated company account" discussed previously—the remainder is offset by bank loans and other liabilities which became an obligation of U.S. Communications. In short, since Overmyer didn't pay the expenses from his own resources he didn't claim them as out-of-pocket expenses.

The pre-operating expenses are as follows:

D. H. Overmyer Communications Companies—Preoperating expenses as of Mar. 31, 1967

Salaries and fringe.....	\$331, 221
Travel and entertainment.....	66, 518
Professional services.....	140, 408
Equipment leases.....	82, 861
Material and supplies.....	18, 554
Rent.....	26, 757
Insurance: Land and building.....	6, 041
Utilities.....	14, 100
Interest on leased equipment.....	10, 998
Advertising.....	48, 534
Studio equipment.....	2, 638
Moving and storage.....	10, 212
Equipment repairs and maintenance.....	699
Research and development.....	14, 952
Miscellaneous.....	23, 208
Interest expense.....	34, 869
Construction permits acquired.....	138, 213

Total preoperating expenses.....¹ 970, 783

¹ An additional \$325,063 was expended through Jan. 15, 1968, the date of closing, primarily for interest (\$163,671), salaries (\$95,711), and rent (\$40,035).

The pre-operating expenses were capitalized as an asset. This is a proper accounting procedure. It would be expected that these expenses would be amortized over the period of the original operating license or some other reasonable period.

This type of asset has a limited value to a new owner—U.S. Communications has an obligation to pay loans, the proceeds of which have already been expended.

The test as to the reasonableness of the expenses performed during the review were extremely limited. It was noted, however, in testing the propriety of the charges for professional services that it could not be determined with certainty in some instances whether the services were rendered for the Communications Companies or for other Overmyer interests because the invoices did not indicate the specific nature of the services or for whom the services were performed.

In addition, the charges for professional services improperly included payments amounting to approximately \$20,196 for the services of Oliver Treyz who was hired as a permanent consultant at a salary of \$1,835 a week effective April 18, 1966. He performed no services for the Communications Company, but rather his full efforts were devoted to the Overmyer network. Consequently, his consulting fees should not have been charged to the Communications Companies and the allowable out-of-pocket expenses are overstated by \$20,196. This amount represents the payments made to Mr. Treyz between April 18 and July 1 when he was transferred to The Overmyer Co. payroll.

Broadcast Rights

The broadcast rights asset amounting to \$2,557,710 represents the face value of various contracts with film companies permitting the showing of the subject films. The current and long term liabilities for broadcast rights totaling \$2,402,318 represents the unpaid balance of the contracts and the difference between the asset and the liabilities amounting to \$155,392 represents the payments made by Overmyer. The payments are small in relation to the total contract value because most contracts provide that payments commence after the stations are on-the-air and the films have been or are about to be shown.

The review revealed that U.S. Communications valued the broadcast rights contracts transferred at \$2,234,039 or \$323,671 less than shown on the balance

sheet and the liabilities at \$2,131,810 or \$270,508 less than shown on the balance sheet. Consequently, the net value of the broadcast rights amounts to only \$102,229 or \$53,163 less than contended by Overmyer

The differences are primarily accounted for by the fact that a number of verbal agreements were not consummated, there was a different valuation placed on the contracts for "Captain Fathom" and "Three Stooges", and one contractor foreclosed because payments were in default.

A number of film contracts called for monthly installments commencing "January 1, 1968, or the date of first telecast, whichever occurs first" (some said January 1, 1967). In some instances Overmyer made the payments, in others extensions of payment due dates were negotiated. In two instances, both involving the San Francisco station, extensions were not granted and Overmyer failed to make the required installment payment amounting to \$7,377. The contractor, therefore, terminated the agreements. This incident has the effect of reducing the asset and liability by \$128,800. It was not determined why Overmyer failed to make the required payment.

A U.S. Communications official explained that the contractor foreclosed rather than grant an extension in the payment date because it was in a position to sell the films at an equal or higher price. In his opinion, this is one, and possibly the only, instance where the films appreciated in value. It was possible to negotiate extensions of the payment dates for several of the contracts conceivably because there was no other buyer.

The difference between the net value as shown on the balance sheet and as computed by U.S. Communications amounting to \$53,163 was not accounted for.

Long term notes payable—\$737,000

The long term notes payable at March 31, 1967, consist of the following items:

Station, payee, and amount

San Francisco: Pacific National Bank of San Francisco.....	\$350, 000
Atlanta: Girard Trust Bank.....	300, 000
Cincinnati: Tri City Broadcasting Co.....	¹ 45, 000
Atlanta: R. Rounsaville.....	² 42, 000

Total 737, 000

¹ An additional \$15,000 is shown as a current payable.
² An additional \$7,000 is shown as a current payable.

These loans constitute the principal source of financing for the stations—advances by affiliated Overmyer companies comprise the balance of the financing (see "affiliated company account: \$253,046" above). An additional bank loan amounting to \$80,000 was obtained but was repaid in January 1967. The financing was \$1,378,000 less than indicated to FCC as being necessary. The financial plans included in the Overmyer applications to the FCC to obtain the construction permits and subsequent submissions to FCC indicate that the following loans would be obtained to meet the estimated financial needs:

Station, source, and amount

Cincinnati:		
First National Bank of Cincinnati.....	\$400, 000	
D. H. Overmyer Warehouse Co.....	100, 000	
San Francisco:		
Bank of America.....	475, 000	
S. Corwin.....	80, 000	
Atlanta:		
Girard Trust Bank.....	400, 000	
D. H. Overmyer Warehouse Co.....	10, 000	
Pittsburgh:		
Western Pennsylvania National Bank.....	350, 000	
D. H. Overmyer Warehouse Co.....	350, 000	
Houston:		
Southern National Bank.....	550, 000	
D. H. Overmyer Warehouse Co.....	250, 000	
Total.....	2, 965, 000	

Advances from D. H. Overmyer Warehouse Co. were \$45,000 less than promised FCC and bank and other loans were \$1,333,000 less than promised FCC. The review did not reveal why all of the bank loans originally considered necessary were not consummated. Overmyer furnished FCC with letters from the above listed banks purportedly agreeing to loan the necessary funds. FCC accepted these letters as proof that necessary financing would be available. It is questioned whether FCC should have accepted all of these letters considering that conditions were listed which Overmyer could not satisfy. For example, in the case of The First National Bank of Cincinnati the letter dated August 14, 1964, states:

"We are willing to extend such a credit * * * based upon the submission of certified audited figures, satisfactory to us, of the Broadcasting Company and of Mr. Overmyer."

None of the statements for any of the affiliated companies was ever audited by public accountants because primarily fixed assets were recorded at appraised value rather than cost thereby precluding a certification. Since the bank was not willing to loan funds without audited statements, the letter should not have been accepted as satisfaction for needed financing.

It is not known to what extent the failure to obtain the bank loans was responsible for the stations not being completed in a timely manner.

Although the consummated bank loans were charged to individual stations, the proceeds were not applied to meet the construction requirements or particular needs of that station as outlined to the FCC. Generally, the loan proceeds were transferred from the lending institution to a central disbursing account (located in New York and Pittsburgh) where they lost their identity. The contra to this transfer was to the intercompany account. Although the central disbursing accounts included deposits and withdrawals applicable to all the Overmyer interests it can not be concluded that the funds were improperly used for interests other than the Communications Companies. This would be the case only if the total expenditures for broadcasting activities was less than loan funds obtained or if the funds needed for broadcasting activities were not available in a timely manner. The claimed expenditures exceed the loan funds and the only instances known where payments were in default are in regard to the broadcasting rights for films in San Francisco mentioned previously which probably was not due to the unavailability of funds. However, conceivably stations could have been completed in accordance with the original time schedules had funds been available to make commitments.

Because of this method of "pooling resources" the financial statements for individual stations are not necessarily meaningful. In the case of the San Francisco station, for example, the loan payable to the Pacific National Bank is recorded as a liability for this particular station and all interest payments on the loan were recorded as an expense of this station. This does not appear to be proper accounting considering that the loan proceeds were available to all the stations. In fact, the total expenses of the station as of March 31, 1967, (including interest on the loan amounting to \$12,880) were \$166,123 less than the loan proceeds (\$350,000 minus \$183,877).

The note payable to Tri City Broadcasting Company (\$45,000 long term and \$15,000 current) recorded for Cincinnati represents the outstanding balance of a note dated April 19, 1965, amounting to \$75,000.

Formal loans were not granted by the affiliated Overmyer companies as promised FCC in its application for the construction permits. Overmyer promised to loan the Communications Companies \$710,000, whereas funds amounting to only \$665,000 were advanced as evidenced by the balance in the intercompany account of The Overmyer Co., Inc. and equipment payments made by the Leasing Company. Moreover, the total consummated loans and advances by Overmyer are \$1,378,000 less than the estimated necessary financing.

With regard to the loan promised by the Warehouse Company for the Cincinnati station amounting to \$100,000, it was noted that on July 29, 1964, the Warehouse Company transferred \$100,000 to the account of the Cincinnati station. Two weeks later, on August 12, 1964, \$89,000 of this amount was transferred back to the Warehouse Company. The purpose of these transactions was to show that the station had funds available as of July 31, 1964. On August 17, 1964, an additional \$10,000 was withdrawn from the bank account. The check for this amount could not be located and it could not be determined whether the funds were transferred to the central disbursing account or returned to the Warehouse Company.

Net Worth—\$53,500

The net worth of the five Overmyer Communications Companies totals \$53,500, representing paid-in common stock of \$50,000 to the San Francisco station; \$1,000 to the Rosenberg (Houston), Atlanta and Pittsburgh stations; and \$500 to Newport (Cincinnati) station. The capital stock in the San Francisco station was more than the usual token amount in order to satisfy a stock agreement between Overmyer and the previous holder of the construction permit who retained a 20% interest in the station. The payment for the capital stock of the San Francisco station is an illustration of the pooling of resources described previously.

The capital stock from the San Francisco station was given as collateral to the loan from Pacific National Bank. Immediately prior to obtaining the loan it was necessary for Overmyer to pay the remaining balance due on the stock of \$35,100 (and for the minority holder to pay \$9,000). Overmyer drew a check in the amount of \$35,100 on the "D. H. Overmyer Company, Inc.", account in favor of the "D. H. Overmyer Communications Company (California)" which was deposited in the Pacific National Bank. Immediately thereafter a check for a like amount was drawn on the "D. H. Overmyer Communications Co." and deposited in the Bank of Commerce, New York. This account was one of the common disbursing accounts for all of the Overmyer TV stations.

Out-of-pocket expenses

Overmyer's claimed out-of-pocket expenses are as follows:

Net worth of five stations.....	\$53,500
Cancellation of payables to affiliated Overmyer companies.....	253,046
Assets donated by affiliated Overmyer companies.....	358,840
Charges for services performed by employees of affiliated Overmyer companies	666,514
	<u>\$1,331,900</u>

The net worth of the five stations and cancellation of payables to affiliated Overmyer companies were discussed in the previous section as they are included on the balance sheet.

Assets donated by affiliated Overmyer companies—\$358,840

The assets donated by other Overmyer companies are comprised of (1) various transmitter antenna, microwave, etc., equipment purchased by the Overmyer Leasing Company, the deposits and payments on which amount to \$289,103; (2) land for a transmitter site for the Cincinnati station costing \$58,688; and (3) construction costs incurred by Green and White Construction Company at the Cincinnati transmitter site amounting to \$11,049.

The total cost of this equipment and property with applicable payments are shown on the following schedule.

Assets donated to U.S. Communications by affiliated Overmyer companies

Station	Cost	Amount paid as of	
		Mar. 15, 1967 ¹	Jan. 15, 1968 ²
Cincinnati	\$1,117,164	\$229,522	\$403,415
Atlanta	1,110,768	79,449	116,705
San Francisco	789,125	19,696	81,396
Pittsburgh	202,000	24,240	172,691
Houston	148,327	5,933	5,933
Total	<u>\$3,367,384</u>	<u>\$358,840</u>	<u>\$780,140</u>

¹ Approximately date of sale.

² Date of closing

By accepting this equipment U.S. Communications is obligated to pay the full cost of \$3,367,384. The amount included in the out-of-pocket expenses (\$358,840) represents only a token down payment. To date, U.S. Communications has not determined whether all of this equipment is to be used in the stations or they would prefer to dispose of it.

Charges for services performed by employees of affiliated Overmyer Companies—\$666,514

Overmyer contends in his application to FCC for transfer that throughout the time the construction permits were held services were performed by a number of employees of The Overmyer Company and the Overmyer Leasing Company for the benefit of the Communications Companies in conjunction with their normal duties. Records were not maintained as to the value of these services and therefore estimates were made at the time the construction permits were transferred. The value of the services is estimated to be \$666,514 based on the judgment of certain key employees as to the amount of time devoted to these activities.

The value of the services was computed for each department of The Overmyer Company by (1) estimating the percentage of time the applicable employees devoted to broadcasting activities during the period of September through December 1966; (2) multiplying the percentage thus ascertained by the salary charges of these employees during the period; (3) dividing the total of the charges thus ascertained by the total salaries of all employees in the department; and (4) multiplying the percentage thus ascertained by the total expenses of the department. The total of allocable charges for all departments for this test period was used as a basis for the charges for the other periods when the permits were held. The following schedule summarizes the charges for all the periods including the deduction made for the stations not transferred (Toledo and Dallas) and a charge for services purportedly performed by the Overmyer Leasing Company.

Summary of charges to Overmyer Communications Companies for cost of services performed by employees of affiliated Overmyer Companies

THE OVERMYER COMPANY

Percentage of salaries allocated for time devoted to activities of Communications Companies during period of September through December 1966.....	11.143%
Total salary and overhead expenses of company for period September-December 1966.....	\$1,160,160
<hr/>	
Year ended 12/31/66 (11.143% × \$1,160,160 × 3).....	\$387,843
Year ended 12/31/65 (75% of charges for 1966).....	290,882
Six months ended 12/31/64 (20% of 1966 level which is equivalent to 10% of charges for 1966).....	38,784
Three months ended 3/31/67 (75% of 1966 level which is equivalent to 18.75% of charges for 1966).....	72,721
	<hr/>
	790,230
Deduct portion applicable to Toledo, Dallas, and network activities—20%	158,046
	<hr/>
Overmyer Leasing Company.....	632,184
	<hr/>
	34,330
	<hr/>
Total charges.....	666,514

The presentation to FCC indicates that The Overmyer Co., Inc. was established September 1, 1966, as a management staff organization for all of the Overmyer operating companies—warehousing, leasing, and communications. The establishment of this company made it possible to readily determine both staff salary expenses and overhead expenses, whereas previously the staff salary expenses were recorded in the Overmyer Warehousing Company and the overhead expenses were recorded throughout the several operating companies.

The allocation of charges for services is based on employees of record during the test period of September through December 1966 applied to the entire time the construction permits were held. However, there is no assurance that these persons were employed for the entire time the construction permits were held. It is known that a considerable number of employees were hired during 1966 to coincide with the large warehouse construction program and likewise a number of employees were dismissed as an economy measure when the financial difficulties arose.

A number of former employees responding to an inquiry regarding the nature of their services indicate that they were not employed in the periods outside the test period.

The charges for the periods outside the test period are severely distorted by the inclusion of these employees.

The presentation to the FCC was in error in stating that The Overmyer Co., Inc. was established September 1, 1963. Actually, the company was incorporated March 28, 1966. Expenses for the company were recorded at least from this date (evidence indicates that expenses may have been recorded as early as January 1, 1966). The failure to use the full period for which expense records were readily available is particularly significant because the expenses of The Overmyer Company were considerably less in periods outside the test period and therefore, if they had been considered, there would have been a sizeable reduction in the charges to the Communications Companies.

The charges to the Communications Companies for April through August 1966 are based on estimated expenses of The Overmyer Co., Inc. amounting to \$1,450,200 (\$1,160,160 × 125%) whereas actually these expenses amount to \$847,569. Applying the same percentage of salary allocation as used in the Overmyer computation to the actual expenses for this period (11.143% × \$847,569) results in charges of \$94,445 or \$67,155 less than the \$161,600 (\$387,843 × $\frac{5}{12}$) claimed as out-of-pocket expenses by Overmyer. By the same token, since the warehouse operations expanded considerably in 1966 and expenses were much less before this time, it is reasonable to assume that the charges for the six months ended December 31, 1964, (\$28,784), the year ended December 31, 1965 (\$290,882) and January through March 1966 (\$96,900) are grossly overstated—assuming the same rate of overcharge as the period of April through August 1966 ($\frac{94,445}{160,600} = 58.44\%$) the claimed out-of-pocket expenses for these periods are overstated by \$177,306.

No explanation was given as to why the test period did not extend beyond December 1966 to March 1967 (the date of sale). Records of salary and overhead expenses were readily available through March 1967.

The charges to the Communications Companies for January through March 1967 are based on estimated expenses of The Overmyer Co., Inc. amounting to \$870,120 (75% of \$1,160,160) whereas actually these expenses amounted to \$748,457. Applying the same percentage of salary allocation as used in the Overmyer computation to the actual expenses for this period (11.143% × 75% × \$748,457) results in charges of \$62,550 or \$10,171 less than the \$72,721 claimed as out-of-pocket expenses by Overmyer.

In summary, because estimated expenses of The Overmyer Co., Inc. were used for periods when actual expenses were available the claimed out-of-pocket expenses were overstated by at least \$254,632.

The reduced expenses outside the test period to a degree reflect sizeable changes in personnel necessitated by the warehouse construction program and the subsequent financial difficulties. Consequently the number of employees expending effort on broadcasting activities was at a peak during the test period.

The estimated percentage of time employees devoted to activities of Communications Companies appears questionable. The amount of time expended on broadcasting activities is supported only by statements from officials of the various departments to the effect that they are familiar with the formula used for computing allocable expenses and believe it to be reasonable. Considering the magnitude of the charges, it would appear that, as a minimum, statements

should have been made regarding the particular activities undertaken supported by confirmations from the individual employees involved.

Overmyer's computation of charges considered that the employees' time devoted to broadcasting activities during January through March 1967 was 75 percent of the time expended during September through December 1966. This allocation appears excessive considering the reduced number of employees and the fact that the principal activity during this period was negotiating the sale of the stations. It is inconceivable that all departments would be involved in the sale of the stations and certainly not in the ratio to each other as they would in previous periods. For example, it is doubtful that effort was expended preparing advertising to justify a charge of \$8,472, or acquiring real estate to justify a charge of \$28,318.

The charge of \$38,784 for the six months ended December 31, 1964, is 10% of the charges for 1966 based on the estimate that the degree of effort amounted to 20% of that during 1966. Application was made for two construction permits in August 1964, one in November 1964 and two in February 1965. The first permit was approved March 10, 1965 (Cincinnati) and the other four permits were obtained in May, August and October 1965. Admittedly, expenses are incurred before construction permits are obtained (legal and market research, etc.). However, no pre-operating expenses were recorded in 1964; the first payment for equipment was made March 1, 1966; and the only land purchase was made June 15, 1966. Therefore, there were no activities before the permits were acquired which would justify an allocation of charges to all operating departments for services performed for the Communications Companies.

Also, it does not appear reasonable that \$290,882 should be charged for labor costs by employees of affiliated companies for their efforts in 1965. The pre-operating expenses for 1965 consist of professional services amounting to \$37,841. Communications Companies New York office expenses of \$50,615, and miscellaneous expenses of \$8,017. There were no field employees in 1965. Again, no explanation is furnished to indicate the activities during this period by employees of affiliated companies which justify charges amounting to over three times as much as the direct expenses.

The various functions necessary to place a station on-the-air are performed in a recognizable sequence. It is, therefore, inconceivable that all departments should be considered as expending the same proportion of efforts during different periods. For example, it does not appear reasonable that the relationship between the effort expended by advertising department and that of legal department would be the same in late 1966 as it was in 1964 or 1965 when there would have been little or no advertising; or between the president's office and the taxes and insurance department in these periods since no taxes or insurance premiums were paid until 1966.

The deduction of \$158,046 for the portion of services applicable to the Toledo and Dallas stations and network activities appears insufficient. The deduction is 20% of the total charges for all stations. The pre-operating expenses and related efforts necessary to place the Toledo station on-the-air were considerably more than for any of the other stations which did not progress to this point. For example, as explained in the following sections, more personnel were hired for this station than all the other stations combined and the direct advertising expenses were in regard to the opening of this station with only incidental mention of the other stations. Also, land for antenna and transmitter sites was obtained for Toledo but for only one of the other stations.

It would appear that a deduction should have been made for the cost of the services performed by employees of the Communications Companies for the benefit of affiliated Overmyer companies in conjunction with their normal duties. Overmyer officials explained that the principal rationale for allocating charges to the Communications Companies for services performed by employees of affiliated companies is the fact that all employees perform services within their field for all Overmyer interests regardless of corporate entity. This was attested to in the application for transfer submitted to FCC. In keeping with this policy,

a number of former Communications Companies' employees, contacted during the review, indicated that they performed services for the affiliated companies. Therefore, a deduction should have been made from the claimed out-of-pocket expenses for the value of the services performed by Communications Companies' employees for the benefit of other Overmyer interests.

With regard to the charges for services during periods when obviously there was no activity and other obvious deficiencies in the computation of charges mentioned above, it is questioned why the FCC did not ask for clarifying information when it was considering the application for transfer as these deficiencies could have been observed by an analysis of the justification for transfer submitted by Overmyer. The fact that these charges and deficiencies were not challenged by FCC is an indication that FCC staff study was cursory at best and not particularly concerned with the validity of the claimed out-of-pocket expenses.

A review of the claimed out-of-pocket expenses by FCC is particularly essential in the case of the transfer of these stations because the transferee was precluded from determining their validity. The sales agreement establishes a maximum price but also provides that the price is to be the amount approved by FCC within the maximum. When the sales agreement was consummated the amount of out-of-pocket expenses was not known; Overmyer computed the amount of out-of-pocket expenses between March 31, 1967, when the sales agreement was signed, and June 1967, when the justification for transfer was submitted to FCC. When FCC approved the amount of out-of-pocket expenses as \$1,331,900 the transferee was obliged to pay Overmyer \$1 million for an 80% interest without questioning the validity of the expenses. The review disclosed that U.S. Communications had no knowledge of the pre-operating expenses or charges for services performed by employees of affiliated companies. Officials stated that it would be pointless for them to review Overmyer records as they were precluded from taking exceptions.

The following schedule shows the amount of charges allocated to the Communications Companies for services performed by employees of individual departments of affiliated Overmyer companies during the various periods:

ALLOCATION OF CHARGES TO OVERMYER COMMUNICATIONS COMPANIES FOR SERVICES PERFORMED BY EMPLOYEES OF OTHER OVERMYER COMPANIES

	(A) Percent of salaries allocated	(B) Total expenses September- December 1966	(C) Expenses allocated 1966 (AxBX3)	(D) Expenses allocated 1965 (75 percentXC)	(E) Expenses allocated July-December 1964 (10 percentXC) (18.75 percentXC)	(F) Expenses allocated January-March 1967	Total
Overmyer Co., Inc.:							
President's office.....	17.4	\$88,044	\$45,960	\$34,470	\$4,596	\$3,617	\$93,644
Controller's office.....	5.17	155,799	24,164	18,123	2,416	4,531	49,234
Personnel department.....	14.14	65,146	27,635	20,726	2,763	5,182	56,306
Purchasing and office services.....	5.0	90,079	9,454	7,091	947	1,772	19,264
Taxes and insurance department.....	9.44	41,041	11,623	8,717	1,162	2,179	23,681
Auditing department.....	10.3	33,205	10,260	7,695	1,026	1,924	20,905
Legal department.....	11.5	71,228	24,573	18,430	2,457	4,607	50,057
Treasurer's department.....	12.5	37,581	14,094	10,571	1,409	2,643	28,717
Corporate relations department.....		16,477					
Human relations department.....		3,186					
Advertising and public relations department.....	17.8	84,617	45,186	33,890	4,519	8,472	92,067
Data processing department.....		22,285					
Acquisition department.....		14,175					
Finance and development department (home office).....	13.4	208,364	83,763	62,822	8,376	15,706	170,667
Regional offices.....	14.2	157,895	67,263	50,447	6,736	12,612	137,048
Total expenses and amount of allocation.....		1,089,122	363,975	272,982	36,397	68,245	741,600
Undistributed general expense: Allocation on same percentage (11.1 percent) as total expense above.....		71,038	23,868	17,901	3,287	4,475	48,631
Total expenses and amount allocated to communications companies.....		1,160,160	387,843	290,882	38,784	72,721	790,230
Deduct portion applicable to Toledo, Dallas, and network activities (20 percent):.....							158,046
Subtotal.....							632,184
Add Overmyer Leasing Co. expenses chargeable to communications companies.....							34,330
Total allocation.....							666,514

1 The Overmyer computations consolidated the charges for 4 departments. The charges for this department were adjusted on this schedule so that the total agrees with the Overmyer computation.

In most instances there is no way to verify the accuracy of the charges. Sworn statements by key employees describe many of the functions performed by the individual departments and supporting data was furnished indicating the amount of time devoted to Communications Companies activities by particular employees. However, in many instances there is no way to verify that the functions were actually performed, nor whether they were performed by the particular employees claimed to have performed them, nor whether they took the amount of time indicated.

Nevertheless, a number of tests were performed by the Subcommittee staff in an attempt to determine the overall reasonableness of the charges. For example, letters were sent to a number of former employees requesting them to indicate the amount of time they devoted to Communications Companies activities in order to compare the employees' estimate with the estimate used in the Overmyer computations. Also, analyses were made of payrolls and other accounts and records of The Overmyer Co., Inc. and the Communications Companies. The results of the various verification tests are described below.

President's office—The allocation of charges for the services of employees of the president's office amounts to \$93,644. This represents 17.4% of the total expenses of the office for the period of September through December 1966 plus amounts for the other periods the permits were held as shown on page 29. It is contended in the supporting data for these charges (not submitted to FCC) that 12 of the 25 employees in this office during the test period devoted 20 to 50% of their time to duties pertaining to the activities of the Communications Companies.

The review disclosed that the amount of charges allocated for services by employees of this department is questionable because a number of employees did not perform the services indicated and the salary charge for one employee was overstated.

It is claimed that one employee (William Nixon) devoted 20% of his time to the Communications Companies activities whereas this employee was president of the Nixon Construction Company, a subsidiary and forerunner to the Green and White Construction Company. It was specifically indicated in the application for transfer that no charges were made to the Communications Companies for services performed by the Green and White Construction Company.

Another employee is claimed to have devoted 40% of her time to activities of the Communications Companies. She was subsequently transferred to the Overmyer network (along with 7 other employees in this department) and allegedly all the employees transferred to the network devoted full time to the network regardless of which payroll they were on.

Another employee is claimed to have devoted 50% of his time to activities of the Communications Companies whereas in response to a letter requesting his estimate of time devoted to these activities he indicated that he did not spend any time on these activities.

Another employee's salary was overstated by \$173. An allocation of charges was made for 20% of this employee's salary.

These employees were on the payroll for only a limited time during the test period and their combined excessive allocable salaries for the test period amounted to only \$640. Nevertheless, the allocation of charges for this office (\$93,644) includes \$6,461 for the services of these employees.

Controller's department—The allocation of charges for the services of the employees of the controller's department amounts to \$49,234. This represents 5.17% of the total expenses for the department for the period of September through December 1966 plus amounts for the other periods the permits were held as shown on page 29. It is contended in the supporting data for these charges (not submitted to FCC) that 4 of the 71 employees in the department during the test period devoted 75 to 100% of their time to duties pertaining to the activities of the Communications Companies.

The review disclosed that the amount of charges for services by employees of this department is grossly excessive because many of the functions claimed to have been performed by the employees of this department were not performed, the services performed required only a minimum of time, one employee did not perform the services indicated, and the charge for one employee's services far exceed the total salary earned.

A sworn statement by the controller of all Overmyer corporations, submitted to FCC with the application for transfer, described the services performed by

his department in regard to the activities of the Communications Companies as follows:

"For each of the Communications Companies, the Controller's office established and maintained general and subsidiary ledgers; books of original entry; prepared payrolls and payroll checks; cash receipts, disbursements; billings and collections; prepared financial statements and, as required, special management reports; and handled financial correspondence with respect to the foregoing.

"The above accounting services are rendered to approximately 50 corporations."

This statement is applicable to all Overmyer companies and does not take into consideration the particular circumstances pertaining to the Communications Companies. For example, it is stated that the department prepared cash receipts, billings and collections for the Communications Companies whereas these companies had no income. Also, the review did not reveal any evidence of special management reports or financial correspondence as having been prepared.

The charges for the services performed appear to be excessive. As pointed out previously, no pre-operating expenses were recorded in 1964. In fact, none of the services described could have been performed before the construction permits were obtained and therefore, there is no justification for a charge of \$2,068 for the six months ended December 31, 1964.

Also, the charge of \$15,509 for the services performed in 1965 appears excessive. There were no field employees and only a few employees in the New York office in 1965 (only 14 at the peak in 1966) and therefore, payroll preparation was minimal. There were few transactions comprising the pre-operating expenses. These expenses for 1965 consist of professional services amounting to \$37,841, New York office expenses of \$50,615, and miscellaneous expenses of \$8,017—a total of \$96,474. It does not appear reasonable that the cost of recording expenses in sizeable increments should be 16% of the expenses.

The unreasonableness of these charges was confirmed by the supervisor of the general accounting section of the Overmyer Warehouse Company at the time the construction permits were held when he stated:

"One of my clerk-typists prepared the D. H. Overmyer Communications Company vouchers and checks. This was a simple typing function.

"Also, on occasion, any one of my bookkeepers may have 'helped out' the bookkeeping section of the Communication Co."

The unreasonableness of the charge was further substantiated by the fact that one employee did not perform any services to justify the allocation of salary. The employee is claimed to have devoted 75% of her time to the Communications Companies activities whereas the former controller for The Overmyer Co., Inc. stated that this employee devoted all of her time to network activities. The allocation of charges for this department (\$49,234) includes \$14,951 for the services of this employee.

In addition, one employee was employed only one month and earned a total of \$665. This month was in the test period and 100% of his time was devoted to activities of the Communications Companies. However, due to the method of computing the charges for services, it was also considered that this employee devoted time to those activities from July 1964 to March 1967. A total of \$5,428 was charged to the Communications Companies for the services of this employee—\$4,763 more than his total earnings. It is because of allocations for these types of employees that the charges outside the base period are distorted and why the charge should have been based on the payroll for the entire period. It is known that a number of employees for whom allocations of salaries were made were not employed for the entire time the construction permits were held. However, recomputations of the charges are not made in this report because the exact employment dates are not known.

Personnel department—The allocation of charges for the services of the employees of the personnel department amounts to \$56,306. This represents 14.14% of the total expenses for the department for the period of September through December 1966 plus amounts for the other periods the permits were held as shown on page 29. It is contended in the supporting data for these charges (not submitted to FCC) that there were 22 employees in the department during the test period and that the personnel director and deputy personnel director devoted 25% of their time and an employee devoted 100% of his time to activities of the Communications Companies.

The review disclosed that the amount of charges allocated for the services of employees of this department is excessive because the cost of performing similar

services for the affiliated companies is considerably less than the charges to the Communications Companies, and it is doubtful that the services were performed to the degree indicated since costs for some of the services were incurred directly by the Communications Companies.

A sworn statement by the controller of all Overmyer corporations, submitted to FCC with the application for transfer, described the services performed by the personnel department in regard to the activities of the Communications Companies as follows:

"As the Communications companies were formed, personnel were recruited which required interviews, testing and screening of job applicants; requesting and processing background checks and other information relating to personnel matters; processing of correspondence and other functions relating to termination, vacations and similar matters."

The Communications Companies had 14 employees in the New York office and 9 field office employees in December 1966. The field employees were hired between February and August 1966. It is not known whether the employees in the New York office were hired specifically for the Communications Companies or were transferred from affiliated companies, nor is it known when they were hired or transferred. It is known that The Overmyer Co., Inc. did not pay employment agency fee for any employee hired after August 1966 because the review disclosed that none of the 56 employees for whom a fee was paid during September through December was hired for the Communications Companies. Therefore, the only services performed by employees of the personnel department after August 1966 for the benefit of the Communications Companies related to terminations and/or vacations. It does not appear reasonable that the value of these services is \$14,394. By the same token, there is no justification for the charge of \$2,763 for services performed in 1964 when the construction permits had not been acquired and the first employee of record was sometime in 1965.

In addition, the charges for 1965 and 1966 totaling \$48,361, which are primarily for the cost of hiring 23 employees, appear to be excessive. The pre-operating expenses recorded in the accounts of the Communications Companies include payments to personnel agencies for the hiring of employees. Hence, at least some of the cost of hiring employees was charged directly to the Communications Companies, and yet a substantial allocation of charges is being made allegedly because these same services were performed by affiliated company employees. Also, the total charges for the personnel department (\$56,306) amounts to \$2,488 per employee whereas the agency fees paid by The Overmyer Co., Inc. for hiring 56 employees amounts to \$406 per employee. At this rate, the 23 Communication Companies employees could have been hired at a cost of \$9,338. The cost of performing the other personnel services could not reasonably account for the difference between this amount and the total charge (\$46,968).

The excessive charge may partially be accounted for by the fact that 27 employees were hired in 1966 for the Toledo station. The deduction of 20% for the portion of activities "applied" to this station (\$11,261) is completely inadequate. Since there were more employees at the Toledo station than at all other locations, more than 50% of the personnel expenses must have been applicable to Toledo.

The excessive charge is also accounted for by the fact that the employee who devoted 100% of his time to activities of the Communications Companies was only employed for 10 months whereas the allocation considers that he was employed for the entire period (July 1964 through March 1967). His total earnings amounted to approximately \$8,461 whereas \$12,107 is charged for his services.

It appears that rather than base the allocation of charges for personnel services on unsupported estimates of time expended by employees, it would be more reasonable to base them on the average cost of servicing all employees in the affiliated companies plus or minus any direct costs such as employment agency fees.

A sworn statement by the executive vice president indicated, "while I normally was not involved in day-to-day recruiting outside of the staff area, I did, at Mr. Overmyer's direction, take a very active part in the recruiting and interviewing of several key executives in the communications operating group." However, allocation of charges for services performed by the personnel department cannot be justified on the basis of the recruiting services performed by the executive vice president because these services are part of the justification for allocating 25% of his salary and other expenses of the president's office to the Communications Companies.

Taxes and insurance department.—The allocation of charges for the services of the employees of the taxes and insurance department amounts to \$23,681. This represents 9.44% of the total expenses for the department for the period of September through December 1966 plus amounts for the other periods the permits were held as shown on page 29. It is contended in the supporting data for these charges (not submitted to FCC) that there were 15 employees in the department during the test period and that 9 of these employees devoted 10% of their time and one devoted 20% of his time to the activities of the Communications Companies.

The review disclosed that the amount of charges allocated for the services of employees of this department is extremely excessive because the services performed required a minimum of effort.

A sworn statement by the controller of all Overmyer Corporations, submitted to FCC with the application for transfer, described the services performed by the department in regard to taxes for the Communications Companies as follows:

"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 Companies, I relied upon my personal experience in this field."

With regard to services pertaining to insurance, it was stated:

"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."

These statements appear to be applicable to all the Overmyer interests without regard to the particular circumstances of the Communications Companies. For example, it is stated that the department filed state and municipal sales-use tax returns. However, the nature of the Communications Companies activities would not require these returns. Federal tax returns for the Communications Companies were prepared by a public accountant—not this department. Also, it is stated that "correspondence with taxing officials or with other company personnel is handled by this department;" however, there is no evidence, nor is it likely, that such services were required for the Communications Companies. Further, it is stated that this department handled insurance claims, correspondence and followed up on all insurance matters, but there is no evidence, nor is it likely, that the Communication Companies had any claims or had any matters that needed following up.

It is inconceivable that there were any services performed in 1964 to justify a charge of \$1,162 considering that the construction permits were not obtained until 1965, no expenses were recorded requiring the filing of tax returns, and the first insurance premium was not paid until May 1966. For these same reasons there appears to be no justification for the charge of \$8,717 for services in 1965. The only tax payments in 1965 were 2 franchise tax payments amounting to \$150 and, as stated above, the federal income tax return was prepared by a public accountant.

Insurance premiums amount to \$8,041 (through March 30, 1967, see page 572). It is not understandable how the complexities of obtaining insurance on a minimum of property warrant a charge for services amounting to \$11,623 for 1966 and \$2,179 for three months of 1967.

A letter was sent to 2 of the 9 employees for whom an allocation of 10% of their salary is made in the computation of charges requesting their estimate of time expended on activities of the Communications Companies. Both employees were in relatively low paid clerical positions. One responded that she was employed only between April and August 1966 and did not spend any time on these activities. The allocation of charges for this department (\$23,681) included \$853 for the services of this employee. The other employee indicated that she was employed only between June and September 1966 and she spent 10% of her time on these activities only during the month of September 1966—not for the entire period of July 1964 through March 1967 as claimed by Overmyer. The allocation of charges for this department was overstated by \$1,505 because of this discrepancy.

Auditing department.—The allocation of charges for the services of the employees of the auditing department amounts to \$20,905. This represents 10.3% of the total expenses for the department for the period of September through December 1966 plus amounts for the other periods the permits were held as shown on page 29. It is contended in the supporting data for these charges (not submitted to FCC) that 10 of the 11 employees in this department during the test period devoted 5 to 15% of their time to duties pertaining to the activities of the Communications Companies.

The review disclosed that the amount of charges allocated for services by employees of this department is extremely excessive because it appears that few, if any, of the services indicated were actually performed.

A sworn statement by the chief internal auditor, submitted to FCC with the application for transfer, indicated that the department reviewed the Communications Companies' New York office accounting records, performed field audits and reviewed costs incurred by Green and White Construction Co.

It does not appear feasible that internal audits could have been conducted to the extent claimed. As pointed out previously, no pre-operating expenses were recorded in 1964. Considering that no expenses had been recorded, and that the construction permits had not been obtained, it is not understandable what reviews could have been performed in 1964 to justify a charge of \$1,026.

By the same token, as explained previously, there were only a few pre-operating expenses recorded in 1965 amounting to \$96,474, there were no field offices in 1965, and Green and White Construction Company did not incur any costs applicable to the Communications Companies until 1966. Therefore, it is inconceivable that any type internal review could have been performed in 1965 that would cost \$7,695.

With regard to the contention that reviews were conducted of costs incurred by the Green and White Construction Company for the construction of TV facilities, such reviews could not have been significant since the only construction for record amounts to \$11,049 (at the transmitter site in Cincinnati).

Overmyer officials stated that reports of these reviews were not prepared. It is an accepted accounting practice that reports are prepared at the conclusion of all reviews regardless of whether there are any deficiencies or recommendations. The fact that reports were not prepared indicating the scope and results of the reviews leads one to conclude that the reviews, if conducted, could not have been extensive enough to justify a charge of \$20,905.

One employee is claimed to have devoted 10% of her time to activities of the Communications Companies whereas in response to a letter requesting her estimate of time devoted to these activities she indicated that she did not spend any time on these activities. The allocation of charges for this department (\$20,905) includes \$2,030 for the services of this employee.

The computation of the salary for one employee was overstated by \$540. An allocation was made for 5% of this employee's salary. The error results in an overstatement of the charges by \$406.

Treasurer's department.—The allocation of charges for the services of the employees of the treasurer's department amounts to \$28,717. This represents 12.5% of the total expenses for the department for the period of September through December 1966 plus amounts for the other periods the permits were held as shown on page 29. It is contended in the supporting data for these charges (not submitted to FCC) that 7 of the 15 employees in the department during the test period devoted 5 to 30% of their time to duties pertaining to the activities of the Communications Companies.

The review disclosed that the amount of charges allocated for services by employees of this department is not completely warranted considering the services performed.

A sworn statement by the treasurer, submitted to FCC with the application for transfer, indicates that the principal duties of the department with regard to the activities of the Communications Companies pertained to obtaining and servicing loans. Overmyer indicated in the application for construction permits that five loans amounting to \$2,255,000 would be obtained to finance construction. Actually, four loans were consummated but the proceeds amounted to a net value of only \$730,000. No indication was given as to the amount of effort necessary to consummate these loans or expended attempting to obtain loans which were not consummated. Nevertheless, there is no reason to believe that loans for the Communications Companies would be any more difficult to obtain or to administer than the loans obtained for the Warehouse companies. It was stated that "over approx-

imately the last ten years the Overmyer Warehouse companies have generated first mortgage loans substantially in excess of \$100,000,000 . . ." The results of almost two years effort by this department for the Communications Companies were loans amounting to \$730,000 and does not appear to warrant a charge of \$28,717.

It would appear that rather than use an unsupportable estimate of time expended by certain employees as a basis for charges to the Communications Companies, it would be more reasonable to allocate the portion of the total expenses of the department in a ratio of the amount of loans consummated and/or attempted for the Communications Companies to the comparable amount for all the affiliated companies during the period the construction permits were held.

Advertising and public relations departments—The allocation of charges for the services of employees of the advertising and public relations department amounts to \$92,067. This represents 17.8% of the total expenses for the department for the period of September through December 1966 plus amounts for the other periods the permits were held as shown on page 29. It is contended in the supporting data for these charges (not submitted to FCC) that 6 of the 7 employees in the department during the test period devoted 5 to 30% of their time to duties pertaining to the activities of the Communications Companies.

The review disclosed that the amount of charges allocated for services by employees of this department is grossly excessive because it is unlikely that the personnel performed the services attested.

A sworn statement by the executive vice president of the Communications Companies, submitted to FCC with the application for transfer, described the services performed by this department in regard to the activities of the Communications Companies as follows:

"The Communication Companies have relied exclusively on the Advertising Department personnel of the Overmyer Companies. The advertising personnel have served the Communications Companies in designing layouts for business papers, forms, Communications Companies' and individual station logs; in planning and carrying out several national advertising campaigns to promote the Communications Companies and the stations; in planning comprehensive campaigns in each local area to stimulate conversion of UHF, including on-the-air promotion, business cards, local ads, store posters, etc.; reviewing each Communication Company expenditure for space, art work, production, etc. Practically daily meetings were held by such personnel with Communications Companies' people."

A letter from the vice president of The Overmyer Co., Inc. in charge of advertising and sales promotion revealed that only approximately 15% of his time was devoted to Communications Companies' activities whereas 25% of his time was allocated to those activities. Moreover, it does not appear that any of his salary should have been allocated to the Communications Companies because he stated:

" . . . I spent considerable time developing advertising and sales promotion programs for WDHO-TV, Toledo, which is also owned by Mr. Overmyer.

"Our theory was that we would develop prototype advertising and promotion programs which would then be applied to his other construction permits as the stations were built.

"In regard to the Overmyer network, I was asked to develop printed materials covering everything from stationery to trade ads, and to develop an advertising and promotional strategy in anticipation of the day the network commenced operation."

It is obvious from this statement that there was little to no advertising expenses incurred for the subject construction permits because the Toledo station was not transferred and Overmyer network expenses are not applicable to the construction permits. The charge of \$33,104 to the Communications Companies for the services of this employee is not justified in view of this statement.

A "Station Profile" for each of the stations contains the following statement: "An extensive advertising campaign is planned for the inauguration of our new * * * television station. This campaign is scheduled to begin approximately four weeks prior to our air date. It will include ads in the local daily newspapers, the Sunday editions and all small town papers in our coverage area. In addition, we plan a heavy radio campaign, bumper streamers and window posters.

"Advertising for the Overmyer Communications Company is handled by New York advertising agency, Redmond, Marcus and Shure. Samples of our corporate advertisements are attached. These have appeared in the New York Times and Wall Street Journal, in addition to broadcasting magazines."

The samples referred to include statements such as:

"* * * Overmyer plans to launch new stations in six important markets this year * * * an unprecedented number. We've just opened our first in Toledo. Others will follow in Pittsburgh, Atlanta, San Francisco, Cincinnati and the Houston area."

Direct charges, primarily fees from the advertising agency, amounting to \$48,534 are included in the pre-operating expenses (see page 572). These charges were allocated to all the stations because they were all mentioned in the advertisements. However, it does not appear reasonable to allocate charges for developing prototypes to stations that did not use the prototypes. The cost of advertising the Toledo station should be reduced if other stations enjoy the use of the advertising developed but stations should not be charged for these costs until they utilize the advertising.

The Toledo station went on the air May 3, 1966. The ads prepared by the advertising agency were printed during May 1966 and the other advertising included in the campaign supposedly commenced in April 1966. This being the case, it does not seem possible that employees of The Overmyer Co. were devoting any portion of their time to advertising activities for broadcasting during 1964. Certainly costs for preparing advertising were not incurred before the construction permits were received or when it was known that on-the-air dates were considerably in the future, yet \$4,519 was charged for these services supposedly performed in 1964. Also, the charge for services performed in 1965 amounting to \$33,890 appears to be excessive considering that the total direct charges amounted to only \$3,869 during this period. The direct charges are for the fees paid the agency for designing the advertisements plus the publication costs. It does not seem reasonable that the indirect service charges could be almost 9 times the direct charges.

The charge for services supposedly performed during 1967 amounting to \$8,472 also appears unwarranted. There is no evidence that there was any advertising in this period. As it was known that the stations were going to be sold it is unlikely that any preparations were made for advertising. Also, in this regard it is noted that the vice president in charge of advertising, mentioned above, resigned as of December 2, 1966; nevertheless, as pointed out previously in similar cases, an allocation of charges was made for the 3 months in 1967 as if he were still on the payroll.

The charge for services performed during 1966 amounting to \$45,186 appears to be excessive considering the total direct charges amounted to only \$45,278 during this period.

Finance and development department.—The allocation of charges for the services of the employees of the finance and development department amounts to \$307,715 (170,667 for the New York office and \$137,048 for the seven regional offices). This represents 13.4% of the New York office's and 14.2% of the regional offices' total expenses for the period of September through December 1966 plus amounts for the other periods the permits were held as shown on page 29. It is contended in the supporting data for these charges (not submitted to FCC) that 37 of the 61 employees in the New York office during the test period devoted 5 to 30% of their time to duties pertaining to the activities of the Communications Companies and 48 of the 62 employees in the regional offices (San Francisco, Chicago, Dallas, New York, Atlanta, Detroit and Denver) during the test period devoted 10 to 30% of their time to these duties.

The review disclosed that the amount of charges allocated for services by employees of this department is completely out of proportion to the services that possibly could have been performed.

A sworn statement by the vice president of finance and development of The Overmyer Co., Inc., submitted to FCC with the application for transfer, describes the services performed by this department in regard to the activities of the Communications Companies as follows:

"Locating, evaluating, negotiating for and acquiring real estate for antenna sites and studios and for office space for the TV station and handling problems related thereto."

"Searching out, negotiating for, arranging for and servicing short and long-term loans and other financing arrangements."

The allocation of charges for the services performed by employees of this department are over 41% of the total charges for all departments. It would seem that charges of this magnitude should be supported by more than a short generalized statement. As a minimum, one would expect a detailed description of

the particular activities of the various employees involved by date and location, including any unusual circumstances or difficulties encountered and an approximation of the number of properties evaluated.

The supporting data indicates that many alternative sites were investigated over extended periods. In addition, it was stated that: "because of the technical problems involved, and zoning and the public relations problems, and a variety of other difficulties, coupled with the inexperience of our personnel in the TV field, the amount of time required to locate and check out each potential site has been inordinate."

Nevertheless, only one parcel of land and no studios or buildings were purchased; only five studios, transmitter and antenna sites are required for the entire complex. The review disclosed that with regard to the land purchase (cost \$55,000) fees amounting to \$3,688 were paid to law firms "for services in connection with the purchase and other miscellaneous matters up to the time of closing." It is therefore questionable what services were performed by employees of this department with regard to the land purchase.

The review disclosed that there were difficulties encountered in San Francisco in that a selected site had to be abandoned due to circumstances beyond the control of Overmyer. However, difficulties at other sites were not revealed. Also, the amount of additional effort required because of the difficulties in San Francisco could not be determined. Moreover, at Cincinnati, and possibly other sites, Overmyer took over the sites selected by the previous permit holder and therefore services of employees of this department would not be required or, at best, be minimal. Also, records of other construction permit transfers did not indicate problems of this magnitude locating suitable sites.

The contention that this department made arrangements for financing is not understandable. As described previously (page 45), it is contended that the treasurer's department also expended considerable effort attempting to arrange for financing. The amount of charges allocated for services of employees by the treasurer's department was found to be excessive because the time supposedly expended to attempt to obtain required financing could not be completely justified. Therefore, an allocation of charges for the same services by employees of this department should not be accepted.

On the surface, it appears unreasonable that a total of 85 employees would be involved in acquiring the real estate necessary for five stations. It would appear that to justify charges for a staff this large, statements should be made as to individual duties. A letter was sent to 23 of the 85 employees for whom an allocation of salary is made in the computation of charges requesting their estimate of time expended on activities of the Communications Companies. Responses were received from 18 of these requests.

Out of the 18 responses 17 stated that no time was devoted to activities of the Communications Companies (10% of their salary was allocated in the computation of charges in 7 instances and 20% in 10 instances). The allocation of charges for this department (\$307,715) includes \$21,812 for the services of these employees. In the other instance (20% was allocated in the computation of charges) he indicated that he spent time on communications companies activities during a limited period but could not give a percentage of effort. Two persons for whom no allocation of salary is made in the computation of charges responded indicating they did perform services for the Communications Companies. However, the amount of time was negligible and has very little effect on the amount of charges.

OVERMYER LEASING COMPANY EXPENSE, \$34,330

In computing the out-of-pocket expenses a charge to the Communications Companies is made in the amount of \$34,330 for services performed by the Overmyer Leasing Company.

The review disclosed that the charge for services performed by the Leasing Company is not warranted because it appears that the charge is already included in the out-of-pocket expenses.

A sworn statement from the president of the Leasing Company submitted to FCC with the application for transfer indicates that these charges are justified because:

"Between June, 1965 and December 31, 1966, Company entered into approximately \$6¼ million of leasing contracts of which approximately \$2¼ million or 40% were for Overmyer Communications."

It is further contended that: "... based on my personal experience and on supervising the employees of Company, it is my estimate that approximately 20%

of the Company payroll can reasonably be attributed to services performed for Communications between June 1965 and April 1967."

These statements completely overlook the fact that the Communications Companies were billed monthly by the Leasing Company for the cost of the equipment leased. These billings amounted to \$75,846 from inception to March 29, 1967, and are included in the intercompany account and thereby included in the computation of the out-of-pocket expenses. It is inconceivable that the Leasing Company didn't include a pro-rata share of its indirect costs in the billings for the leased equipment. If this is the case, there is no reason to consider the separate charge for these costs.

In computing the salary costs of the finance and development department of The Overmyer Co., Inc. during the test period of September through December 1966, an additional charge in the amount of \$33,634 was made to "transfer salary expense from D. H. Overmyer Leasing Company, Inc." It is not understandable why these charges should be transferred to The Overmyer Co., Inc. and then subsequently contend that 20% of the total expenses of the company are reimbursable because they are attributable to the Communications Companies.

EXPENSES OF THE OVERMYER COMPANY, INC.

The allocation of charges for service by the various departments of The Overmyer Company, Inc. is based on 11.143% of the total expenses of the company for the test period of September through December 1966. These expenses amounted to \$1,160,163. The following schedule shows the type of expenses incurred by The Overmyer Company during this period.

The Overmyer Co., Inc., expenses for the 4 months, September through December 1966

Salaries	\$644,130
Payroll allowances.....	87,747
Hospitalization and life insurance.....	—4,626
Repairs and maintenance—office equipment.....	10,317
Insurance—workmen's compensation.....	1,076
Heat, light, and power (including water).....	1,651
A.D.T. burglar alarm.....	120
Rent expense.....	67,807
Overtime pay.....	15,802
Real and personal property taxes.....	2,702
Taxes—franchise, license, other.....	4,729
Office supplies and expense.....	59,789
Telephone and telegraph.....	60,626
Postage.....	10,519
Travel expense.....	71,831
Entertainment expense.....	1,922
Dues and subscriptions.....	1,327
Contributions.....	100
Advertising.....	30,825
Temporary office help.....	11,056
Freight.....	977
Office equipment rental.....	32,805
Classified advertising.....	12,054
Professional services.....	80,600
Personnel agency and testing fees.....	24,194
Boat expense.....	9,640
Moving expense.....	4,281
Meetings and conferences.....	717
Miscellaneous.....	6,182
Total selling and administrative expense.....	1,250,850
Cash discount earned.....	—746
Administrative service charges.....	—89,941
Total miscellaneous income and expense.....	—90,687
Total expenses.....	1,160,163

The total employees' salaries and benefits account for 63% of all expenses. The Overmyer Co., Inc. is a staff company therefore the remaining expenses are for services (rent, light, phone) to the employee so that he can perform his duties. The allocation of charges for services performed for the Communications companies is based on the percentage of salary cost for the estimated time devoted to these duties to the total salary cost applied to the total expenses. Hence, if the total expenses of The Overmyer Co., Inc. are inflated, the charges to the Communications Companies are inflated. Therefore, if expenses unrelated to servicing the employees are included in the total expenses, a portion of the unrelated expenses would be passed on to the Communications Companies. A limited review of the expenses revealed this to be the case. This is reminiscent of the wartime cost-plus contracts where little regard was given to economy because this would reduce the overall profit.

A limited test check of the expenses revealed:

1. Employees included on the payroll whose sole duties related to subsidiary warehouse companies (Merchants and Manufacturers Warehouse of Ohio and Texas Union Warehouse Company).
2. Employees included on the payroll whose sole duties related to the network.
3. Substantial charges for legal services for litigation pertaining to individual subsidiary warehouse companies.
4. Expenses incident to maintaining a boat.
5. Employment agency fees amounting to \$5,600 are included for hiring 4 employees for the Green and White Construction Company. This amount should have been recorded as an expense of that company. The erroneous recording of this amount has the effect of overstating the charges to the Communications Companies by \$1,422.
6. Forty-seven voided vouchers totaling \$28,070 were not deducted from the recorded expenses. (It was explained that some of these were reinstated in the following period but this could not be verified. The vouchers were supposed to have been voided because of a change in banks.)
7. Salary expenses were overstated in 7 instances (totalling \$1,602) dues to duplicate recording of one check and recording of amounts for which checks were not written.
8. A number of invoices, vouchers, checks, and other supporting data for recorded expenses could not be located.

It can be concluded that the expenses of The Overmyer Company were not accurately recorded and include a number of items which should have been eliminated before the charges for services performed for the Communications Companies.

ITEM 23

SUBCOMMITTEE STAFF MEMORANDUM

METHOD OF DETERMINING PRICE TO AVC TO PURCHASE OVERMYER'S REMAINING 20 PERCENT STOCK INTEREST IN FIVE TV STATION CONSTRUCTION PERMITS PROVIDED IN LOAN AGREEMENT DATED MARCH 28, 1967

1. The price shall be amount of gross receipts of the TV companies for 12 months preceding the date of purchase provided station has been operating at least 112 hours a week for 18 months preceding date of purchase. If a station does not qualify by this method—
2. The price shall be the following share of total broadcast revenues for the several markets as computed by FCC:

	Percent
San Francisco.....	3
Houston (Rosenberg).....	5
Atlanta.....	5
Cincinnati (Newport).....	8
Pittsburgh.....	8

3. Regardless of which of the above 2 methods is used, the price computed shall be increased or reduced by 20% of the rest of the current assets and all liabilities (not to exceed \$500,000) as of the date of purchase.

4. In no event shall price exceed \$3 million.

ESTIMATED PRICE TO AVC TO PURCHASE OVERMYER'S REMAINING 20 PERCENT STOCK INTEREST IN FIVE TV STATION CONSTRUCTION PERMITS

Method 1.—gross receipts for 12 months preceding date of purchase provided station operated 112 hours per week during preceding 18 months:

1. AVC estimates gross receipts for first year of operation will be \$3,920,000.
2. Gross receipts should not decrease in succeeding years.
3. Maximum deduction for 20% of liabilities less current assets is \$500,000 thereby reducing price to \$3,420,000.
4. AVC estimates 2 stations will operate 95 hours a week and 3 stations, 85 hours a week.
5. No UHF station in major markets presently operates 112 hours a week.

Conclusion.—It is unlikely that stations can qualify under method 1 but if they do qualify the price will be not less than the \$3 million maximum.

Method 2.—a share of total broadcast revenues for applicable market areas.

1. At the time agreement was made the price would have been \$5,230,000.
2. Five months after the agreement was made the price would have been \$5,760,000.
3. Industry predicts broadcast revenues will increase.
4. Maximum deduction for 20% of liabilities less current assets is \$500,000 thereby reducing price to \$4,730,000.

Conclusion.—Method 2 will probably be used and the price will be not less than the \$3 million maximum.

ITEM 24

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 14, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the understanding set forth in my letter to you of January 10, 1968, and as a result of Mr. Lishman's request to our staff, there is enclosed herewith a memorandum listing and identifying those members of the Commission staff who were involved in the staff processing of the original Overmyer applications for construction permits and the applications for transfer of these construction permits recently acted upon by the Commission. A brief description of their job functions is also included in this memorandum.

The considerations which I raised in my previous letter are equally applicable to this information, since it is of the same nature (i.e., dealing with internal staff presentation to the agency). We therefore also urge you to maintain the confidentiality of the attached memorandum.

Sincerely yours,

ROSEL H. HYDE, *Chairman.*

Enclosure.

PERSONNEL WHO WORKED ON OVERMYER APPLICATIONS

Following is a list of Broadcast Bureau personnel who worked on initial aspects of the various Overmyer applications:

Name and title	Application
Richard J. Higgins, Attorney Adviser.....	BAPCT-351 (Atlanta).
Do.....	BAPCT-352 (Newport).
Leo A. Byrnes, Attorney Adviser.....	BAPCT-354 (San Francisco).
Edward J. Reilly, Attorney Adviser.....	BAPCT-364 (Pittsburgh).
Roy J. Stewart, Attorney Adviser.....	BPCT-3518 (Rosenberg).
Lloyd R. Smith, Engineer.....	Do.
Robert Braden, Accountant.....	Do.
K. Gordon Oppenheimer, Attorney.....	BPCT-3173 (Toledo).
Henry Blair, Engineer.....	Do.
Robert F. Braden, Accountant.....	Do.
Edward W. Hautanen, Attorney Adviser.....	BTC-5376 to 5380 and BALCT-327 and 328.

The duties of the personnel listed above were to initially examine the various applications with a view to determining the legal, technical and financial qualifications of the applicants. These personnel were also responsible for preparing the initial draft of a Memorandum to the Commission discussing fully the nature of the proposal and all problems presented thereby, and recommending appropriate action by the Commission.

All of the persons listed above are still employed by the Commission except Mr. Braden (retired) and the Messrs. Higgins and Byrnes, who have left the Commission.

The initial drafts of memoranda to the Commission involving the above-listed applications were reviewed by various Broadcast Bureau personnel, including the following:

<i>Name and title</i>	<i>Application</i>
Robert H. Alford, Chief, Transfer Branch-----	BAPCT's 351, 352, 354 and 364.
Robert J. Rawson, Chief, Renewal and Transfer Division.	Do.
James O. Juntilla, Deputy Chief, Broadcast Bureau.	Do.
James B. Sheridan, Chief, Broadcast Bureau----	Do.
Samuel L. Saady, Chief, Television Branch-----	BPCT-3173 and BPCT-3518.
Martin I. Levy, Chief, Broadcast Facilities-----	Do.
James O. Juntilla, Chief, Broadcast Facilities----	Do.
James B. Sheridan, Chief, Broadcast Facilities---	Do.
Robert H. Alford, Chief Broadcast Facilities----	BTC-5379 to 5380.
Robert J. Rawson, Chief, Broadcast Facilities----	BALCT-327.
George S. Smith, Chief, Broadcast Bureau-----	AVC-Overmyer transfers.

The duties of these supervisory personnel were to review the initial draft of the proposed memorandum, to suggest necessary changes, and to give final approval to the Broadcast Bureau's recommendations to the Commission.

All of the personnel listed above are still with the Broadcast Bureau except Mr. Sheridan, who is still with the Commission serving in another capacity.

PROCESSING OF APPLICATIONS

Whether filed in the Secretary's Office or received in the Mail and Files Division, applications for broadcast licenses go to the License Division of the Broadcast Bureau. If the application is for a construction permit for a new AM or FM station, or for a change in the facilities of such a station, it is referred to the Aural, New and Changed Facilities Branch of the Broadcast Facilities Division for processing. If the application is for a new television station, it is assigned to the Television Applications Branch for processing. If the application is for assignment of a construction permit or station license (AM, FM or TV) or for transfer of control of a licensee holding a permit or license (AM, FM or TV), it is referred by the License Division to the Transfer Branch of the Renewal and Transfer Division for processing.

Processing of applications begins with an examination of the application and all supporting documents to determine whether the applicant or applicants are legally, technically, and financially qualified. (In the case of applications for new facilities, this process involves essentially one applicant—the proposed permittee. In assignments and transfers, information furnished by assignors and transferors must also be examined.) At times, it is possible to determine on the basis of the application that the applicant meets the statutory qualifications. However, it is often necessary to obtain supplemental information from applicants before legal, technical and financial qualifications can be determined. In such instances, the person with initial responsibility for examining an application and preparing a draft memorandum to the Commission obtains necessary supplemental information. Generally, such information is obtained through the applicant's Washington counsel, or by writing directly to the applicant, if necessary.

If an applicant is determined by the staff to be qualified and the application presents no substantial policy questions, it is referred to the Commission by the staff with a recommendation for a grant. (Certain applications, such as those involving *pro forma* assignments, or routine assignment applications which present no problems, can be granted by staff action under delegated authority.)

However, if the staff is not satisfied with respect to an applicant's qualifications, or if the applications present policy questions, or involves new interpretations of the Communications Act or Commission policies, the matter is referred to the Commission with appropriate recommendations. Such recommendations extend to obtaining additional information from applicants, sending out prehearing letters, or designating an application for hearing. Once the Commission obtains the necessary supplemental information it can grant an application if it is satisfied all outstanding questions have been resolved, or, if unresolved matters remain, it can set the application for hearing. Final action by the Commission then depends on evidence developed at the hearing. (It might also be noted that in certain instances—such as where two or more qualified applicants apply for the same new facility, or where substantial and material questions of fact raised by a Petition to Deny filed under Section 309(d) of the Communications Act remain unresolved—a hearing is required.)

ITEM 25(a)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., May 9, 1966.

Hon. ROSEL H. HYDE,
Acting Chairman,
Federal Communications Commission,
Washington, D.C.

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.

Sincerely yours,

HARLEY O. STAGGERS, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., December 21, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: At the December 15, 1967 hearing before the Special Subcommittee on Investigations of the House Interstate and Foreign Commerce Committee, you referred to a letter directed to me dated May 9, 1966, which requested information relating to the sale of television and radio stations. You indicated that the information had not been furnished and I stated that I would look into the matter.

According to my information, upon receipt of your letter a member of your staff was advised that the information sought was voluminous and would require some time to compile because of our heavy workload. Arrangements were then made for a staff member of your Special Subcommittee on Investigations to com-

pile this data at the Commission offices. Mrs. Victoria Williams came to the Commission offices and worked with our staff on this project for a number of weeks. She was furnished a desk in the Broadcast Bureau and was provided with the necessary files from which she could extract the information requested.

Our staff cooperated at all times, and we were of the impression that all the information requested by you had been made available. I regret the misunderstanding in this matter, and assure you of our wish to be helpful.

Sincerely yours,

ROSEL H. HYDE, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., January 26, 1968.

HON. ROSEL H. HYDE,
Chairman, Federal Communications Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your letter, a copy attached for your ready reference, regarding information the committee requested on May 9, 1966, and to date still not received, relating to radio and television station transfers.

While we fully appreciated efforts your staff made to accommodate Mrs. Victoria Williams, this is to advise that she did not compile the complete statistical data sought. Nor was her assignment at the time to do so. Indeed, her research activities were strictly confined to specific examples of the problem under study, and clearly not intended as a substitute for the broad, all-inclusive review we asked that the Commission supply.

Accordingly, we should appreciate your compiling this material and submitting it to us with all due expeditiousness.

Very truly yours,

HARLEY O. STAGGERS, *Member of Congress,*
Chairman.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., July 2, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your letter of January 26, 1968, requesting certain information concerning broadcast station transfers previously requested on May 9, 1966, and my letter of February 15, 1968, notifying you that such information would be supplied as soon as possible.

The requested information has now been compiled and six copies are enclosed.

Sincerely yours,

Enclosures.

ROSEL H. HYDE, *Chairman.*

ITEM 25 (b)

(Prepared for the Committee on Interstate and Foreign Commerce, House of Representatives by the Federal Communications Commission, Broadcast Bureau, June 24, 1968)

TV STATIONS TRANSFERRED 2 OR MORE TIMES BETWEEN 1954 AND 1967 (IN TOP 50 MARKET)

Rank	Station and market	Date original CP granted	Original owner	Date granted and nature of transfer	Name of transferor	Name of transferee	Other call letters
1	WINDT-TV (channel 13), New York, N.Y.	May 10, 1948	Bremer Broadcasting Corp.	(1) Dec. 31, 1956; voluntary assignment of CP. (2) Mar. 28, 1958; voluntary TC (100 percent). (3) Feb. 25, 1959; voluntary TC of National Telefilm Associates, Inc., parent corporation of licensee corporation. (4) Oct. 25, 1961; voluntary TC.	Bremer Broadcasting Corp. Irving R. Rosenhaus, Matthew B. Rosenhaus, Emanuel Pollack and Morton Pollack, et al. Ely A. Landau, Oliver A. Unger, and Harold Goldman. National Telefilm Associates, Inc., parent corporation of licensee corporation from National Theatres & Television, Inc.	Atlantic TV National Telefilm Associates, Inc. National Theatres Corporation name changed to National Theatres & Television, Inc., August 1959). Gerald Cantor, et al. (all stockholders).	WINDT-TV (Mar. 27, 1962); WIFA-TV (May 6, 1958); call letters WATV.
2	KCOP (channel 13), Los Angeles, Calif.	Sept. 17, 1948	Dorothy S. Schiff (KMTR Radio Corp.)	(1) Dec. 11, 1957; voluntary AL. (2) Jan. 27, 1960; voluntary acquisition of positive control through exchange stock.	Copley Press (Publisher of San Diego Union & Tribune and 8 Los Angeles County dailies, and others). Harry L. Crosby, Jr., Kenyon Brown; George L. Coleman; Joseph A. Thomas; and Alvin G. Flanagan. P. G. Publishing Co.	Educational Television for the Metropolitan Area, Inc. Kenyon Brown; Bing Crosby; George L. Coleman; and Joseph H. Thomas (each 25 percent). NAFI Corp. (now Chris Craft Industries, Inc.).	KLAC (July 28, 1947).
9	WTIC (channel 11); Pittsburgh, Pa.	Jan. 15, 1959	WWSW, Inc.	(1) Oct. 30, 1957; voluntary relinquishment of positive control of permittee corporation through sale of 50 percent of stock. (2) Nov. 20, 1964; voluntary TC.	Kenneth Brennen and family, and P. G. Publishing Co. Cherry & Webb Broadcasting Co.	Kenneth Brennen, Margaret M. Brennen, and Mary Theima Bregensser. WTIC-TV Corp.	WTIC-TV (Sept. 29, 1965); WTIC-XX.
	WPRI-TV (channel 12), Providence, R.I.	Sept. 23, 1953	Cherry & Webb Broadcasting Co.	(1) Mar. 11, 1959; voluntary AL. (2) June 14, 1967; voluntary AL.	Capital Cities Television Corp. Providence Television, Inc.	Capital Cities Television Corp. Providence Television, Inc.	WPRI (July 18, 1967); WPRO.

ITEM 25(b)—Continued

TV Stations transferred 2 or more times between 1954 and 1967 (in top 50 market)—Continued

Rank	Station and market	Date original CP granted	Original owner	Date granted and nature of transfer	Name of transferor	Name of transferee	Other call letters
14	WHCT (channel 18), Hartford-New Haven, Conn.	Sept. 8, 1954	General Times Television Corp.	(1) Feb. 23, 1956; assignment of CP. (2) Dec. 23, 1958; voluntary AL. (3) June 1, 1960; voluntary AL.	General Times Television Corp. (later called RKO General). Columbia Broadcasting System, Inc. Edward D. Taddei & Associates.	Columbia Broadcasting System, Inc. Capitol Broadcasting, Inc. (Taddei group). Hartford Phonvision Co. (wholly owned by RKO General).	WHCT (Sept. 16, 1956); WGTH.
15	KTVT (channel 11), Dallas-Fort Worth, Tex. (located in Fort Worth, Tex.).	Aug. 10, 1955	Texas State Network, Inc.	(1) Dec. 1, 1959; involuntary TC. (2) July 27, 1960; voluntary AL. (3) Aug. 1, 1962; voluntary AL and of CP.	S. W. Richardson. Texas State Network, Inc., executors of the estate of S. W. Richardson, deceased. NAFI Telecasting, Inc.	Howell Smith, Perry R. Bass, John B. Connally (Texas State Network, Inc.) executors of the estate of S. W. Richardson, deceased. NAFI Telecasting, Inc. (now Chris Craft Industries, Inc.) WKY-TV System, Inc.	KTVT (Sept. 1, 1960); KFJZ.
17	KMSP (channel 9), Minneapolis-St. Paul, Minn.	Jan. 5, 1955	Family Broadcasting Corp.	(1) Sept. 15, 1954; voluntary TC of permittee corporation. (2) May 23, 1956; voluntary assignment of CP. (3) Nov. 20, 1957, voluntary TC (75 percent interest). (4) Oct. 28, 1959; voluntary TC.	Lee L. Whiting, et al. Family Broadcasting Corp. Thomas P. Johnson; Seymour Weintraub; William F. and Rachel B. Adler; Lott Co.; Lewis S. Greenberg; Oliver Tyrone Corp.; George W. Eby; Larry H. Israel; Monroe A. Long, Sr.; and Henry Oliver Rea (or Thomas P. Johnson & Seymour Weintraub Associates operating as United Television, Inc.) National Telefilm Associates, Inc.	Minneapolis Tower Co. (name changed to United Television Corp.). United Television Corp. National Telefilm Associates, Inc. Twentieth Century-Fox Television, Inc.	KMSP (May 13, 1958); KMCM (Sept. 1, 1950); KEYD.
17	WTCN (channel 11), Minneapolis-St. Paul, Minn. (located in Minneapolis, Minn.).	Aug. 25, 1953	Minnesota Television Public Service Corp.	(1) Apr. 16, 1955; voluntary TC of permittee corporation. (2) Apr. 17, 1957; voluntary TC (acquired with Radio WTCN). (3) Aug. 24, 1964; voluntary TC (100 percent). (4) Nov. 8, 1967; voluntary TC of Chris-Craft Industries, Inc. (parent corporation of licensee corporation).	Robert Butler, et al. Consolidated Television & Radio Broadcasting, Inc. Time-Life Broadcasting, Inc. H. V. Sherrill et al.	Consolidated Television & Radio Broadcasters, Inc. (Bitner interests). TLF Broadcasters, Inc. (name changed to Twin State Broadcasting, Inc., wholly owned by Time-Life Broadcasting, Inc.) WTCN Television Inc. (wholly owned by Chris-Craft). Baldwin-Montrose Chemical Co., Inc. (merger).	
19	WAIH (channel 11), Atlanta, Ga.	Aug. 18, 1948	Pacific & Southern Co., Inc.	(1) Sept. 13, 1962; voluntary AL and of CP. (2) Nov. 15, 1967; voluntary AL.	Crosley Broadcasting of Atlanta, Inc. WIBC, Inc.	WIBC, Inc. Jupiter Broadcasting of Georgia, Inc.	
23	WDAF (channel 4), Kansas City, Mo.	Oct. 16, 1949	The Kansas City Star Co.	(1) Apr. 23, 1958; voluntary AL and of CP (in compliance with Government antitrust consent decree). (2) July 13, 1960; voluntary AL. (3) Feb. 19, 1964; voluntary AL.	The Kansas City Star Co. National Missouri TV, Inc. Transcontinental Television Corp.	National Missouri TV, Inc. Taft Broadcasting Co.	
23	KMBC (channel 9), Kansas City, Mo.	July 14, 1953	Midland Broadcasting Co.	(1) June 9, 1954; voluntary assignment of CP (WHB and KMBC were sharing time). (2) July 26, 1961; voluntary AL.	Midland Broadcasting Co. Cook Broadcasting Co. (under merger Cook became KMBC Broadcasting Co.) Midwest Broadcasting Co.	WHB Broadcasting Co. (name changed to KMBC Broadcasting Co.) Metro-Media, Inc.	
24	WCAN (channel 24), Milwaukee, Wis.	July 9, 1953	Midwest Broadcasting Co.	(1) Mar. 29, 1956; voluntary assignment of CP. (2) Dec. 21, 1966; voluntary assignment of CP.	Lou Poller.	Lou Poller.	
24	WVTV (channel 13), Milwaukee, Wis.	Sept. 16, 1953	Bartell Broadcasters, Inc.	(1) Jan. 14, 1955; voluntary assignment of CP. (2) May 6, 1959; voluntary AL and of CP. (3) Aug. 9, 1962; voluntary acquisition of positive control of licensee corporation through purchase of stock (51 percent). (4) Mar. 24, 1966; voluntary AL.	Bartell Broadcasters, Inc. Columbia Broadcasting System, Inc. Gene Posner & Associates. WXIX, Inc.	Columbia Broadcasting Systems, Inc. WXIX, Inc. (Gene Posner & Associates). Bernard J. Sampson and Harold Sampson. WKY Television System, Inc.	WVTV (June 7, 1966). WUHF (Nov. 27, 1962); WXIX. WOKY (Feb. 27, 1955).

ITEM 25(b)—Continued

TV Stations transferred 2 or more times between 1954 and 1967 (In top 50 market)—Continued

Rank	Station and market	Date original CP granted	Original owner	Date granted and nature of transfer	Name of transferor	Name of transferee	Other call letters
27	KOVR (channel 13), Sacramento-Stockton, Calif. (located in Stockton-Sacramento, Calif.)	Aug. 24, 1965	Radio Diablo, Inc. (Hoffman Associates).	(1) Jan. 8, 1958; voluntary TC (2) Dec. 29, 1959; voluntary TC (96 percent).	H. Leslie Hoffman Group Gannett Co., Inc.	Gannett Co., Inc. Metropolitan Broadcasting Corp. (first to become Metropolitan Broadcasting of California and finally Metromedia).	KOVR (June 10, 1954). KHOF.
30	WCCB (channel 36), Charlotte, N.C.	Dec. 31, 1953	Inter-City-Advertising Co. of Charlotte, N.C., Inc.	(3) July 29, 1964; voluntary TC (1) Dec. 29, 1954; TC of permittee corporation (as WAYS-TV) (2) June 4, 1956; involuntary assignment of CP. (3) July 27, 1956; voluntary assignment of CP. (4) Apr. 24, 1957; voluntary assignment of CP (while in off-air). (5) May 3, 1961; voluntary TC of permittee corporation. (6) Aug. 20, 1964; voluntary assignment of CP (as off-air WUTV).	Metromedia, Inc. George Dowdy, Horton Doughton, B. T. Whitmine, and Harold Thoms. WQMC Television, Inc. Winfred R. Ervin. Hugh Deadwyler.	McClatchy Newspapers Hugh Deadwyler Winfred R. Ervin, receiver. Hugh Deadwyler	WCCB. WUTC (July 18, 1952). WQMC (Jan. 24, 1955), WAYS.
34	KPTV (channel 12), Portland, Oreg.	Mar. 3, 1955	Oregon Television, Inc.	(1) Apr. 17, 1957; voluntary TC. (2) July 22, 1959; voluntary TC.	Henry White, Stephene Thompson, Robert L. Sabin, Julius L. Meier, Jr., William A. Healy estate, Kathleen E. Marlarkey and the U.S. Bank of Portland (Oreg.), trustees for James Huntington Malarkey (all stockholders). George Haggerty	George Haggerty	KPTV (May 12, 1957); KLOR.
39	WBRC-TV (channel 6), Birmingham, Ala.	June 22, 1949	Birmingham Broadcasting Co., Inc.	(1) May 26, 1955; voluntary assignment of CP. (2) May 8, 1957; voluntary AL.	Birmingham Broadcasting Co., Inc. Storer Broadcasting Co.	Storer Broadcasting Co. WBRC, Inc. (changed name to Taft Broadcasting Co. July 1, 1959).	
41	KBTU (channel 9), Denver, Colo.	Sept. 29, 1952	Colorado Television Corp.	(1) Mar. 24, 1955; voluntary assignment of CP. (2) Mar. 23, 1955; voluntary TC of Colorado TV Corp. (3) Sept. 22, 1961; voluntary AL.	Colorado Television Corp. J. C. Dyer, et al. (Colorado TV, Inc.) TV Denver, Inc.	TV Denver, Inc. do Mullins Broadcasting Corp.	
41	KWGN (channel 2), Denver, Colo.	July 18, 1952	Eugene P. O'Fallon, Inc.	(1) July 27, 1955; voluntary TC. (2) Nov. 16, 1955; transfer of negative control (50 percent) of Eugene P. O'Fallon, Inc. (to become KTVR, Inc.). (3) Mar. 25, 1959; voluntary acquisition of positive control through purchase of 50 percent stock. (4) Mar. 3, 1966; voluntary AL.	Eugene P. O'Fallon, Jr., Martin J. O'Fallon III, and Eugene P. O'Fallon as trustees for the Eugene P. O'Fallon trust. Gotham Broadcasting Corp. Radio Hawaii, Inc.	Gotham Broadcasting Corp. Radio Hawaii, Inc. Gotham Broadcasting Corp. (owned by J. Elroy McCaw).	KWGN (Mar. 7, 1966); KCTO (Mar. 1, 1963); KTVR (Sept. 30, 1955); KFEL.
46	WHTN (channel 13), Charleston-Huntington, W. Va. (located in Huntington, W. Va.).	June 16, 1955	Greater Huntington Radio Corp.	(1) June 20, 1956; voluntary assignment of CP. (2) Dec. 21, 1960; voluntary AL.	Greater Huntington Radio Corp. (S. J. Hyman theater interests). Cowles Broadcasting Co.	WGN of Colorado, Inc. Cowles Broadcasting Co.	
46	WSAZ (channel 3), Charleston-Huntington, W. Va. (located in Huntington, W. Va.).	Oct. 24, 1949	WSAZ, Inc.	(1) Mar. 29, 1961; voluntary TC. (2) July 29, 1964; voluntary AL.	Huntington Publishing Co. WJR, the Goodwill Station, Inc.	Reeves Broadcasting & Development Corp. WJR, the Goodwill Station, Inc. Capitol Cities Broadcasting Corp.	

ITEM 25 (c)

(Prepared for the Committee on Interstate and Foreign Commerce, House of Representatives by the Federal Communications Commission Broadcast Bureau, June 24, 1968)

RADIO STATIONS (AM AND FM) IN THE METROPOLITAN AREAS OF NEW YORK, CHICAGO, LOS ANGELES, PHILADELPHIA, CLEVELAND, BOSTON, AND DETROIT
TRANSFERRED 2 OR MORE TIMES BETWEEN 1954 AND 1965

Station and market	First licensed	Original owner	Date granted and nature of transfer	Name of transferor	Name of transferee	Other call letters
New York (AM):						
WFON, New York City, N.Y.	Jan. 31, 1924	Peoples Pulpit Association.	(1) Mar. 20, 1957; voluntary AL. (2) June 24, 1959; voluntary AL.	Watchtower Bible and Tract Society of New York, Inc. Tele-Broadcasters of New York, Inc.	Tele-Broadcasters of New York, Inc. WPOW, Inc.	WPOW (Apr. 15, 1957); WBBR.
WHN, New York City, N.Y.	Mar. 18, 1922	George Schubel	(1) Sept. 21, 1954; voluntary AL. (2) Dec. 13, 1961; voluntary AL.	Marcus Loew Booking Agency Loew's Theatre Broadcasting, Inc.	Loew's Inc. (name changed to Loew's Theatres Broadcasting, Inc.) Storer Radio, Inc.	WMGM (AM and FM) (Sept. 15, 1948); WHN.
WADO, New York, N.Y.	Mar. 12, 1934	WODAAM Corp.	(1) July 6, 1955; voluntary AL. (2) July 15, 1959; voluntary TC.	WODAAM Corp. Morris S. Novik, Georgia L. Weil, and Edna M. Hartley.	WDV Broadcasting Corp. Bartell Broadcasters of New York, Inc. (Gerald A. Bartell & Associates).	WADO (Nov. 1, 1959). WOV (Nov. 12, 1941); WNEW.
WNEW, New York, N.Y.	Mar. 11, 1940	Greater New York Broadcasting Corp.	(1) Apr. 14, 1954; voluntary AL and of CP. (2) Dec. 4, 1955; voluntary TC. (3) Apr. 24, 1957; voluntary TC.	WNEW, Inc. Richard D. Buckley et al. (all stockholders). Richard D. Buckley, J. D. Wrather, Jr., and John L. Loeb.	WNEW Broadcasting Co., Inc. WNEW Broadcasting, Inc. Dumont Broadcasting Corp., to change name to Metropolitan Broadcasting Corp. (June 9, 1958) and finally, to Metro Media, Inc. (May 11, 1961).	WNEW (Nov. 12, 1941); WOV.
Metropolitan area of New York (AM):						
WGBB, Freeport, N.Y.	Dec. 13, 1924	Harry H. Carmen	(1) Jan. 5, 1955; voluntary AL. (2) July 18, 1956; voluntary TC. (3) Apr. 12, 1961; voluntary TC. (4) Mar. 3, 1965; voluntary AL and of CP.	Harry H. Carmen. Oscar J. Nollet, Moses Hornstein, Norman F. Penny, Augustus B. Weller, and Sidney Friedman. Huntington-Montauk Broadcasting Co., Inc.	Long Island's First Station, Inc. Huntington-Montauk Broadcasting Co., Inc.	
WGSM, Huntington, N.Y.	Nov. 7, 1951	Huntington-Montauk Broadcasting Co., Inc.	(1) Apr. 12, 1961; voluntary TC. (2) Feb. 8, 1965; voluntary AL.	Fifth Market Broadcasting Co., Inc. Byron T. Sammis and 10 other stockholders. Fifth Market Broadcasting Co., Inc.	Fifth Market Broadcasting Co., Inc. Nassau Radio Corp. Fifth Market Broadcasting Co., Inc. WGSM Radio, Inc.	WGSM (Sept. 27, 1958); WHNY.
WLIX, Islip, N.Y.	Dec. 31, 1959	Great South Bay Broadcasting Co., Inc.	(1) Dec. 30, 1958; voluntary TC of permittee corporation. (2) May 20, 1959; voluntary assignment of CP. (3) June 25, 1963; voluntary AL.	George E. Klein, Sr., and George E. Klein, Jr. Great South Bay Broadcasting Co., Inc. South Shore Broadcasting Co., Inc.	Seymour Malman South Shore Broadcasting Corp. Meridian Media, Inc.	WLIX (June 12, 1967). WBIC (June 8, 1959); WSNB.
WTHE, Mineola, N.Y.	Sept. 23, 1949	Eastern Broadcasting Co.	(1) June 20, 1956; voluntary AL. (2) Mar. 25, 1959; voluntary TC. (3) Sept. 17, 1965; voluntary AL.	Key Broadcasting, Inc. Seymour Weintraub Media Enterprises, Inc.	Keynote Broadcasting System, Inc. VIP Radio, Inc. (name changed to Media Enterprises, Inc.) Bursam Communications Corp.	WTHE; WFYI (May 1, 1959). WKIT (Dec. 1, 1956); WKBS.
WVOX, New Rochelle, N.Y.	Jan. 19, 1951	New Rochelle Broadcasting Service, Inc.	(1) May 25, 1955; voluntary TC. (2) Nov. 5, 1958; voluntary TC. (3) Dec. 30, 1958; voluntary TC of negative control of Radio Westchester, Inc., parent corporation of licensee corporation.	James Iodice and Don R. Iodice as a family group. Donald Daniels and Frances Daniels Martin Stone	Donald Daniels and Frances Daniels Radio Westchester, Inc. (100 percent owned by Martin Stone). VIP Radio, Inc. (equally owned by Martin Stone and Plymouth Rock Publications, Inc., which is 100 percent owned by John Hay Whitney).	WVOX (Mar. 26, 1959); WWES (Dec. 10, 1958); WNRC (Aug. 11, 1958); WGNR.
New York (FM):						
WPIX-FM, New York, N.Y.	Apr. 19, 1948	William G. H. Finch	(1) May 4, 1955; voluntary TC of WGH, Inc., licensee of WGHF, New York, N.Y. (2) Nov. 27, 1957; voluntary transfer of Muzak Corp. (parent corporation of licensee corporation). (3) July 15, 1964; voluntary AL and of CP and SCA.	William G. H. Finch William Benton, Helen H. Benton, Charles Benton, Harry E. Houghton, et al. (all stockholders). Wrather Corp.	Air Music, Inc. (merged into Muzak on Aug. 5, 1955). Wrather Corp. (including Subsidiary Communications Authority). WPIX, Inc.	WPIX-FM (Oct. 11, 1964); WBFM; WGHF.
WNCN-FM, New York City, N.Y.	Aug. 30, 1957	General Broadcasting Corp.	(1) Nov. 14, 1957; voluntary acquisition of positive control (including subsidiary communications authorization) through purchase of stock. (2) Apr. 11, 1958; voluntary relinquishment of positive control (of licensee corporations and subsidiary communications authorization) through sale of stock. (3) Aug. 26, 1960; voluntary AL and of CP and SCA. (4) Dec. 20, 1963; involuntary TC and of SCA. (5) Mar. 2, 1964; voluntary AL and SCA.	John W. Guider T. Mitchell Hastings, Jr. Concert Network, Inc. (to become SN Network, Inc.). Concert Network, Inc. Leonard M. Salter, receiver in bankruptcy.	T. Mitchell Hastings Eugene N. Foss II and Robert Sidney Swain. WNCN, Inc. Leonard M. Salter, receiver in bankruptcy. SN Network, Inc. (later to become the National Science Network, Inc.)	WNCN (Nov. 11, 1957); WYCN (June 28, 1957).

RADIO STATIONS (AM AND FM) IN THE METROPOLITAN AREAS OF NEW YORK, CHICAGO, LOS ANGELES, PHILADELPHIA, CLEVELAND, BOSTON, AND DETROIT
 TRANSFERRED 2 OR MORE TIMES BETWEEN 1954 AND 1965—Continued

Station and market	First licensed	Original owner	Date granted and nature of transfer	Name of transferor	Name of transferee	Other call letters
Metropolitan area of New York (FM): WTFM-FM, Lake Success, N.Y.	Oct. 31, 1958	WGLI, Inc.	(1) Feb. 10, 1960; voluntary TC.	William H. Reuman, Fred Barr, and Edith Pickscheid.	Friendly Frost, Inc.	WTFM (Oct. 6, 1960; WGLI-FM (Mar. 1, 1960).
Chicago (AM): WNUS, Chicago, Ill.	Oct. 10, 1923	Oak Leave Broadcasting Corp. (Catholic Radio Foundation and Chicago Evening Post station).	(2) Aug. 8, 1961; voluntary AL and of CP and SCA.	WGLI, Inc.	WTFM, Inc.	WTFM (June 19, 1958); WGLI-FM.
			(1) Nov. 10, 1954; voluntary AL.	Oak Leave Broadcasting Corp.	John A. Dyer; Vivian I. Christoph; Elizabeth M. Hinzman; Evelyn M. Dyer; William F. Moss; Martha D. Curtis; Mary J. Winkler; Patricia D. Fort; Helen M. Kennedy; and William R. Moss doing business as radio station WGES.	WNUS (Sept. 3, 1964); WYNN (Sept. 1, 1962); WGES.
WLS, Chicago, Ill.	Apr. 11, 1924	Sears, Roebuck & Co.	(2) June 13, 1962; voluntary AL.	See last transferee.	The McLendon Corp.	
			(1) Mar. 10, 1954; voluntary AL.	Agricultural Broadcasting Co.	WLS, Inc.	
			(2) Dec. 29, 1959; voluntary acquisition of positive control through purchase of stocks.	Prairie Farmer Publishing Co., 50 percent owner of WLS, Inc.	American Broadcasting Paramount Theatres, Inc.	
WAIT, Chicago, Ill.	June 13, 1923	Wilbur Glenn Voliva	(1) Apr. 15, 1954; voluntary AL.	Gene T. Dyer, Evelyn M. Dyer, Adele Moulds, Louis Moulds, and Grace V. McNeill, d/b/a radio station WAIT.	Oscar Miller, Gertrude Miller, Julius Miller, Bertha L. Miller, Adele Moulds, Louis E. Moulds, Grace V. McNeill, and William T. McNeill, d/b/a radio station WAIT.	
			(2) Apr. 17, 1957; voluntary AL.	See last transferee.	Oscar Miller, Gertrude Miller, Julius Miller, and Bertha L. Miller, d/b/a radio station WAIT.	
			(3) Aug. 23, 1962; voluntary AL.	do.	Maurice Rosenfield, Lois F. Rosenfield, Harold A. Weiss, Robert G. Weiss, and Devoe, Shadur, Mikva & Plotkin, a copartnership, d/b/a radio station WAIT.	
Metropolitan area of Chicago (AM): WJOL, Joliet, Ill.	May 27, 1925	WCLS, Inc.	(1) Dec. 29, 1954; voluntary TC.	W. H. Erwin and 4 other stockholders.	Joseph F. Novy and Jerome F. Cerny, a copartnership (to become WJOL, Inc.).	WJOL (Sept. 18, 1945); WCLS.
			(2) May 1, 1964; voluntary AL.	WJOL, Inc.	Publishing enterprises, Inc.	
Chicago (FM): WFMM-FM, Chicago, Ill.	July 30, 1948	WJJD, Inc.	(1) Oct. 23, 1957; voluntary TC of licensee corporation and subsidiary communications authorization.	Field Enterprises, Inc.	Music Services, Inc. (to become Functional Music, Inc.,	
			(2) July 16, 1965; voluntary AL.	Functional Music, Inc.	Maurice Rosenfield; Lois E. Rosenfield; Jerome E. Rosenfield; and Lucille K. Rosenfield d/b/a WFMM radio.	
Metropolitan area of Chicago (FM): WNWC-FM, Arlington Heights, Ill.	May 31, 1960	John D. Morgan	(1) Sept. 7, 1961; voluntary TC.	John D. Morgan, Inc.	Robert O. Atcher & Thomas B. Hogan.	
			(2) Mar. 25, 1965; voluntary TC.	Robert O. Atcher & Thomas B. Hogan.	WNWC, Inc.	
WXFM-FM Elmwood Park, Ill.	Aug. 12, 1948	Elmwood Park Broadcasting Corp.	(1) Jan. 17, 1957; voluntary AL and of CP.	Elmwood Broadcasting Corp.	Mrs. Evelyn R. Chauvin Schoonfield.	WXFM (Mar. 20, 1957); WLEY.
			(2) Aug. 31, 1965; voluntary AL and of CP and SCA.	Mrs. Evelyn R. Chauvin Schoonfield.	WXFM, Inc.	
Los Angeles (AM): KFAC, Los Angeles, Calif.	Mar. 10, 1922	Bible Institute of Los Angeles	(1) Apr. 3, 1956; voluntary AL.	Los Angeles Broadcasting Co., Inc.	E. L. Lord tr/as Los Angeles Broadcasting Co.	KFAC (Apr. 30, 1931); KTBI.
			(2) Dec. 17, 1962; voluntary AL.	E. L. Lord tr/as Los Angeles Broadcasting Co.	Cleveland Broadcasting, Inc.	
KLAC, Los Angeles, Calif.	Mar. 19, 1924	KMTR Radio Corp.	(1) July 18, 1956; voluntary AL.	KMTR Radio Corp.	Hall Broadcasting Co., Inc.	KLAC (Mar. 7, 1946); KMTR.
KRKD, Los Angeles, Calif.	Jan. 17, 1927	James R. Fouch	(2) June 26, 1963; voluntary AL.	Hall Broadcasting Co., Inc.	Metromedia, Inc.	KRKD (Jan. 26, 1932); KMCS (Oct. 29, 1930); KMIC.
			(1) Nov. 2, 1955; voluntary AL.	Radio Broadcasters, Inc.	Continental Telecasting Corp.	
			(2) July 18, 1957; voluntary acquisition of positive control through purchase of stock.	Richard C. Simonon.	Albert Zugsmith.	
			(3) Oct. 13, 1959; voluntary AL.	Albert Zugsmith, et al., all stockholders of Continental Telecasting Corp.	Trans American Broadcasting Corp.	
			(4) Mar. 15, 1961; voluntary TC.	Estates of Robert A. Yeakel, et al. (all stockholders of Trans American Broadcasting Corp.)	International Church of the Foursquare Gospel.	
Metropolitan area of Los Angeles (AM): KBVM, Lancaster, Calif.	Jan. 17, 1957	Harold J. Brown and John J. Cawley, Jr., d/b/a Brocaw Broadcasting Co.	(1) July 29, 1959; voluntary AL.	Harold J. Brown and John J. Cawley, Jr., d/b/a Brocaw Broadcasting Co.	Tri-County Broadcasters, Inc.	
			(2) Mar. 15, 1963; voluntary acquisition of positive control through purchase of stock.	George Patton and Ray N. Hinkel.	Donald D. Lewis.	

RADIO STATIONS (AM AND FM) IN THE METROPOLITAN AREAS OF NEW YORK, CHICAGO, LOS ANGELES, PHILADELPHIA, CLEVELAND, BOSTON, AND DETROIT
TRANSFERRED 2 OR MORE TIMES BETWEEN 1954 AND 1965—Continued

Station and market	First licensed	Original owner	Date granted and nature of transfer	Name of transferor	Name of transferee	Other call letters
KFOX, Long Beach, Calif.	Feb. 29, 1924	Nichols & Warriner, Inc.	(1) Feb. 24, 1954; voluntary TC.	Dorothy A. Nichols, individually and as executrix of the estate of Hal G. Nichols, deceased, and D. Ethel Chamness.	W. T. McDonald and F. A. Fetsch.	KFOX; KFOR.
			(2) Nov. 16, 1955; voluntary acquisition of positive control through purchase of stock.	F. A. Fetsch.	W. T. McDonald.	
			(3) Aug. 29, 1956; voluntary AL.	KFOX Broadcasting Corp.	Hogan Broadcasting Corp.	
			(4) Feb. 12, 1958; voluntary TC.	Arthur B. Hogan.	Kevin B. Sweeney, Harry L. Crosby, Jr., Kenyon Brown, Cal Perley, George L. Coleman, and Joseph A. Thomas (stockholders in KFOX Broadcasting, Inc.).	
			(5) Nov. 29, 1961; voluntary AL.	KFOX Broadcasting, Inc.	Illinois-California Broadcasting Co., Inc. (Richard Goodman, Mason Loundy, Egmont Sounderling, later to become WOPA, Inc., a Sounderling station).	
KWKW, Pasadena, Calif.	Aug. 6, 1948	Andrew G. Haley tr/as Rose Bowl Broadcasters.	(1) July 27, 1960; voluntary AL.	Marshall S. Neal and Edwin Earl d/h/a Southern California Broadcasting Co.	KWKW, Inc.	KWKW (Feb. 16, 1950); KAGH.
			(2) Apr. 18, 1962; voluntary AL and of CP.	KWKW, Inc.	Lotus Theatre Corp.	
KGIL, San Fernando, Calif.	Dec. 2, 1947	San Fernando Valley Broadcasting Co.	(1) June 20, 1956; voluntary TC.	American Broadcasting Stations, Inc.; The Valley News Corp.; KJBS Broadcasters, Inc.; d/b/a San Fernando Valley Broadcasting Co.	Pierce Brooks Broadcasting Corp.	KDAY (May 1, 1956); KOWL (Nov. 1, 1946); KXAR.
			(2) July 20, 1960; voluntary TC.	Pierce P. Brooks, Lester F. Hall, and Mildred E. Gregory.	Buckley-Jaeger Broadcasting Corp. of California.	
KDAY, Santa Monica, Calif.	Sept. 30, 1946	Arthur H. Croghan.	(1) Apr. 17, 1957; voluntary AL and of CP.	KOWL Broadcasting Co.	Radio California, Inc.	KDAY (May 1, 1956); KOWL (Nov. 1, 1946); KXAR.
			(2) July 15, 1959; voluntary TC.	Gotham Broadcasting Corp.	John D. Keating.	
			(3) Apr. 25, 1962; voluntary AL.	Radio California, Inc.	Continental Broadcasting of California, Inc.	
Los Angeles (FM): KGBS-FM, Los Angeles, Calif.	June 4, 1954	Nicholas M. Brazy.	(1) Feb. 3, 1959.	Brazy Broadcasting Corp. (solely owned by Nicholas M. Brazy).	Metropolitan Theatre Corp.	
			(2) May 1, 1960; voluntary AL.	Metropolitan Theatre Corp.	International Good Music, Inc., later to become KGMJ, Inc., owned by president of IGM (Rogan Jones).	
KRHM-FM, Los Angeles, Calif.	Mar. 7, 1961	Hall Broadcasting Co., Inc.	(1) June 26, 1963; voluntary AL.	Hall Broadcasting Co., Inc.	Metromedia, Inc.	KRHM (Mar. 17, 1965).
			(2) Mar. 17, 1965; voluntary AL and of SCA.	Metromedia, Inc.	Minneapolis Basketball Corp. (Robert E. Short (80 percent), Francis T. Ryan (20 percent) doing business as KRHM Enterprises).	
Metropolitan area of Los Angeles (FM): KNAC-FM, Long Beach, Calif.	June 20, 1961	Saul Robert Levine doing business as High Fidelity Broadcasters.	(1) Nov. 18, 1957; voluntary assignment of CP.	Saul Robert Levine doing business as High Fidelity Broadcasters.	Radio Beverly Hills.	KNAC (Dec. 3, 1966); KLFB (Sept. 14, 1958); KBCA.
			(2) July 23, 1958; voluntary assignment of CP.	Radio Beverly Hills.	Ted Bolnick and Walter Gelb doing business as Long Beach FM Broadcasting Co.	
			(3) Oct. 21, 1959; voluntary assignment of CP.	T. Bolnick and W. Gelb doing business as Long Beach FM Broadcasting Co.	Harriscope, Inc. (later to change name to Harriscope Broadcasting, Inc. on Dec. 7, 1965).	
KJLH-FM, Long Beach, Calif.	Sept. 7, 1951	Nichols and Warriner, Inc.	(1) Feb. 24, 1954; voluntary TC of Nichols and Warriner, Inc.	Dorothy A. Nichols, individually and as executrix of the estate of Hal G. Nichols, deceased, and Deane Ethel Chamness.	W. T. McDonald and F. A. Fetsch.	KJLH (July 12, 1965); KILB (Mar. 26, 1965); KFOX-FM.
			(2) Nov. 16, 1955; voluntary acquisition of positive control.	F. A. Fetsch.	W. T. McDonald.	
			(3) Aug. 29, 1956; voluntary AL.	KFOX Broadcasting Corp.	Hogan Broadcasting Corp. (later to become KFOX, Inc.)	
			(4) Feb. 12, 1958; voluntary TC.	Arthur B. Hogan.	Kevin B. Sweeney; Harry L. Crosby, Jr.; Kenyon Brown; George L. Coleman; and Joseph A. Thomas.	
			(5) Nov. 29, 1961; voluntary AL.	KFOX, Inc.	Illinois-California Broadcasting Co., Inc. owned by Richard Goodman, Mason A. Loundy, and Egmont Sounderling.	
			(6) Mar. 16, 1965; voluntary AL.	Illinois-California Broadcasting Co., Inc.	John Lamar Hill.	
KKOP-FM, Redondo Beach, Calif.	Sept. 18, 1961	Sherman Somers and Robert William Crites d/b/a South Bay Broadcasting Co.	(1) Feb. 1, 1961; voluntary assignment of CP.	Sherman Somers and Robert William Crites d/b/a South Bay Broadcasting Co.	George R. Gillum and Robert William Crites d/b/a South Bay Broadcasting Co.	KKOP (Mar. 1, 1965); KAPP.
			(2) Sept. 14, 1962; voluntary AL.	George R. Gillum and Robert Wm. Crites d/b/a South Bay Broadcasting Co.	George R. Gillum, trading as South Bay Broadcasting Co.	
			(3) Dec. 23, 1964; voluntary AL.	G. R. Gillum trading as South Bay Broadcasting Co.	Southern California Associated Newspapers (Copley Press owns 100 percent of licensee's stock).	
KST-FM, Los Angeles, Calif.	Oct. 9, 1957	The Echo Park Evangelistic Association.	(1) Sept. 23, 1959; voluntary AL.	The Echo Park Evangelistic Association.	E. Edward Jacobson.	KADS (Sept. 2, 1966); KGLA (Mar. 20, 1957); KFSG.
			(2) July 1, 1966; voluntary AL and of SCA.	E. Edward Jacobson.	The McLendon Pacific Corp.	
KST-FM, Los Angeles, Calif.	Oct. 9, 1957	The Echo Park Evangelistic Association.	(1) Sept. 23, 1959; voluntary AL.	The Echo Park Evangelistic Association.	E. Edward Jacobson.	KADS (Sept. 2, 1966); KGLA (Mar. 20, 1957); KFSG.
			(2) July 1, 1966; voluntary AL and of SCA.	E. Edward Jacobson.	The McLendon Pacific Corp.	

RADIO STATIONS (AM AND FM) IN THE METROPOLITAN AREAS OF NEW YORK, CHICAGO, LOS ANGELES, PHILADELPHIA, CLEVELAND, BOSTON, AND DETROIT
TRANSFERRED 2 OR MORE TIMES BETWEEN 1954 AND 1965—Continued

Station and market	First licensed	Original owner	Date granted and nature of transfer	Name of transferor	Name of transferee	Other call letters
KVKM-FM, San Fernando, Calif.	Mar. 25, 1959	Valley FM Broadcasting Co.	(1) June 3, 1958; voluntary assignment of CP. (2) May 25, 1960; voluntary AL and of CP and SCA.	Walter Gelb; William E. Morgan; and Ted Bolnick, d/b/a Valley FM Broadcasting Co. San Fernando Broadcasting Co., Inc. (controlled by Gelb and Bolnick).	Walter Gelb and Ted Bolnick, d/b/a Valley FM Broadcasting Co. Spectra Broadcasting, Inc.	
KSRF-FM, Santa Monica, Calif.	Mar. 16, 1961	J. D. Funk and C. D. Funk, d/b/a Santa Monica Broadcasting Co.	(1) Feb. 6, 1962; voluntary AL (2) Dec. 20, 1963; voluntary TC (3) June 25, 1965; voluntary AL and of CP and SCA.	J. D. Funk and C. D. Funk, d/b/a Santa Monica Broadcasting Co. Pacific Ocean Park, Inc. Pacific Ocean Broadcasting, Inc.	Pacific Ocean Broadcasting, Inc. (20 percent owned by George Baron). Pacific Seaboard Land Co. Santa Monica Broadcasting, Inc. (90 percent owned by George Baron and 10 percent owned by Cary D. Funk).	KSRF (Oct. 17, 1960); KSTM-FM.
KBOB West Covina, Calif.	Dec. 30, 1957	John K. Blanche and Joseph D. Worth doing business as Pacific-South Broadcasting Co.	(1) Dec. 9, 1963; voluntary AL (2) Aug. 11, 1965; voluntary TC.	John K. Blanche and Joseph D. Worth doing business as Pacific-South Broadcasting Co. Sherman J. McQueen	San Gabriel Valley Broadcasting Co. James E. Moser	KBOB (Jan. 1, 1967); KSGV (Oct. 18, 1963); KDWC (Oct. 26, 1960); KSGV (June 24, 1960); KWDC.
Philadelphia (AM): WIBG Philadelphia, Pa.	Apr. 16, 1925	WIBG, Inc.	(1) Dec. 8, 1954; voluntary acquisition of positive control. (2) July 13, 1955; voluntary TC. (3) Mar. 27, 1957; voluntary TC. (4) Mar. 15, 1961; voluntary relinquishment of positive control of Storer Broadcasting Co., parent corporation of licensee through sale of stocks.	John B. Kelly; John B. Kelly, Jr.; Grace P. Kelly; Elizabeth Anne Kelly; Margaret Davis. Paul F. Harron et al. WPFH Broadcasting Co. George B. Storer retaining de facto control.	Paul F. Harron WPFH Broadcasting Co. Storer Broadcasting Co. General public	
WIP, Philadelphia, Pa.	Mar. 20, 1922	Gimbel Bros., Inc.	Sept. 17, 1958; voluntary AL and CP. Dec. 29, 1959; voluntary AL	Pennsylvania Broadcasting Co. WIP Broadcasting Corp.	WIP Broadcasting Inc. Metropolitan Broadcasting Corp. (to become Metro-media, Inc.).	
Metropolitan area of Philadelphia (AM): WEEZ, Chester, Pa.	Jan. 20, 1940	Lou Poller	Nov. 17, 1954; voluntary AL Sept. 2, 1959; voluntary AL Oct. 4, 1965; voluntary AL	Lou Poller Eastern Broadcasting Co., Inc. WDRF Inc.	Eastern Broadcasting Co., Inc. WDRF, Inc. Radio Del-Val, Inc.	WEEZ (Nov. 15, 1959). WDRF (Nov. 24, 1954); WPWA.
Philadelphia and metropolitan areas of Philadelphia (FM): No stations sold 2 or more times between 1954 and 1965.						
Cleveland (AM): WHK, Cleveland, Ohio	Feb. 21, 1922	Radio Air Service Corp.	Nov. 2, 1955; voluntary AL Apr. 16, 1958; voluntary AL	United Broadcasting Co. The Forest City Publishing Co.	The Forest City Publishing Co. Dumont Broadcasting Corp. (now Metro-media)	
WABQ Cleveland, Ohio	Jul. 16, 1947	W. J. Marshall	Jan. 14, 1959; voluntary AL	Friendly Broadcasting Co.	Preston G. Tuschman tr/as Tuschman Broadcasting Co. (name changed to Tuschman Broadcasting Corp.) Booth Broadcasting Co.	WABQ (Jan. 29, 1959); WPQT (Jan. 20, 1959); WJMO.
WIXY, Cleveland, Ohio	Nov. 6, 1950	The Civic Broadcasters, Inc.	Oct. 7, 1964; voluntary AL Mar. 21, 1962; voluntary TC Feb. 19, 1964; voluntary TC Oct. 6, 1965; voluntary AL	Tuschman Broadcasting Corp. Frederick C. Wolf et al. (all stockholders) Transcontinent Television Corp. Northeastern Pennsylvania Broadcasting, Inc.	Transcontinent Television Corp. (parent corporation of Northeastern Pennsylvania Broadcasting, Inc., licensee of WIXY). Paul A. Schell Kopf, Jr., et al. Westchester Corp.	WIXY (Dec. 11, 1965); WDOX.
Metropolitan area of Cleveland (AM); Cleveland and Metropolitan area of Cleveland (FM):			No stations transferred 2 or more times between 1954 and 1965.			
Boston (AM): WCOP, Boston, Mass.	Sept. 17, 1935	Joseph M. Kirby	(1) May 26, 1954; voluntary AL (2) May 3, 1956; voluntary AL (1) June 13, 1967; voluntary AL	T. B. Baker, Jr., A. G. Beaman & Roy V. Whisnand, a partnership. Post Publishing Co. WBMS, Inc.	Post Publishing Co. Plough Broadcasting Corp. Bartell Broadcasters, Inc.	WCOP (July 23, 1935); WMFH. WILD; WHEE (Apr. 29, 1951); WBMS.
WILD, Boston, Mass.	Feb. 27, 1947	The Templeton Radio Manufacturing Corp.	(1) Nov. 19, 1958; voluntary AL (1) Oct. 23, 1957; voluntary TC	Bartell Broadcasters, Inc. Victor C. Diehm, Mrs. Hilda M. Deisroth, George M. Chisnell, & Kathryn E. Kahler.	The Noble Broadcasting Corp. Great Trails Broadcasting Corp.	WEZE (Dec. 2, 1957); WVDA (June 17, 1953); WNAC (May 15, 1933).
WEZE, Boston, Mass.	Sept. 13, 1922	Shepard Broadcasting Service, Inc.	(2) Dec. 7, 1960; voluntary TC	Great Trails Broadcasting Corp.	WEZE, Inc.	
Metropolitan area of Boston (AM): No stations sold 2 or more times between 1954 and 1965. Boston and metropolitan area of Boston (FM): WBCN-FM, Boston, Mass.	Oct. 23, 1959	Concert Network, Inc.	(1) Nov. 14, 1957; voluntary acquisition of positive control through purchase of stock. (2) Apr. 11, 1958; voluntary relinquishment of positive control through sale of stock. (3) Dec. 20, 1963; involuntary TC. (4) Mar. 30, 1965; voluntary TC	John W. Gardner (stockholder in Concert Network, Inc.). T. Mitchell Hastings, Jr. Concert Network, Inc. Leonard M. Salter, receiver in bankruptcy.	T. Mitchell Hastings, Jr. (stockholder in Concert Network, Inc.). Eugene N. Foss II and Robert Sidney Swain. Leonard M. Salter, receiver in bankruptcy. Concert Network, Inc.	

RADIO STATIONS (AM AND FM) IN THE METROPOLITAN AREAS OF NEW YORK, CHICAGO, LOS ANGELES, PHILADELPHIA, CLEVELAND, BOSTON, AND DETROIT
TRANSFERRED 2 OR MORE TIMES BETWEEN 1954 AND 1965—Continued

Station and market	First licensed	Original owner	Date granted and nature of transfer	Name of transferor	Name of transferee	Other call letters
Detroit (AM): No stations sold 2 or more times between given dates. Metropolitan area of Detroit (AM): WPON, Pontiac, Mich.	Jan. 28, 1965	James Gerity, Jr.	(1) Feb. 12, 1958; voluntary AL (2) Sept. 14, 1962; voluntary AL	Gerity Broadcasting Co. Chief Pontiac Broadcasting	Chief Pontiac Broadcasting Co. WPON, Inc.	WPON (Aug. 4, 1953). WBLM.
Detroit and metropolitan area of Detroit (FM): WGPR-FM, Detroit, Mich.	Dec. 20, 1963	560 Broadcasting Corp.	(1) Apr. 21, 1961; voluntary assignment of CP, TC. (2) Oct. 24, 1963; voluntary TC. (3) July 24, 1964; voluntary TC.	560 Broadcasting Corp. Ross Mulholland	Ross Mulholland	
WMUZ-FM, Detroit, Mich.	Mar. 26, 1956	Michigan Music Co.	(1) Apr. 23, 1956; voluntary acquisition of positive control. (2) Sept. 10, 1958; voluntary AL.	John M. Roeder and Dale Roeder Richard A. Connell, Jr., Henrietta Connell, Calvin C. Connell, Dawn Connell Watts, James F. Hopkins as trustee for Dawn Connell Watts and James F. Hopkins as trustee for Michael A. Connell. Michigan Music Co.	John M. Roeder (25 percent) and Dale Roeder (75 percent) in WGPR, Inc. & Accepted Modern Makers, Inc. Ruth T. Hopkins, Ira G. Luskombe, Robert W. Hopkins, James Hopkins, and Wallace F. Hopkins.	
WBFG-FM, Detroit, Mich.	Oct. 9, 1961	Jacob Wilson Henock	(1) Mar. 15, 1961; voluntary assignment of CP. (2) Feb. 28, 1962; voluntary AL.	Jacob Wilson Henock Robert M. Parr tr/as Detroit Broadcasting Co.	Percy B. Crawford tr/as Alpha Broadcasting Co. (half Avetelstar is now administrator of the estate of Perry B. Crawford, deceased). Robert M. Parr tr/as Detroit Broadcasting Co. Trinity Broadcasting Corp.	WBFG (Jan. 19, 1962); WRMP (May 8, 1961); WFME

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., January 23, 1968.

Re Application of D. H. Overmyer (Transferor) and U.S. Communications Corporation (Transferee); File Nos. BTC-5376, 5377, 5378, 5379, 5380.

HON. ROSEL H. HYDE,
Chairman, Federal Communications Commission,
Washington, D.C.

—DEAR MR. CHAIRMAN: Enclosed is list of twenty-six questions concerning the manner in which FCC processed transfer applications in the above proceedings. Will you kindly provide answers to these questions?

I am sending a copy of this request and enclosure to each member of the Commission.

With kind regards,
Sincerely yours,

HARLEY O. STAGGERS, *Chairman.*

STAFF QUESTIONS FOR THE FCC ON THE OVERMYER/AVC TRANSFER

- How does the Commission define "out-of-pocket expenses"?
- To what extent does the Commission permit a CP transferor to profit by the appreciation of assets (included in the CP transfer) such as land, buildings, film rights, equipment, etc.
- To what extent does the Commission permit a CP transferor to recover the original cost of tangible assets (included in the CP transfer) which have depreciated in value?
- What documentation does the Commission require to enable it to verify claimed out-of-pocket expenses and other figures submitted as part of application for transfer of construction permits? What mechanics does the Commission follow to verify out-of-pocket expense figures submitted by applicants?
- Cite any Commission rules, regulations and significant precedents which limit the consideration that can be received by a transferor of a construction permit to out-of-pocket expenses.
- Does the Commission distinguish out-of-pocket expenses, provided for in sec. 311(c) (3) from out-of-pocket expenses relating to transfers of construction permits in sec. 310(b)?
- In 1965, when the Commission approved D. H. Overmyer's application for these 5 CP's, was it informed that he intended to develop a UHF network? If the Commission was so informed, did it request a showing by Overmyer as to the effect his network interest would have upon the financing of these 5 CP's?
- What records, materials and papers did the Commission require Overmyer to submit to demonstrate that none of the OPE's claimed in the transfers to AVC were associated with the network?
- When Overmyer initially applied in 1964 and 1965 to purchase the CP's which he has transferred to AVC, he submitted cost and revenue estimates to the Commission. In its application to purchase these same CP's, filed approximately two years later, AVC estimated its costs, for the identical equipment, to be nearly double Overmyer's estimates, despite the fact that all existing executory contracts entered into by Overmyer for the purchase construction and leasing of tangible property were assigned to AVC. What examination did the Commission make of these discrepancies? Are such discrepancies usual? Does the Commission have a procedure to verify such cost estimates submitted by applicant?
- What financial analysis does the Commission staff make of a CP applicant? Net worth? Liquidity? What rules, if any, govern such analysis?
- At the time Overmyer was originally granted these 5 CP's, was the Commission staff satisfied that he and/or the transferee corporations controlled by him possessed adequate liquidity to finance all the stations? If so, submit the Commission's financial analysis which supported this determination.
- In the present proceeding, did the Commission require Overmyer to submit documentation of any other attempts by him to finance the 5 CP's before it authorized the transfers to AVC?

13. Page 13 of the Loan Agreement between AVC and Overmyer, dated 3/28/67, states that as of 2/28/67 the San Francisco licensee is indebted to the Pacific National Bank of San Francisco for \$350,000 and the Georgia licensee is indebted to the Girard Trust Company for \$300,000. Do these items appear as out-of-pocket expenses on any schedule filed in these proceedings? Since AVC has assumed these debts, as part of its obligations under the Stock Purchase Agreement, isn't the gross consideration which AVC pays to Overmyer thereby increased by \$650,000?

14. Sec. 310(b) requires a finding by the Commission that the public interest, convenience and necessity will be served by a transfer of the CP. Submit specific findings of the Commission and reasons upon which such findings were based, that in each market area covered by each of the 5 CP's that the public convenience, interest and necessity was served by its transfer to AVC.

15. What showing did the Commission require that it was in the public interest to expedite the applications for transfer?

16. Could the Commission have made a finding that it was in the public interest to have permitted the transfer of less than all 6 stations to AVC until AVC demonstrated its ability to operate at least one of these UHF stations satisfactorily? If so, was such action deliberated?

17. In a section 311(c) (3) situation the consideration that can be received by a withdrawing CP applicant is limited to an amount "determined by the Commission to have been legitimately and prudently expended by such applicant and to be expended in connection with preparing, filing and advocating the granting of an application." No other section of the Act limits the amount which can be paid in permit or license transfers. Nevertheless, the Commission has administratively created a rule that the transferor of a CP is limited to out-of-pocket expenses. Has the Commission promulgated a similar rule with respect to station license transfers?

18. Only 80% of the stock of the 5 CP's was transferred by D. H. Overmyer and he retained 20%, subject to an option in AVC to acquire that 20% at a future date for \$3 million (exceeding allocable out-of-pocket expenses by about \$2,700,000). Has the Commission authorized transfers of CP's in the past, where only a portion of the transferor's stock was sold and the balance retained by the transferor, with or without an option to purchase the balance in the transferee? If the answer is "yes", submit a list of relevant instances.

19. What "affirmative factual showing" did D. H. Overmyer make to support a waiver of the Commission's rule 1.597 ("Procedures on transfer and assignment applications")? Submit any staff analysis supporting this waiver of Commission policy.

20. What studies has the Commission made to determine whether group ownership of broadcasting licenses enhances competition?

21. Is it in the public interest to encourage group ownership of UHF stations? Is it in the public interest to encourage a network of UHF stations? If so, what competitive protection would be afforded non-network UHF licensees?

22. Has the Commission determined that multiple ownership is a solution to the high cost of originating TV programs? If so, submit a copy of its pronouncements supporting such a determination.

23. Has the Commission determined that a single, independent UHF station cannot produce worthwhile TV programs in competition with local network affiliated or independent VHF licensees?

24. Please provide a list (station call letters and FCC Docket Number) of all proceedings in which the Commission has waived its "50-market rule" and its "3-year transfer rule" since their promulgation.

25. How many allocations are there for UHF TV stations? How many UHF licenses have been issued? How many UHF CP's have been granted? How many UHF station licensees or UHF construction permittees are multiple UHF licensees or permittees in the top 50 markets?

26. Submit a copy of the following documents relating to AVC's purchase of these 5 CP's: (1) supplemental loan agreement dated 5/3/67; (2) plan and agreement of merger between WPHL and U.S. Communications dated 6/8/67; (3) mortgages on the properties secured by the \$3 million loan; and (4) assignment of rents agreement referred to in Loan Agreement dated 3/28/67.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am transmitting responses to the twenty-six questions regarding the Overmyer matter submitted to me in your letter of January 23, 1968.

Individual Commissioners perhaps would have worded replies to some of the questions differently, but the responses do reflect the views of a majority of the Commissioners.

Sincerely yours,

ROSEL H. HYDE, *Chairman.*

ANSWERS OF THE FCC TO QUESTIONS "ON THE OVERMYER/AVC TRANSFER BY MEMBERS OF THE SPECIAL SUBCOMMITTEE ON INVESTIGATIONS"

Question 1. How does the Commission define "out-of-pocket expenses"?

Answer. "Out-of-pocket expenses" (OPE's) have not been defined by Commission rule. OPE's relating to transfers of construction permits that have been allowed by the Commission on a case-by-case basis may be described as (a) legitimate expenditures incurred by an applicant in obtaining a construction permit, such as costs of professional services, travel, printing, market research, surveys, etc., and (b) funds spent after grant of CP and prior to license for acquisition of land, buildings, equipment, film rights, furniture and fixtures, etc.

Question 2. To what extent does the Commission permit a CP transferor to profit by the appreciation of assets (included in the CP transfer) such as land, buildings, film rights, equipment, etc.

Answer. As a general rule, a transferor is limited to his cash outlay for OPE's. However, there is no flat prohibition against a transferor's being reimbursed for interim appreciation in asset value, provided the appreciation is adequately documented.

Question 3. To what extent does the Commission permit a CP transferor to recover the original cost of tangible assets (included in the CP transfer) which have depreciated in value?

Answer. We know of no instance where this question has arisen.

Question 4. What documentation does the Commission require to enable it to verify claimed out-of-pocket expenses and other figures submitted as part of application for transfer of construction permits? What mechanics does the Commission follow to verify out-of-pocket expense figures submitted by applicants?

Answer. When OPE's are claimed, they must be listed in the application. When OPE's appear to be out of line or specific items are unusual, transferor is required to furnish pertinent information as well as detailed documentation. Admittedly, practical considerations dictate that considerable reliance must be placed on the honesty and integrity of the transferor. If he misrepresents the facts, he is subject to possible criminal sanctions found in 18 U.S.C. 1001. Similar reliance is placed on taxpayer's honesty in the tax system. In short, where OPE's appear reasonable they are accepted on assignor's certification. Otherwise, applicant is informed that documentation is necessary before action can be taken.

Question 5. Cite any Commission rules, regulations and significant precedents which limit the consideration that can be received by a transferor of a construction permit to out-of-pocket expenses.

Answer. The Commission has for a number of years followed the policy of limiting the consideration that can be received by a transferor of a CP to out-of-pocket expenses. Copies of opinions and orders adopted pursuant to this policy have been furnished to the Subcommittee's staff in response to a previous request. The material furnished included Memorandum Opinions and Orders, *In the Matter of Bernard Rappaport*, 10 RR 2nd 610; and, *In re Application of Sam H. Beniom* (FCC 62-778).

Question 6. Does the Commission distinguish out-of-pocket expenses, provided for in Section 311(c)(3), from out-of-pocket expenses relating to transfers of construction permits in sec. 310(b)?

Answer. Section 311(c)(3) of the Communications Act authorizes recovery of amounts "... 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." Although the Commission generally follows the same test in a transfer proceeding (Sec. 310(b)) there have been differences in the evolution of policy in the transfer area.

Question 7. In 1965, when the Commission approved D. H. Overmyer's application for these 5 CP's, was it informed that he intended to develop a UHF network? If the Commission was so informed, did it request a showing by Overmyer as to the effect his network interest would have upon the financing of these 5 CP's?

Answer. Nothing was filed in the applications to indicate that Overmyer intended to form a network. Apparently, Overmyer's network plans were formed after he obtained the permits. Members of the Commission had notice of the proposed network through public disclosure of Overmyer's plans in the trade press in July, 1966. At about the same time, Overmyer and his counsel called at offices of the Commissioners to explain Overmyer's network proposal. Overmyer was not requested to make any showing of the impact his proposed network would have on financing construction under the permits. It should be noted that when these network plans were first disclosed, Overmyer's warehouse empire—on which much of Overmyer's plans hinged—still seemed sound. Thus, there was no apparent reason for re-examining Overmyer's financial qualifications.

Question 8. What records, materials and papers did the Commission require Overmyer to submit to demonstrate that none of the OPE's claimed in the transfers to AVC were associated with the network?

Answer. The affidavit of Thomas Byrnes filed in the WBMO-TV transfer application (BTC-5379) in support of Overmyer's OPE's represented that expenses attributed to the Toledo and Dallas applications, and to network activities had been excluded. A copy of the Byrnes affidavit has been previously furnished to the Subcommittee's staff. The exclusion for network activities is referred to in Paragraph (f), page 7 of the Byrnes affidavit. A further statement pertaining to this exclusion appears at page 8 of the affidavit. In view of these sworn statements, the applicant was not required to submit further records on the exclusion of network costs.

Question 9. When Overmyer initially applied in 1964 and 1965 to purchase the CP's which he has transferred to AVC, he submitted cost and revenue estimates to the Commission. In its application to purchase these same CP's, filed approximately two years later, AVC estimated its costs, for the identical equipment, to be nearly double Overmyer's estimates, despite the fact that all existing executory contracts entered into by Overmyer for the purchase, construction and leasing of tangible property were assigned to AVC. What examination did the Commission make of these discrepancies? Are such discrepancies usual? Does the Commission have a procedure to verify such cost estimates submitted by applicant?

Answer. Overmyer's and AVC's estimates did not involve "identical equipment." First, the estimates which Overmyer originally made when he obtained the permits were further modified. Each permit was subsequently modified to assure that the stations would have full color and technical facilities designed to afford maximum coverage and thereby make the stations more fully competitive with existing stations in their respective markets. In general, power output was increased, antenna systems were changed, antenna heights were increased, and antenna and studio sites were relocated. The cost of these improved facilities would naturally be greater than costs originally estimated when the permits were first obtained. It should be understood that cost estimates reflect an applicant's business judgment as to what it would take to construct a station and operate it for the first year. Estimates are thus subject to considerable variation, depending largely on the elaborateness of applicant's proposals. For example, one applicant may propose a physical plant which provides the bare essentials of housing equipment and personnel; whereas, another applicant, differently motivated, might construct a "monument" considerably in excess of minimum requirements. Thus, whether AVC goes ahead with the assumed Overmyer contracts on their present terms is a matter to be determined by AVC. Individual preferences in equipment may well dictate that deposits made by Overmyer on equipment con-

tracts will be applied by AVC to different equipment. As a matter of practice, the Commission's staff does not compare a transferor's equipment cost estimates against those of the transferee. Such a comparison would not be meaningful in view of the considerations discussed above.

It is difficult to say how "usual" discrepancies between transferor and transferee cost estimates are. But since the OPE rule limits the transferor's recovery, discrepancies in this area are important only in the sense that they suggest a continuing need to keep a tight check on applicants' financial qualifications. In the Commission's view, the adoption of the *Ultravision* test (see response to Question 10), with its more stringent standard of financial qualifications, serves this purpose.

Question 10. What financial analysis does the Commission staff make of a CP applicant? Net worth? Liquidity? What rules, if any, govern such analysis?

Answer. The Commission's financial qualification standard is not set out in any rule but is set out in the *Ultravision* case—which will be discussed first. The *Ultravision* test was adopted in July 1965 in *Ultravision Broadcasting Co.* 5 RR 2d 343. There the Commission stated (5 RR 2d 343, Parag. 10) that: "... we shall hereafter require all applicants for commercial broadcast facilities, whether AM, FM, VHF-TV or UHF-TV, to demonstrate their financial ability to operate for a period of one year after construction of the station. In those instances where operation during the first year is dependent upon estimated advertising revenues, the applicants will be required to establish the validity of the estimate.

An applicant is thus required to demonstrate either that he has sufficient funds to construct the station and to operate for one year without resort to station revenues or if revenues are relied on, the applicant must demonstrate the basis for his estimates. The *Ultravision* test applies both to applications for new stations and transfers of existing stations. (Of course, if the station being transferred is already built, the crucial matter is the transferee's ability to operate for the first year.) The premise of the *Ultravision* test is that if the applicant can build the station and get through the first year, it is probable that the stations will realize revenues sufficient for the station to survive. Any more stringent test would unduly penalize applicants not having great wealth.

Applications are analyzed by the staff to determine whether the applicant is financially qualified under the *Ultravision* test. Essentially, the analysis consists of balancing the applicant's available funds (paid-in capital, bank loans, equipment credits) against costs for constructing the station (purchase or lease of studio and transmitter sites, down payments on equipment, installation costs) and operating costs for the first year (personnel costs, equipment installments, debt amortization, taxes, etc.). Applicant's funds are analyzed both to determine their overall sufficiency and their actual availability. For example, if an applicant purchases equipment on a time basis—as is usually the case—equipment credits must be supported by a letter from the supplier stating the terms and conditions for payment. Similarly, if an applicant intends to borrow money to finance the station, he must file a loan commitment setting forth the terms and conditions of the loans. And where first-year revenues are relied on, the applicant must demonstrate the basis for assuming such revenues will be available.

Initial verification of cost and revenue estimates is limited to examining the supporting documents (balance sheets, letters of credit, loan commitments) 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 that the applicant is financially qualified. However, if estimates or supporting documents involve questionable items, the applicant is requested by the staff to furnish additional information.

And, if qualification still remains in doubt, the staff recommends to the Commission that the matter be resolved by sending the applicant a prehearing letter or by designating the application for hearing on a financial qualification issue. Essentially the same procedures are followed if the applicant's financial ability has been questioned by a private party in a Petition to Deny.

Proof of financial qualification is further governed by Section III of application forms for new stations (FCC Form 301), for assignment of CPs or licenses (FCC Form 314) and for transfer of control of a permittee or licensee (FCC Form 315). A copy of Section III—which is identical to all three application forms—is attached to these responses. As can be seen, this "Financial Qualifications" section is designed to elicit detailed information concerning an applicant's financial

ability. Page 2 of Section III sets out extensive requirements for the manner in which the availability and liquidity of funds must be demonstrated.

Liquidity—in the sense of having the present ability to satisfy the minimum financial requirements specified in the *Ultravision* test—is essential to an applicant's proposal. The matter of liquidity is covered in considerable detail in Parag. 3, page 2, Section III of 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. See *A-C Broadcasters*, 10 FCC 2d 256. Net worth is an additional factor used in appraising financial ability. Where the net worth is substantial and relatively unencumbered it gives some indication that an applicant has financial resources beyond those immediately relied upon. Of course, net worth is inconclusive when it rests on securities of closed corporations, residential property, household and personal goods, etc., absent a specific commitment to use such properties if needed.

Question 11. At the time Overmyer was granted these 5 CP's, was the Commission staff satisfied that he and/or the transferee corporations controlled by him possessed adequate liquidity to finance all the stations? If so, submit the Commission's financial analysis which supported this determination.

Answer. Before the Commission approved the Overmyer applications for the CPs, it determined that Overmyer was financially qualified. The financial data the Commission had before it in arriving at this conclusion is set out in detail in material previously furnished to the Subcommittee, in response to certain questions asked by Subcommittee members at the December 16, 1967, hearings on the Overmyer-AVC transfers. See letter to the Honorable Harley O. Staggers from Chairman Hyde, dated January 22, 1968, and attachment thereto entitled "Data which the Commission Considered in Granting Construction Permits to D. H. Overmyer", for insertion in the December 15 hearing record at pages 31 and 32.

The Subcommittee has also been previously furnished copies of internal memoranda which discussed Overmyer's financial qualifications at the time the permits were obtained. The data on Overmyer's financial position can be found in the following memoranda:

WBMO-TV Atlanta, Georgia (BAPCT-351)—Inter-Office Memorandum from Chief, Broadcast Bureau to Commission, dated March 16, 1965, Mimeo Number 63424.²

WSCO-TV, Newport, Kentucky (BAPCT-352)—Inter-Office Memorandum from Chief, Broadcast Bureau to Commission, dated February 8, 1965, Mimeo Number 63558.²

KEMO-TV, San Francisco, California (BAPCT-352)—Inter-Office Memorandum from Chief, Broadcast Bureau to Commission, dated September 22, 1965, Mimeo Number 74174.²

WECO-TV, Pittsburgh, Pennsylvania (BAPCT-364)—Inter-Office Memorandum from Chief, Broadcast Bureau to Commission, dated June 14, 1965, Mimeo Number 70517.²

KJDO-TV, Rosenberg, Texas (BAPCT-3518)—Inter-Office Memorandum from Chief, Broadcast Bureau to Commission, dated August 12, 1965, Mimeo Number 71233.²

The Commission believes that Overmyer's financial qualification when he obtained the permits is fully covered in the material referred to above. The Commission will promptly furnish any additional information which the Subcommittee might desire, upon being notified that further data is needed.

Question 12. In the present proceeding, did the Commission require Overmyer to submit documentation of any other attempts by him to finance the 5 CP's before it authorized the transfers to AVC?

Answer. Overmyer's efforts to find alternative methods of financing construction are set out in the "Reasons for Proposed Transfer" which are attached hereto (appendix B). The main reason for the transfers was unexpected financial reverses Overmyer had suffered in his warehouse companies. In Overmyer's view his financial predicament was such that he could not keep the warehouses and also complete construction under the permits. Overmyer further stated that during the latter part of 1966 and early 1967, he "... explored the

¹ See App. A, p. 1.

² These identifying Mimeo numbers appear in the second line of the covering page of the memoranda.

double approach of (1) extending payment of Green & White debts and putting them on an orderly schedule over a period of two-three years, and of trying to realize some present cash from the warehousing properties by means of sale-lease backs, and (2) trying to find a partner, preferably a minority stockholder, in the UHF stations which would provide the financing necessary to carry them . . . The attempt to find a minority stockholder for the UHF operations was unsuccessful; accordingly, the present arrangement was worked out with A. V. C. Corporation . . ."

In view of (a) Overmyer's personal assessment of his financial position, an assessment which suggested a condition close to insolvency, and (b) his statement that he had been unable to arrange alternative financing by taking in a solvent minority stockholder, the Commission was satisfied with the reasons given to support the proposed transfer.

Question 13. Page 12 of the Loan Agreement between AVC and Overmyer, dated March 28, 1967, states that as of February 28, 1967 the San Francisco licensee is indebted to the Pacific National Bank of San Francisco for \$350,000 and the Georgia licensee is indebted to the Girard Trust Company for \$300,000. Do these items appear as out-of-pocket expenses on any schedule filed in these proceedings? Since AVC assumed these debts, as part of its obligations under the Stock Purchase Agreement, isn't the gross consideration which AVC pays to Overmyer thereby increased by \$650,000?

Answer. In the Stock Purchase Agreement (page 6), Overmyer warrants that the indebtedness of the California and Georgia permittees results from bank loans for "... working capital which have been used in the TV companies." The balances remaining on these loans do not appear as OPE's claimed by Overmyer. The debts are those of the subsidiary permittee corporations. The assumptions by AVC of a contingent liability on default by the permittee companies would constitute an additional consideration which can not be valued precisely.

Question 14. Section 310 (b) requires a finding by the Commission that the public interest, convenience and necessity will be served by a transfer of the CP. Submit specific findings of the Commission and reasons upon which such findings were based, that in each market area covered by each of the 5 CP's that the public convenience, interest and necessity was served by its transfer to AVC.

Answer. The staff memorandum to the Commission regarding the AVC-Overmyer applications sets out pertinent market data on a market-by-market basis. See Paragraphs 18-19, Mimeo 6738, previously furnished the Subcommittee. Thus, even though the Commission's Order of December 8, 1967, granting the applications (FCC 67-1312, Mimeo 9408) treats the Overmyer applications and WPHL-TV assignment as a package, the Commission had before it data pertaining to individual markets. The Commission's finding that a grant of the applications would be in the public interest is as follows:

"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 television service to the public. It is therefore believed the public interest would be served by a waiver of the *Interim Policy*."

The reference in the Order to "... a grant of the *applications*" (emphasis added) makes it clear the Commission's public-interest finding encompassed all the permits and, hence, all the markets involved.

Question 15. What showing did the Commission require that it was in the public interest to expedite the application for transfer?

Answer. None, because the processing of the applications was not expedited. Although Overmyer at one point wrote the Commission and requested that—in view of his financial condition—the applications be processed as expeditiously as possible, the applications were taken up in their regular turn. The applications were filed June 30, 1967 and were received in the Commission's Assignment & Transfer Section on July 13, 1967. Because of the volume of work handled by this Section, preliminary processing did not begin until early September. Processing was subject to intermittent interruptions because of the workload of the staff member to whom the applications were assigned. The staff memorandum went to the Commission in late October. The applications were considered by the Commission in November 1967. The Commission's Order approving the applications was not released until December 8, 1967, in order to give dissenting Commissioners an opportunity to write individual opinions.

Question 16. Could the Commission have made a finding that it was in the public interest to have permitted the transfer of less than all 6 stations to AVC

until AVC demonstrated its ability to operate at least one of these UHF stations satisfactorily? If so, was such action deliberated?

Answer. From the standpoint of legal authority, the power of the Commission to adopt a general rule which looks to such a one-permit-at-a-time policy seems established. Further, under the doctrine of *Securities & Exchange Commission v. Chenery Corporation*, 332 U.S. 194, at 203, the Commission would have the option of adopting such a policy on an *ad hoc* basis. From a practical viewpoint, however, the wisdom of adopting this single permit approach in the Overmyer-AVC proceedings is not clear.

A specific condition precedent to the Stock Purchase Agreement was Commission approval of the transfer of all five Overmyer permits ". . . without conditions or modifications in the terms of Commission authorizations materially adverse to AVC" (p. 17, Purchase Agreement), and the WPHL-AVC merger was contingent on the transfer applications. Added to this was the financial condition of Overmyer, which forcibly suggested a permittee who was in no position to get the stations on the air in the foreseeable future. Any proposal to outlaw package transfers and adopt a one-permit-at-a-time policy is fundamental in nature. The merits of such a policy would have to be explored in a general rulemaking proceeding, where all interested parties would have ample opportunity to comment.

Question 17. In a Section 311(c) (3) situation the consideration that can be received by a withdrawing CP applicant is limited to an amount "determined by the Commission to have been legitimately and prudently expended by such applicant and to be expended in connection with preparing, filing and advocating the granting of an application." No other section of the Act limits the amount which can be paid in permit or license transfers. Nevertheless, the Commission has administratively created a rule that the transferor of a CP is limited to out-of-pocket expenses. Has the Commission promulgated a similar rule with respect to station license transfers?

Answer. No. A distinction is drawn between the transfer of a bare CP and an operating station. Where a CP is transferred, the transferor is limited to recovering OPE's. But consideration for transfer of an operating station is determined by negotiation between the buyer and seller. Obviously, restrictions on station sales prices would constitute a form of administrative price-fixing. The problems here are extremely complex and have been of concern to both the Commission and Congress.

As far back as the 69th Congress, prior to the enactment of the Radio Act of 1927, bills were introduced which contained provisions for fixing or limiting prices for which stations could be sold [e.g. S. 1 and S. 1754, S. 4057, H.R. 9971, S. 4156]. However, the 1927 Act did not contain such a provision. S. 3285 which became the Communications Act of 1934 (Public Law No. 416 June 19, 1934, 48 Stat 1064) also intentionally excluded limitations on consideration in transfer cases (see 83 Cong. Rec. 93 19 et seq). From 1936 to 1941 there were numerous Resolutions submitted to Congress to investigate station sale prices,³ but they died in the Rules Committee or were specifically rejected by the House or Senate (See for example—83 Cong. Rec. 9319 et seq). Pursuant to the request of December 9, 1936 of Congressman Wigglesworth⁴ Congress was furnished for 12 years reports by the Federal Communications Commission on every assignment and transfer application granted with or without hearing. These reports consisted of tables showing among other things, original cost of, replacement value of, and total claimed value of fixed assets, value of stock transferred, station earnings and consideration for the station sales. In 1944 the Commission, by letters to the Chairmen of the Senate Interstate Commerce Committee and the House Interstate and Foreign Commerce Committee, sought Congressional direction on the subject but no legislation was enacted. H.R. 4314 (79th Cong. 1st Session, 91 Cong. Rec. 9512) was introduced by Congressman Celler on October 9, 1945,⁵

³ H. Res. 394, 74th Cong., second sess., 80 Congressional Record 456; H. Res. 61, 75th Cong., first sess., 81 Congressional Record 216; H. Res. 313, 75th Cong., first sess., 81 Congressional Record 8880; H. Res. 342, 75th Cong., first sess., 81 Congressional Record 9683; H. Res. 365, 75th Cong., second sess., 82 Congressional Record 720; H. Res. 72, 76th Cong., first sess., 84 Congressional Record 305; H. Res. 462, 76th Cong., third sess., 86 Congressional Record 4321; H. Res. 92, 75th Cong., third sess., 81 Congressional Record 342; S. Res. 300, 76th Cong., third sess., 86 Congressional Record 10788; H. Res. 51, 77th Cong., first sess., and many others.

⁴ See p. 369 of hearings before the House subcommittee of the Committee on Appropriations on Independent Offices Appropriation Bill for 1938, H.R. 4064—75th Cong., first sess., pp. 352-403, 1038-1039.

⁵ See his earlier comments on station prices, 83 Congressional Record 9319 et seq.

limiting price in a station sale. On February 13, 1947 he also introduced H. R. 1936, 80th Cong. 1st Session, 93 Cong. Rec. 1021 containing similar terms. With respect to S. 658 which as amended ultimately on July 16, 1952, became the "McFarland amendments" to the 1934 act there had been discussions of limitations on sale price, which idea was again rejected.

Question 18. Only 80% of the stock of the 5 CP's was transferred by D. H. Overmyer and he retained 20%, subject to an option in AVC to acquire that 20% at a future date for \$3,000,000 (exceeding allocable out-of-pocket expenses by about \$2,700,000). Has the Commission authorized transfers of CP's in the past, where only a portion of the transferor's stock was sold and the balance retained by the transferor, with or without an option to purchase the balance in the transferee? If the answer is "yes", submit a list of relevant instances.

Answer. Yes. This happens infrequently, and generally in the situation where, for one reason or another, it is necessary to bring in new capital to finance construction. Illustrative cases where the permittee has retained a stock interest in the permittee, which interest could later be purchased under an option at a stated price are listed below:

BAPCT-353: Assignment of permit for UHF Station WOGO-TV (now WFLD-TV), Chicago, to a joint venture between the original permittee and Field Enterprises, granted January 19, 1965.

BAPCT-391: Assignment of permit for UHF Station WSNS, Chicago, Illinois to a joint venture between the general partner in the original permittee and HarriScope of Chicago, Inc.

BAPCT-399: Assignment of permit for UHF Station WAFT-TV, Cleveland, to a joint venture between the original permittee and Kaiser Broadcasting Co., granted August 19, 1967.

BTC-5331: Transfer of control of permittee corporation holding permit for UHF Station KTXL, Sacramento, California through acquisition of majority stock interest in permittee by Community Cablecasting Corp.

Question 19. What "affirmative factual showing" did D. H. Overmyer make to support a waiver of the Commission's rule 1.597 ("Procedures on transfer and assignment of applications")? Submit any staff analysis supporting this waiver of Commission policy.

Answer. No showing was necessary because the Commission's "three-year" rule (Sec. 1.597) does not apply to transfer of permits. The Report and Order accompanying the "three-year" rule (23 RR. 1503 et seq.) makes it clear that one of the chief purposes of the rule is to prevent disruption in program service of the chief purposes of the rule is to prevent disruption in program service of which stems from short-term holdings. The policy basis of the rule has no application to stations which have never been built. If the station goes on the air but has not yet been fully licensed, the rule applies. It applies also to the situation where a license and a related modified construction permit are being transferred.

Question 20. What studies has the Commission made to determine whether group ownership of broadcasting licenses enhances competition?

Answer. Throughout the years the Commission has sought to further the congressional policy of maintaining the field of broadcasting as one of full competition. This has been implemented by the Commission's multiple ownership rules. Under the present rules, ownership is limited to 7 television stations (no more than 5 VHF) 7 AM stations and 7 FM stations. While these rules are generally thought of in terms of preventing monopoly control, to the extent that monopoly control is prevented, the Commission is promoting the competition element. In its Report and Order of November 25, 1953, amending the multiple ownership rules, the Commission stated: ". . . the fundamental purpose of this facet of the rules, the Commission's multiple-ownership rule is to promote diversification of ownership in order to maximize diversification of program and service viewpoints, as well as to prevent any undue concentration of economic power contrary to the public interest. In this connection, we wish to emphasize that, by such rules, diversification of program services is furthered without any governmental encroachment on what we recognize to be the prime responsibility of the broadcast licensee. (See sec. 326 of the Communications Act.) It is to effect this purpose that the foregoing or specific limitation on the number of stations that may be owned, operated, or controlled by any persons has been included in the multiple-ownership rules."

The Commission addressed itself to the question of multiple-station ownership an industry-wide question as early as 1937 when it commenced an investigation of chain broadcasting. (Report on Chain Broadcasting (1941) pp. 2, 67, 69).

A 1940 FM rule and a 1941 TV rule, in addition to prohibiting duplicate ownership or control of two stations of the same class in the same community or serving substantially the same service area (the duopoly rule), also placed limitations on the maximum ownership or control of stations in the Nation as a whole. FM station ownership or control was limited to 6 and TV station ownership or control was limited to 3. In 1944, the 3-station limit on television station ownership was raised to 5. On November 27, 1953, the Commission issued its report and order amending the multiple-ownership rules. Maximum limits on station ownership or control were placed at 7 FM, 7 AM, and 5 TV. On September 17, 1954, the Commission further amended its rules so as to permit any one interest to operate 7 TV stations, provided that at least 2 were UHF. After reviewing its diversification of ownership policy and reviewing the need for multiple ownership by network organizations, the Commission therein stated: "We have always recognized these needs and have by rule permitted multiple ownership of broadcast stations in the light of such (other and competing) considerations. Here too it is our view that the greater good which will flow from the proposed rule offsets the disadvantage resulting from permitting individual licensees to own a large number of stations."

The Supreme Court has restated the philosophy underlying the economic element of the multiple-ownership rules in the case of *United States v. Storer Broadcasting Co.*, 351 U.S. 192 (1956), wherein the Commission's authority to promulgate rules setting a numerical limit upon the number of television stations which a given party can control or have an interest was upheld.

In a recent action, Report and Order Docket 16068, FCC 68-135, February 7, 1968, the Commission adopted an ad hoc approach to ownership of more than three stations (or more than two VHF stations) in the top 50 markets. Rather than adopt a fixed limit on ownership in the top 50 market, the Commission decided that flexibility, within present rule limitations, will serve to make for a more rapid development of UHF stations and enhance the chances for development of a fourth commercial TV network.

Question 21. Is it in the public interest to encourage group ownership of UHF stations? Is it in the public interest to encourage a network of UHF stations? If so, what competitive protection would be afforded non-network UHF licensees?

Answer. In paragraph 14 of the Report and Order terminating the proceeding relating to multiple ownership in the top 50 markets, it was indicated that there was no wish to discourage group ownership of UHF stations and that group ownership of UHF stations would enhance the chances of the development of a fourth commercial TV network. The Commission does not attempt to protect independent UHF or independent VHF stations from the normal forces of competition.

Question 22. Has the Commission determined that multiple ownership is a solution to the high cost of originating TV programs? If so, submit a copy of its pronouncements supporting such a determination.

Answer. The Commission has never specifically determined that multiple ownership *per se* would solve the problem of television program production costs. Notwithstanding the lack of such a determination, it is undoubtedly true that a multiple owner in television may have a sufficient economic base to enable him to do more in program production than can the individual station—especially stations in medium and small markets. A number of multiple owners engage in a significant amount of program production.

Question 23. Has the Commission determined that a single, independent UHF station cannot produce worthwhile TV programs in competition with local network affiliated or independent VHF licensees?

Answer. Any TV station, whether it is UHF or VHF, whether it is a network affiliate or an independent, should be able to produce some worthwhile program. This is one of the bases for our allocation program providing for local stations in various communities. However, it is impossible for any TV station, with the high cost of TV program production, to produce all of the programs to round out its schedule of operation. Therefore, most programs carried by independent stations, whether VHF or UHF, and most programs carried by network affiliates during non-network time are syndicated programs. The heavy cost of producing these programs is shared by the numerous stations throughout the country which buy the programs.

Question 24. Provide a list (station call letters and FCC Docket Number) of all proceedings in which the Commission has waived its "50-market rule" and its "3-year transfer rule" since their promulgation.

Answer. Information concerning proceedings involving a waiver of the Top Fifty Interim Policy is listed below. The call letters given below are those used

by the station at the time it was acquired. In several instances, call letters have been later changed.

Call letters	File No.	Market	Multiple owner acquiring an interest
KCTO-TV	BALCT-283	Denver	WGN Continental Broadcasting.
WUHF-TV	BALCT-288	Milwaukee	WKY Television Systems.
WIHS-TV	BTC-5101	Boston	Storer Broadcasting.
WXHR-TV	BAPCT-388	do	Kaiser Broadcasting.
KTRK-TV	BALCT-321	Houston	Capital Cities Broadcasting.
KHBC-TV	BAPCT-395	Denver	Newhouse newspaper interests (18-percent ownership in transferee, Denver Post).
WAFT-TV	BAPCT-399	Cleveland	Kaiser Broadcasting.
KPTV-TV	BTC-5424	Portland, Oreg.	Same transferee—Chris Craft (Baldwin-Montrose Chemical).
WTCN-TV	BTC-5425	Minneapolis	
KGOP-TV	BTC-5426	Los Angeles	
KEMO-TV	BTC-5476	San Francisco	Same transferee—USCC (subsidiary of AVC Corp.).
WECO-TV	BTC-5477	Pittsburgh	
WSCO-TV	BTC-5478	Cincinnati	
WBMO-TV	BTC-5479	Atlanta	
KJDO-TV	BTC-5480	Houston	
WPHL-TV	BALCT-327	Philadelphia	

Call letters and file numbers of proceedings involving a waiver of the "three-year" rule are listed below:

Call letters	File No.	Call letters	File No.
KADI(FM)	BALH-820	KTHO	BTC-4794
KALV	BAL-4825	KULR-TV	BTC-5103
KAVE	BAPL-346	KUPI	BAL-4976
KAVE-TV	BAPLCT-76	KVLH	BAL-5258
KAZZ(FM)	BTC-4540	KVTV(TV)	BAPLCT-71
KBAY-FM	BALH-568	KVWG	BAP-610
KBGO	BTC-4403	KWKI	BAL-4792
KBLV	BAL-4738	KXGO-TV	BTC-4051
KCAB	BTC-4429	KYMN	BTC-5221
KCHS	BAL-5015	WABX(FM)	BALH-842
KCND-TV	BTC-4050	WCIU(TV)	BTC-5059
KDEF & FM	BAL-5925;	WDBO & FM & TV	BTC-4253
KFDA-TV	BALH-937	WEEE	BAL-490
KFDW	BAL-5603;	WFBA	BTC-5421
KFDV	BALRE-1325	WFCT	BTC-4152
KFIF	BAL-5603;	WFFG	BAL-4870
KFMF(FM)	BALRE-1325	WFGC & FM	BAL-5949;
KFMG(FM)	BAL-5958		BALH-946
KFST	BALH-876;	WGLC & FM	BAL-5856;
KHCB	BALH-876;		BALH-918
KHER	BASCA-231	WGMZ(FM)	BALH-837
KHOM(FM)	BTC-4764	WGRY	BAPL-310
KIIX(TV)	BTC-4196	WGUL	BAL-5179
KLAC-FM	BTC-4648	WGUY	BTC-4212
KLBB & TV	BAL-5786	WJWR(FM)	BTC-4208
KLWB-TV	BALH-800	WKLC	BAL-5359
KLWL	BAPCT-342	WKVK	BAL-5175
KLVO	BALH-752;	WLAE(FM)	BALH-743
KLYD & TV	BASCA-180	WLET & FM	BAL-4989
KNJO(FM)	BTC-4326	WLTH	BTC-5243
KOCA	BTC-4326	WMAI-FM	BTC-4738
KOL & FM	BAL-6164	WMAX	BAL-5228
KOME	BAL-4997;	WNFO	BTC-4668
KOOT	BAP-673	WOTT	BAL-4730
KOEN	BTC-4134	WQDY	BAL-5239
KRAB(FM)	BTC-4898	WQXL	BAL-4839
KRAL	BAL-4617	WRIZ	BTC-5468
KRAM	BTC-4167	WRON	BAL-4901
KRAV(FM)	BTC-4596	WSJR	BAL-5187
KRIO	BTC-4773	WSLT	BTC-5143
KRZY	BAPL-305	WTYM	BTC-5006
KSDR	BAPH-306	WVOR(FM)	BTC-5004
KSO	BAPL-281	WVTR	BTC-5155
KSWB(TV)	BAL-6187	WWAY(TV)	BTC-4603
	BALH-676	WWOK	BTC-4879
	BAL-5603;	WXRA(FM)	BTC-4393
	BALRE-1325	WXXX	BAL-5061
	BAL-5095	WYDD(FM)	BALH-851
	BAL-4823	WZOK	BTC-4448
	BAL-5828		
	BAL-5603;		
	BALRE-1325		

Question 25. How many allocations are there for UHF TV stations? How many UHF licenses have been issued? How many UHF CP's have been granted? How many UHF station licensees or UHF construction permittees are multiple UHF licensees or permittees in the top 50 markets?
 Answer. The information requested in question 25 is contained in the following table:

	Commercial	Noncommercial	Total
1. Number of allocations for UHF stations:			
United States.....	614	515	1,129
Puerto Rico.....	19	6	25
Virgin Islands.....	4	2	6
Total	637	523	1,160
2. Number of licensed UHF stations on air as of Dec. 31, 1967.....			
3. Number of UHF CP's granted, stations not yet on air, as of Dec. 31, 1967.....			
	136	76	212
	167	37	204

	Number of owners	Number of stations owned in top 50 markets
Owners with 6 UHF stations in top 50 markets.....	2	12
Owners with 3 UHF stations in top 50 markets.....	3	9
Owners with 2 UHF stations in top 50 markets.....	112	23
Owners with 1 UHF station in top 50 markets.....	163	62
Total	80	106

¹ There is 1 station (WFLD-TV, Chicago) owned by 3 entities. 2 of these entities each has another UHF station in the top 50 markets.

Question 26. Submit a copy of the following documents relating to AVC's purchase of these 5 CP's: (1) supplemental loan agreement dated 5/2/67; (2) plan and agreement of merger between WPHL and U.S. Communications dated 6/8/67; (3) mortgages on the properties secured by the \$3 million loan; and (4) assignment of rents agreement referred to in Loan Agreement dated 3/28/67.
 Answer. The documents requested in question 26 are hereby submitted respectively as appendix C (1)-(4).

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section III		
FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT		Name of Applicant				
The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.						
1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the general items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below.						
Transmitter proper including tubes		Antenna system, including antenna-ground system, coaling equipment, transmission line	Frequency and modulation monitors	Studio technical equipment, microphones, transcription equipment, etc.		
\$		\$	\$	\$		
Acquiring land	Acquiring, remodeling, or constructing buildings	Other items itemize	Total	Give estimated cost of operation for first year	Give estimated revenues for first year	
\$	\$	\$	\$	\$	\$	
b. State the basis of the estimates in (a) above.						
c. The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be met and paid for from each source.) The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:						
Existing Capital	New Capital	Loans from banks or others	Profits from existing operations	Donations	Credit, deferred payments, etc.	Other sources (specify)
\$	\$	\$	\$	\$	\$	\$
2. a. Attach as Exhibit No. a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. schedules which give a complete analysis of such items.						
b. Attach as Exhibit No. a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.						
3. Furnish the following information with respect to the applicant only. If the answer is "none" to any or all items, specifically so state:						
a. Amount of funds on deposit in bank or other depository			b. Name and address of the bank in which deposited			
c. Name and address of the party in whose name the money is deposited						
d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition)						
e. Whether the funds were deposited for the specific purpose of constructing and operating the station						

FUNDS, PROPERTY, ETC., TO BE FURNISHED BY PARTIES CONNECTED WITH APPLICANT OR BY OTHERS

4. Submit as Exhibit No. _____ a statement setting forth the full name and address of each person (whether or not connected with applicant, but including partners, shareholders, or subscribers to capital stock of the or other things of value, or will assist in any other manner in financing station. For each person (other than financial institutions or equipment manufacturers) who has furnished or will furnish one percent or more of the total of things of value excluding loans from financial institutions and equipment credit supply the additional information requested in a to g below. For financial institutions or equipment manufacturers, supply the additional information requested in h below. ("Furnish" or "furnished" as herein used includes payments for capital stock or other securities, loans and other credits, gifts and any other contributions.)
- A description of that which has been or will be furnished by each person showing the value thereof and any encumbrances thereon.
 - If the funds or other things of value proposed to be used for the purchase or construction of the station have been acquired for that specific purpose, indicate the source or sources thereof.
 - 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.
 - For each person (except financial institutions) who has agreed to furnish funds or purchase stock, but who has not already done so, submit a balance sheet or, in lieu thereof, a financial statement showing all liabilities and containing current and liquid assets sufficient in amount to meet current liabilities (including amounts payable during the next year or long term liabilities) and, in addition, to indicate financial ability to comply with the terms of the agreement. The balance sheets submitted should segregate receivables and payables to show the amounts due within one year and those due after one year. The term current and liquid assets refers to items such as cash, or loan value of insurance, government bonds, stocks listed on major exchanges etc., or other assets which may be readily used or converted to provide funds to meet the proposed commitments. Assets such as accounts receivable, which result from normal operation of a business, stocks of close corporations, timberland, building lots, etc., are not considered as a readily available source of funds without a specific showing that such assets will provide funds to meet proposed commitments. If a balance sheet does not clearly indicate liquid assets sufficient in amount to meet current liabilities and in addition, proposed commitments, it should be supplemented by a statement showing the manner in which non-liquid assets will provide such funds. Any financial statement furnished in lieu of a balance sheet should, likewise, describe assets relied on to provide funds, in sufficient detail to permit a determination of current position and should be more than a mere statement of total assets and total liabilities or a statement of net worth.
 - As to each person who has or has had in the past 5 years an interest of 25% or more in any business or financial enterprise or any official relationship to any business or financial enterprise, give full and complete disclosure of the enterprise, the name and principal place of business, the character of business engaged in, and the nature and extent of the interest in or relationship to such business.
 - Net-income after Federal income tax, received for the past two years by each person who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value. (A statement that income for the required periods was in excess of a certain specified amount will be sufficient.)
 - If applicant or any person named in the exhibit has pledged, hypothecated or otherwise encumbered any stocks or other securities for the purpose of providing applicant with funds for construction of the station herein requested, submit a statement explaining each such transaction.
 - For financial institutions or equipment manufacturers who have agreed to make a loan or extend credit, submit a verified copy of the agreement by which the institution or manufacturer is so obligated, showing the amount of loan or credit, terms of payment, if any, and security, if any.

D. H. OVERMYER/AVC CORP. FORMS 315, RE WRMO-TV, KEMO-TV, WSCO-TV, WECCO-TV, AND KJDO-TV

REASONS FOR PROPOSED TRANSFER

D. H. Overmyer commenced his warehousing business with rented space for one warehouse in Toledo in 1947. Within about seven years he began projecting a national warehousing and distribution system for large national manufacturing enterprises which need warehousing and distribution space and services in the many major consumer markets throughout the country.

Such a national warehousing service with its standardized procedures, simplified handling and lower costs was warmly accepted by many large companies looking for ways to distribute their goods faster and cheaper to the country's major markets.

Although Overmyer initially used rented facilities in expanding to other cities, in the middle 1950's he began to buy choice sites and to have new buildings constructed which he owned. The real estate values inherent in these properties and the prospects of assured revenues from the national concerns using the warehouse facilities produced a ready supply of long-term credit for purposes of constructing the new warehouse facilities. Over approximately the last ten years the Overmyer Warehouse companies have generated first mortgage loans substantially in excess of \$100,000,000 for construction of over 16,000,000 square feet of warehouse facilities in 55 major consumer markets in the United States and Canada.

One of the better contractors used by Overmyer to construct the buildings during the initial part of the expansion program was a W. J. Nixon, who later organized Nixon Construction Company. When Overmyer began to implement his program for a national system, the Green & White Construction Co. was formed and became Overmyer's principal contractor. Nixon Company became a subsidiary of Green & White (Overmyer has an option to buy Green & White's stock). Green & White has operated since in close association with the Overmyer companies. It set up a field organization and had the construction done principally by local subcontractors. Large-scale building began in 1965, and between January 1965 and August 1966, Overmyer increased its warehouse space from approximately 2,000,000 to 8,000,000 square feet with an additional 8,000,000 square feet under construction.

In the summer of 1966, however, complaints began to reach the Overmyer Warehouse Company that Green & White was unduly slow in paying its subcontractors on Overmyer jobs. The initial inquiry indicated that the general restriction of credit usually available to subcontractors accounted for pressure on Green & White for accelerated payment. But further investigation showed that Green & White, probably due in large part to the great inflation in construction costs in 1966 and to the extensive scope of its undertakings, lost money on many of its projects, had a large deficit and owed millions of dollars to subcontractors. Overmyer's warehousing operations were soon seriously hampered, because completion of buildings was delayed and commitments to serve customers could not be met, and because the liens placed on its buildings by subcontractors prevented expected loans from being consummated.

The Overmyer Warehouse Company had no alternative under the circumstances to assuming and endeavoring to pay the liabilities of Green & White. This presented Overmyer with a critical two-pronged problem: (1) payment of the debts required cash of many millions of dollars which the Warehouse Company did not have; and (2) the construction and—it had become increasingly evident—anticipated large early operating deficits of Overmyer's six UHF stations—already faced Overmyer with demands upon most of the cash the warehousing operations could be expected to generate over the next few years.

Study of these financial problems made it clear that there was but one solution. It did not appear that Overmyer, with the first mortgages on its principal assets, had the resources to produce the cash needed to meet both Green & White debts and the requirements of the UHF stations. Trying to preserve the UHF enterprises alone was futile because they depended on the cash which the warehousing operations and assets alone could produce. Unless the warehousing operation could be preserved, everything would be lost. Hence, Overmyer was forced to

adopt the alternative of paying the Green & White debts in order to keep the warehousing operations viable and of trying to get relieved of the substantial present and prospective cash drain caused by the UHF stations.

Accordingly, during the latter part of 1966 and early 1967, Overmyer explored the double approach of (1) extending payment of Green & White debts and putting payment of them on an orderly schedule over a period of two-three years, and of trying to realize some present cash from the warehousing properties by means of sale-leasebacks, and (2) trying to find a partner, preferably a minority stockholder, in the UHF stations, which would provide financing necessary to carry them. Considerable progress has been made in making arrangements for the orderly liquidation of the Green & White debts and in generating cash through sale-leasebacks. The attempt to find a minority stockholder for the UHF operations was unsuccessful; accordingly, the present arrangement was worked out with A.V.C. Corporation, the proposed transferee, under which Overmyer would be able to (1) get back part of his overall investment in UHF, (2) retain a significant interest (20%) in the UHF operations, the future financing of which will be largely the obligation of the proposed transferee, and (3) realize through loans from A.V.C. cash needed to meet the early maturing Green & White obligations.

It was originally thought that it would be necessary for Overmyer also to sell his Toledo UHF station, which is still operating at a deficit. But with the success of the other measures described above, it is the present intention to keep WDHO-TV and to bring it to a profitable status.

Mr. Overmyer entered UHF broadcasting with the full expectation of not only placing all the stations on the air, but of financing the early deficits through loans and by warehousing profits. Not only has WDHO-TV been on the air over a year, but as shown in Exhibit II hereto, plans were proceeding according to schedule to put all or most of the other five stations on the air during 1966 when the rug was pulled out during the latter part of 1966 by the unexpectedly large deficit of the company constructing the warehouses. If the efforts to realize cash through sale-leasebacks of the warehouses continue successfully, and if the present transaction with A.V.C. is consummated, it is expected that the Green & White debts can be paid off over the next two-three years and that the warehouse operations can be preserved.

APPENDIX C(1)

A.V.C. CORP., 100 WEST 10TH STREET,
WILMINGTON, DEL., May 2, 1967.

Mr. D. H. OVERMYER,
New York, N.Y.

DEAR MR. OVERMYER: This will confirm the understanding between us concerning correction of the inadvertent omission of a provision for interest applicable to the down payment made March 28, 1967 under our Stock Purchase Agreement of that date.

In accordance with the provisions of the Stock Purchase Agreement the sum of \$1,000,000 paid to you on March 28, 1967 is to be applied as a down payment on account of the purchase by A.V.C. Corporation ("AVC") of certain shares of stock of the "T.V. Companies" there identified, or, if that purchase is not consummated, it is to be returned by you to AVC. It was and is further intended that the down payment bear interest until the occurrence of either of these alternatives.

Therefore, it is agreed that the Stock Purchase Agreement dated March 28, 1967 is deemed to be amended hereby to provide that the sum of \$1,000,000 paid to you by AVC on that date bears interest, and that as to such interest the following conditions apply:

1. *Terms.*—Interest begins as of March 28, 1967 and, as to any part of the said \$1,000,000, continues until such part either, (a) is actually applied to the purchase price at a closing under the Stock Purchase Agreement, or (b) is repaid to AVC.

2. *Rate.*—Interest is at the rate of 5¾% per annum, subject to the following: effective as of the date of closing of the First Loan (as defined in a loan agreement dated March 28, 1967 between AVC and you and certain companies affiliated with you) the rate of interest applicable to the First Loan, if other than 5¾% per annum, will also apply hereunder.

3. *Payments.*—Interest accruing with respect to each calendar month will be due and payable to AVC on the first day of the calendar month next following, except that interest for the period from March 28, 1967 to April 30, 1967 will be due and payable on May 2, 1967.

Kindly signify your agreement with the foregoing by signing and returning the enclosed counterpart of this letter.

Very truly yours,

F. H. REICHEL, Jr.,
President.

D. H. OVERMYER.

Agreed:

APPENDIX C(2)

PLAN AND AGREEMENT OF MERGER

Plan and agreement of merger ("Agreement") made the 8th day of June, 1967, between U. S. Communications Corporation, a Delaware corporation ("Communications") and the directors thereof, and Philadelphia Television Broadcasting Company ("WPHL").

Whereas, WPHL is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and Communications is a corporation duly organized and existing under the laws of the State of Delaware; and

Whereas, the Boards of Directors of WPHL and Communications deem it advisable and for the benefit of their respective corporations and their shareholders that WPHL be merged into Communications on the terms hereinafter set forth, and such Boards of Directors accordingly have approved this Plan and Agreement of Merger (hereinafter called this "Agreement");

Now, therefore, WPHL and Communications agree that pursuant to the applicable statutes of Delaware and Pennsylvania, and subject to the conditions hereinafter set forth, WPHL shall be merged into Communications, which shall be (and is hereafter sometimes referred to as) the surviving corporation and that the terms and conditions of such merger shall be as follows:

1. *Approvals and Merger.*—This Agreement shall be submitted to the stockholders of Communications as provided by the laws of Delaware and to the stockholders of WPHL as provided by the laws of Pennsylvania. Upon the approval thereof by the requisite votes of the shareholders of both constituent corporations under such laws, subject to the provisions of this Agreement, all requisite documents shall be filed promptly in the appropriate governmental offices pursuant to such laws, and thereupon the merger of WPHL into Communications shall become effective.

2. *Effects of Merger.*—When the merger becomes effective:

A. The certificate of incorporation of Communications as in effect on the date hereof and set forth in Exhibit A hereto shall continue in full force.

B. The bylaws of Communications as in effect on the effective date of the merger shall continue in full force.

C. The number of directors of Communications shall be not less than five nor more than seven, and the initial directors shall be the following, who shall serve until their successors have been elected and qualified: William A. Banks, Joseph L. Castle, Aaron J. Katz, Frank H. Reichel, Jr., and Leonard B. Stevens.

D. The initial officers of Communications shall be as follows: Joseph L. Castle, Chairman of the Board; Frank H. Reichel, Jr., President and Treasurer; Aaron J. Katz, Vice President; Leonard B. Stevens, Vice President; and Thomas V. Lefevre, Secretary.

E. The shares of capital stock of WPHL shall automatically be converted into and become securities of Communications as set forth in Section 3 below.

F. The separate existence of WPHL shall cease (except insofar as it may be continued by statute) and Communications, as the surviving corporation, shall continue to exist by virtue of and shall be governed by the laws of Delaware with its present name. All property of every description, real, personal and mixed, interests, rights, privileges, powers and franchises of Communications prior to the merger shall not be affected by the merger, and at the time of merger Communications shall, without further act or deed, own and possess all the property of every description, real, personal and mixed, interests, rights, privileges, powers and franchises of WPHL, all as provided by the General Corporation Law of the State of Delaware and the Business Corporation Law of Pennsylvania. Also as

provided by those laws, all rights of creditors and of any persons dealing with the constituent corporations and all liens upon any property of the constituent corporations shall be preserved unimpaired by the merger, and all debts, liabilities, obligations and duties of WPHL shall thenceforth attach to Communications and may be enforced against it to the same extent as if the same had been incurred by it.

3. *Conversion of Shares.*—A. The basis for conversion of shares of the capital stock of the constituent corporations outstanding on the effective date of the merger into shares of stock of Communications on such date shall be as follows:

(i) the outstanding shares of Communications capital stock shall remain unchanged;

(ii) each share of Class A Common Stock and of Class B Common Stock of WPHL shall automatically be converted into five shares of Communications Common Stock, par value ten cents per share;

(iii) all treasury shares, of all classes, of WPHL shall be cancelled;

(iv) each outstanding share of Preferred Stock, without par value, of WPHL shall be converted into \$12 principal amount of 6% Subordinated Debentures of Communications, dated and bearing interest from the effective date of the merger, stated to mature on the sixth anniversary of the effective date of the merger, subject to prepayment at any time, but will not be entitled to the benefit of any sinking, amortization or purchase fund. Each such debenture will provide for prepayment of 25% of the principal amount thereof, together with accrued interest, at the option of the holder thereof upon any interest date upon presentation by such holder not less than 10 days prior to such date.

B. After the effective date of the merger each holder of an outstanding certificate representing shares of Class A Common Stock and of Class B Common Stock of WPHL shall surrender the same to Communications and thereupon each such holder shall be entitled to receive a certificate or certificates for the number of shares of Common Stock, ten cents par value per share, of Communications on the basis provided in clause (ii) of Subsection 3A above, and each holder of an outstanding certificate representing shares of Preferred Stock of WPHL shall surrender the same to Communications and thereupon each such holder shall be entitled to receive one or more Subordinated Debentures of Communications in the principal amount determined as provided in clause (iv) of Subsection 3A above. Until so surrendered the outstanding certificates for shares of capital stock of WPHL so converted into the securities of Communications shall be deemed and may be treated by Communications for all corporate purposes as evidencing the ownership of shares and Subordinated Debentures, respectively, of Communications as though said surrender and exchange had taken place, provided that dividends and other distributions payable to holders of Communications Common Stock and payments of interest or principal on the Subordinated Debentures of Communications shall be paid to the holders of unexchanged WPHL certificates only when such certificates have been surrendered for exchange as provided above.

C. When the merger becomes effective the holders of the capital stock of all classes of WPHL shall cease to have any rights in respect of such stock, except as provided above, and except for such rights, if any, as they may have under Section 515 of the Business Corporation Law of Pennsylvania.

4. *Condition.*—Notwithstanding anything to the contrary expressed or implied herein, the merger shall not become effective until all of the terms and conditions set forth in an Agreement dated June 8, 1967, by and among A.V.C. Corporation, Communications, WPHL, William A. Banks, Aaron J. Katz, Leonard B. Stevens, Donald Heller and Joseph L. Castle (the Shareholders' Agreement) shall have occurred. In the event that the foregoing condition shall not have been performed prior to the termination of the Shareholders' Agreement, then this Agreement may be terminated by the Board of Directors of either constituent corporation by adopting a resolution to that effect and delivering a copy to the other constituent corporation. In such event no further action by the shareholders of either constituent corporation shall be required, and such termination shall be without further liability of either constituent corporation to anyone.

5. *Miscellaneous.*—(a) Communications, as the surviving corporation, shall, promptly following the effective date of the merger, transfer all of the properties, rights and franchises received in the merger, subject to all of the liabilities assumed therein, to a wholly-owned subsidiary of Communications. (b) Except as otherwise expressly provided in this Agreement, nothing herein expressed or implied is intended, or shall be construed, to confer upon or to give any person,

firm or corporation, other than Communications and WPHL and their respective shareholders, any rights or remedies under or by reason of this Agreement.

In witness whereof, this Agreement has been signed by all of the Directors of Communications on its behalf and by the President or Vice President of WPHL on its behalf, and each of such corporations has caused its corporate seal to be hereunto affixed and attested by its respective Secretary or Assistant Secretary, all as of the date first above written.

[CORPORATE SEAL]

U.S. COMMUNICATIONS CORP.,
By FRANK H. REICHEL, JR.,
JOSEPH L. CASTLE,
THOMAS V. LEFEVRE,

(All of the Directors of U.S. Communications Corp.)
THOMAS V. LEFEVRE, *Secretary.*

Attest:

[CORPORATE SEAL]

PHILADELPHIA TELEVISION BROADCASTING CO.
By AARON J. KATZ, *President.*
DONALD K. HELLER, *Secretary.*

Attest:

APPENDIX C(3)

DEED RECORD, JANUARY 22, 1968

This agreement made this 15th day of January, 1968, by and among D. H. Overmyer Co., Inc., a Texas corporation (hereinafter called "Overmyer") with offices at 201 East 42nd Street, New York, N.Y., 10017, A.V.C. Corporation, a Delaware corporation (hereinafter called "A.V.C.") with offices at 100 West 10th Street, Wilmington, Delaware, and U.S. Communications Corporation (hereinafter called "U.S.C.C.") with offices at 100 West 10th Street, Wilmington, Delaware.

WITNESSETH:

Whereas, pursuant to an original loan agreement dated March 28, 1967, between A.V.C., Daniel H. Overmyer, D. H. Overmyer Co., Inc., an Ohio corporation and the wholly-owned subsidiaries of said D. H. Overmyer Co., Inc., an Ohio corporation, listed in Exhibit "A" thereto, one of which subsidiaries was Overmyer, as supplemented by a supplemental loan agreement dated May 3, 1967, A.V.C. loaned the sum of \$385,500.00 to Overmyer, which represented a portion of the First Loan referred to in said original loan agreement, evidenced by the Promissory Note given by Overmyer to A.V.C. in the stated principal amount of \$690,000.00, the repayment of which is secured *inter alia* by a Deed of Trust upon the premises more particularly described in Exhibit "A" attached hereto and made a part hereof (said premises being hereinafter called the "Premises") and bearing even date therewith, which Deed of Trust is recorded in Vol. 67087, page 1426 of the Deed of Trust Records of Dallas County, Texas (hereinafter called the "Deed of Trust") and a Conditional Assignment of Rents, Issues and Profits with respect to the Premises recorded in Vol. 67087, page 1442 of Deed Records of said County (herein called "Conditional Assignment"), and

Whereas, said original loan agreement was further supplemented by three supplemental loan agreements dated August 24, 1967; September 7, 1967; and January 10, 1968, respectively (which original loan agreement and said supplemental loan agreements are herein collectively called the "Loan Agreement"), and

Whereas, pursuant to the said supplemental loan agreements dated August 24 and September 7, 1967, A.V.C. loaned the sum of \$56,150.00 (herein called the "Substitute Loan") to Overmyer, representing a portion of the aforesaid First Loan, evidenced by the Promissory Note given by Overmyer to A.V.C. in the amount of the Substitute Loan (the said Promissory Notes hereinafter referred to as "Note No. 1"; and the aggregate loan amount evidenced thereby being hereinafter referred to as the "First Loan Indebtedness").

Whereas, A.V.C. has assigned, transferred and set over unto U.S.C.C. all of its rights and obligations under the Loan Agreement; and

Whereas, A.V.C. desires to assign unto U.S.C.C. Note No 1, the Deed of Trust and the Conditional Assignment; and

Whereas, pursuant to the Loan Agreement, U.S.C.C. has loaned the sum of \$441,650.00 (herein called the "Second Loan Indebtedness") to Overmyer, which Indebtedness represents a portion of the Second Loan referred to in the Loan Agreement and Overmyer has executed and delivered to U.S.C.C. its Promissory Note (herein called "Note No. 2") in such amount; and

Whereas, U.S.C.C. and Overmyer desire that the Deed of Trust and Conditional Assignment shall also secure the Substitute Loan and the Second Loan Indebtedness.

Now, therefore, the parties hereto covenant, promise and agree as follows:

1. A.V.C. for and in consideration of \$441,650.00 does hereby assign, transfer and set over unto U.S.C.C. Note No. 1, the Deed of Trust, the Conditional Assignment and all its estate, right, title and interest in and to the Premises.

2. Overmyer represents and warrants to U.S.C.C. that the First Loan Indebtedness is still owing with interest and that it has no charge, claim, demand, plea or set-off upon or against the same, or against Note No. 1, the Deed of Trust, the Conditional Assignment or any other instrument executed or delivered by it pursuant to the Loan Agreement.

3. The Deed of Trust and the Conditional Assignment are hereby respectively amended and supplemented so that the same, and each of them, shall secure: (a) the payment by Overmyer to U.S.C.C. of the Substitute Loan and the Second Loan Indebtedness as well as the First Loan Indebtedness, together with interest thereon, the principal amounts of said Indebtedness being payable as set forth in the Loan Agreement; (b) the observance and performance by Overmyer of all of the terms, covenants, agreements and conditions on its part to be observed and performed as contained in: (i) Note No. 1 and Note No. 2; (ii) in those certain Guaranties dated April 29, 1967 and October 1, 1967, given and executed by Overmyer to A.V.C. and since assigned to U.S.C.C. as well as in a certain Guaranty bearing even date herewith given and executed by Overmyer to U.S.C.C.; (iii) the Loan Agreement; (iv) the Deed of Trust; and (v) the Conditional Assignment, all of which terms, covenants, agreements, and conditions are herein incorporated by reference and which Overmyer covenants and agrees to observe and perform.

4. In confirmation and furtherance of the foregoing and in no way in limitation thereof Overmyer does hereby: (a) grant, sell and convey unto Sam French, Trustee, and his successors in trust, the Premises together with all and singular the hereditaments, tenements, rights, privileges and appurtenances thereunto belonging or in anywise appertaining, and (b) sell, assign, transfer and set over unto U.S.C.C. all of the rents, issues and profits of the Premises, such assignment to be operative upon any default being made by Overmyer under the terms of the Deed of Trust, Note No. 1, Note No. 2 or the Conditional Assignment.

5. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

In witness whereof, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

[CORPORATE SEAL]

Attest:

[CORPORATE SEAL]

Attest:

[CORPORATE SEAL]

Attest:

STATE OF NEW YORK,
County of New York, ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared D. H. Overmyer, Chairman and Chief Executive Officer of D. H. OVERMYER CO., INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said D. H. OVERMYER CO., INC., a Texas

corporation, and that he executed the same as the act of such Corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this, the 15th day of January 1968.

RICHARD F. LERCH,

Notary Public in and for New York County, N.Y.

STATE OF NEW YORK,
County of New York, ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared F. H. Reichel, Jr., President of A.V.C. CORPORATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said A.V.C. CORPORATION, a Delaware corporation, and that he executed the same as the act of such Corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this, the 18th day of January, A.D., 1968.

RICHARD F. LERACH,

Notary Public in and for New York County, N.Y.

STATE OF NEW YORK,
County of New York, ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared F. H. Reichel, Jr., President of U.S. COMMUNICATIONS CORPORATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said U.S. COMMUNICATIONS CORPORATION, a Delaware corporation, and that he executed the same as the act of such Corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this, the 15th day of January, A.D., 1968.

RICHARD F. LERACH,

Notary Public in and for New York County, N.Y.

EXHIBIT "A," DALLAS No. 1

Situated in Dallas County, State of Texas, to wit: Being a 6.128 acre tract of land out of the James McLaughlin Survey, Abst. No. 845, City of Dallas, Block No. 7698 Dallas County, Texas, said tract being part of a 15 acre tract of land conveyed to E. W. Conrad by Irving Boulevard Industrial Acres, Inc. by deed dated Sept. 19, 1951; said tract also being part of a tract of land acquired by C.R.I. & P.R.R. on Nov. 7, 1953; said tract being more particularly described as follows: BEGINNING at the intersection of the south line of Halifax Street and the west line of Westmoreland Road; THENCE S. 0 deg. 05' 30" W, with the said west line of Westmoreland Road, 395.91 feet to a point for corner; THENCE N. 89 deg. 31' 00" W, 666.84 feet to a point for corner; THENCE N. 0 deg. 05' 30" E. 404.70 feet to a point for corner in the said south line of Halifax Street; THENCE S. 88 deg. 46' 00" E, with said south line of Halifax Street, 666.95 feet to the place of beginning, containing 266,952.67 square feet or 6.128 acres of land.

Filed January 22, 11 AM, 1968.

State of Texas, County of Dallas.

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the named records of Dallas County, Texas as stamped hereon by me,
January 22, 1968.

TOM E. ELLIS,

County Clerk, Dallas County, Texas.

APPENDIX C(4)

CONDITIONAL ASSIGNMENT OF RENTS, ISSUES AND PROFITS

This agreement, entered into this 24 day of April 1967, between D. H. Overmyer Co., Inc., a Texas corporation, with an office located at 201 East 42nd Street, New York, N.Y. 10017 (hereinafter called "Overmyer") and A.V.C. Corporation, a

Delaware corporation, with offices at 100 West 10th Street, Wilmington, Delaware, 19899 (hereinafter called "A.V.C."),

WITNESSETH :

Whereas, Overmyer is the present owner in fee simple of property briefly described as A tract of 6.12 acres out of the James McLaughlin Survey, Abstract No. 845, Block No. 7698, (Dallas No. 1) in the City of Dallas, County of Dallas, State of Texas and A.V.C. is the owner and holder of a second mortgage covering the said premises, made by Overmyer to A.V.C. under date of April 24, 1967, and

Whereas, A.V.C., as a condition to its mortgage loan to Overmyer has required the execution of this assignment of the rents, issues and profits of the mortgaged premises by Overmyer ;

Now, therefore, in order further to secure the payment of the indebtedness of Overmyer to A.V.C., and in consideration of the loan represented by the aforesaid mortgage and the note secured thereby, and in further consideration of the sum of One Dollar paid by the A.V.C. to Overmyer, the receipt of which is hereby acknowledge, Overmyer does hereby sell, assign, transfer, and set over unto A.V.C. all of the rents, issues and profits of the aforesaid mortgaged premises, this assignment to become operative upon any default being made by Overmyer under the terms of the aforesaid mortgage or the note secured thereby, and to remain in full force and effect so long as any default continues to exist in the matter of the making of any of the payments or the performance of any of the covenants set forth in the aforesaid mortgage or the note secured thereby.

1. In furtherance of the foregoing assignment, Overmyer hereby authorizes A.V.C., by its employees or agents, at its option, after the occurrence of a default as aforesaid, to enter upon the mortgaged premises and to collect, in the name of A.V.C., or in its own name as assignee, the rents accrued but unpaid and in arrears at the date of such default, as well as the rents thereafter accruing and becoming payable during the period of the continuance of the said or any other default; and to this end, Overmyer further agrees that it will facilitate in all reasonable ways A.V.C.'s collection of said rents, and will, upon request by A.V.C., execute a written notice to each tenant directing the tenant to pay rent to A.V.C.

2. Overmyer also hereby authorizes A.V.C. upon such entry, at its option, to take over and assume the management, operation and maintenance of the said mortgaged premises and to perform all acts necessary and proper and to expend such sums out of the income of the mortgaged premises as may be needful in connection therewith, in the same manner and to the same extent as Overmyer theretofore might do, including the right to effect new leases, to cancel or surrender existing leases, to alter or amend the terms of existing leases, to renew existing leases or to make concessions to tenants; Overmyer hereby releasing all claims against A.V.C. arising out of such management, operation and maintenance, excepting the liability of A.V.C. to account as hereinafter set forth.

3. A.V.C. shall, after payment of all proper charges and expenses, including reasonable compensation to such Managing Agent as it shall select and employ, and after the accumulation of a reserve to meet taxes, assessments, water rents, and fire and liability insurance in requisite amounts, credit the net amount of income received by it from the mortgaged premises by virtue of this assignment, to any amounts due and owing to it by Overmyer under the terms of mortgage and the note secured thereby, but the manner of the application of such net income and what items shall be credited, shall be determined in the sole discretion of A.V.C. A.V.C. shall not be accountable for more moneys than it actually receives from the mortgaged premises; nor shall it be liable for failure to collect rents. A.V.C. shall make reasonable effort to collect rents reserving, however, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted.

4. In the event, however, that Overmyer shall reinstate the mortgage loan completely in good standing, having complied with all the terms, covenants and conditions of the said mortgage and the note secured thereby, then A.V.C. within one month after demand in writing shall re-deliver possession of the mortgaged premises to Overmyer, who shall remain in possession unless and until another default occurs, at which time A.V.C. may at its option again take possession of the mortgaged premises under authority of this instrument.

5. Overmyer hereby covenants and agrees not to collect the rents of the said mortgaged premises in advance, other than as required to be paid in advance by the terms of any rental agreement, and further agrees not to do any other act which would destroy or impair the benefits to A.V.C. to this assignment.

6. It is not the intention of the parties hereto that an entry by A.V.C. upon the mortgaged premises under the terms of this instrument shall constitute A.V.C. a "mortgage in possession" in contemplation of law, except at the option of A.V.C.

7. This assignment shall remain in full force and effect as long as the mortgage debt to A.V.C. remains unpaid in whole or in part.

8. The provisions of this instrument shall be binding upon Overmyer and its legal representatives, successors or assigns and upon A.V.C. and its successors or assign. The provisions of this instrument applicable to Overmyer shall be construed to be applicable to any one or more persons or parties who are holders of the legal title or equity of redemption to or in the aforesaid mortgaged premises. The word "note" shall be construed to mean the instrument, whether note or bond, given to evidence indebtedness held by A.V.C. against the mortgaged premises, and the word "mortgage" shall be construed to mean the instrument securing the said indebtedness, owned and held by A.V.C., whether such instrument be mortgage, loan deed, trust deed or otherwise.

9. This assignment shall be subject to (i) such prior assignments or pledges of the rents, issues and profits of the mortgaged premises and (ii) such prior assignments of Landlord's interest in any lease of the whole or any part of the mortgaged premises, as Overmyer may have executed in conjunction with the first mortgage of the mortgaged premises to New England Mutual Life Insurance Company or otherwise.

It is understood and agreed that a full and complete release of the aforesaid mortgage shall operate as a full and complete release of all A.V.C.'s rights and interest hereunder, and that after said mortgage has been fully released this instrument shall be void and of no further effect.

In witness whereof, the undersigned has caused this instrument to be executed in its corporate name by its Chairman and Chief Executive Officer and its corporate seal to be hereto affixed and attested by its Secretary, all in pursuance of authority duly given by its Board of Directors as of this the day and year first above written.

Attest:

D. H. OVERMYER,
D. H. OVERMYER Co., Inc.,
(a Texas corporation).

CORPORATION ACKNOWLEDGEMENT

STATE OF NEW YORK
County of New York:

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared D. H. Overmyer, Chairman and Chief Executive Officer of D. H. Overmyer Co., Inc., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said D. H. Overmyer Co., Inc., a Texas corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 24 day of April A.D., 1967.

PHYLLIS PRESSLER,
Notary Public in and for New York County, New York.

STATE OF TEXAS,
County of Dallas:

I hereby certify that this Instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the named records of Dallas County, Texas as stamped hereon by me.

May 2, 1967.

TOM E. ELLIS,
County Clerk, Dallas County, Texas.

HON. ROSEL H. HYDE,
Chairman, Federal Communications Commission,
Washington, D.C.

DEAR CHAIRMAN HYDE: This refers to your letter of March 18, 1968, transmitting answers to the twenty-six questions regarding the Overmyer transfer and Chairman 'Stagers' further letter to you on this subject dated April 12 (copy attached for your ready reference).

I have fully reviewed the material submitted and must advise that the composite response by the Commission to said questions does not satisfy the Subcommittee's informational needs in this matter. Nor do the answers fully amplify the essential points raised.

Therefore, as a member of the Special Subcommittee, I must urge that each Commissioner reply *individually*, and in *detail*, to these questions. A copy of this request is being directed accordingly.

Very truly yours,

JOHN E. MOSS.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 12, 1968.

Re Docket Nos. BAPCT-352, 351, 354, 364, 3463; BTC-5376, 5377, 5378, 5379, 5380, et al.

HON. ROSEL H. HYDE,
Chairman, Federal Communications Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: Before resuming our hearings, the subcommittee wishes written assurance that it has received the following documents from the Commission and each of its members:

1. The complete record, upon which the Commission and each of its members acted in approving the original CP grants to D. H. Overmyer (for Pittsburgh, Atlanta, Cincinnati, Houston and San Francisco), and all subsequent proceedings and actions taken in connection therewith, prior to their transfer to AVC Corporation.

2. The complete record covering Overmyer's application for consent to transfer to AVC Corporation, for each of the above-mentioned CPs.

3. Any other application, document, report, memorandum or writing which was before the Commission and each of its individual members at the time of (a) the original CP grants shown above; (b) each subsequent proceeding and action taken in connection therewith; and (c) the application for consent to transfer said CPs to AVC.

Under date of March 18, 1968, you transmitted responses to 26 questions submitted on January 23, 1968 by the Committee to you and each member of the Commission. In your transmittal letter you state:

"Individual Commissioners perhaps would have worded replies to some of the questions differently, but the responses do reflect the views of a majority of the Commissioners."

I am asking you and each individual member of the Commission to supply his own answer to each of the questions, together with any comments he may wish to make.

A prompt response to these requests will be greatly appreciated since we are planning to resume hearings in the very near future.

With kind personal regards,

Sincerely yours,

HARLEY O. STAGGERS, *Chairman*.

HON. JOHN E. MOSS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MOSS: This will acknowledge your letter of May 15, 1968, concerning Chairman Hyde's answers to twenty-six questions regarding the Overmyer transfer as transmitted to the Chairman of the Committee on Interstate and Foreign Commerce on March 18, 1968. The question is presented as to whether my individual response to each of these questions would differ from those now before the Committee.

I have again reviewed the questions involved and I am in agreement with the responses thereto.

I feel sure you would be interested in the current status of television stations involved in the Overmyer transfer and the significant benefits already being received by the public. Station KEMO-TV, San Francisco, California, went on the air April 1, 1968. Station WXIX-TV, Newport, Kentucky, will go on the air in July 1968. Significant progress is also reported in construction of Stations WECO-TV, Pittsburgh, Pennsylvania; WBMO-TV, Atlanta, Georgia; and KJDO-TV, Rosenberg, Texas, with early in-service dates planned. These five stations will provide service to over six million people. The AVC Corporation, transferee of the Overmyer stations, has also diligently proceeded with modifications of Station WPHL-TV, Philadelphia, and on May 4, 1968, this station became the nation's first UHF facility with power in excess of four million watts. These improved facilities are serving over one million additional persons.

Sincerely,

ROBERT E. LEE, *Commissioner*.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., June 6, 1968.

HON. JOHN E. MOSS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MOSS: This is in reply to your letter of May 15, 1968, addressed to each member of the Commission, and relating to Chairman Hyde's response to the request of Congressman Stagers for information in connection with the Commission's consideration of a series of assignment and transfer of control applications of UHF-TV authorizations to AVC Corporation and related corporate entities.

As Chairman Hyde advised you in his letter of May 24, 1968, my answer has been delayed due to my absence from the country for the period May 24-June 2.

I carefully reviewed the responses submitted pursuant to the subcommittee's request, discussed them with my fellow Commissioners, and am in agreement with the accuracy of the formal responses as set forth in Chairman Hyde's March 18, 1968 letter.

Additional information which may be of significance is as follows, taken from the Commission's official records: the Overmyer interests acquired Station WECO-TV in Pittsburgh (File No. BAPCT-364) on March 10, 1965; and Station WXIX-TV (formerly WSCO-TV), Newport, Kentucky (Cincinnati metropolitan area) on the same date (File No. BAPCT-352). This was some two months before I assumed office on May 5, 1965. In addition, I did not participate in the Commission's action of August 12, 1965, granting a new construction permit to the Overmyer interests for new UHF station (BPCT-3518) in Rosenberg (Houston), Texas. That decision was rendered by a panel of the Commission composed of Chairman Hyde and Commissioner Cox.

I trust that this letter supplies the information which you have requested.

Sincerely yours,

JAMES J. WADSWORTH, *Commissioner*.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Foreign Operations and Government Information,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN MOSS: Reference is made to your letter of May 15, 1968, in which you advise Chairman Hyde that each Commissioner is urged to reply individually and in detail to the twenty-six questions in Chairman Stagers' letter of April 12, 1968.

I do not disagree with several of the Commission's answer,¹ but would point out that—while the statement of policies and procedures therein are substantially correct—practice is not always consistent with theory.

My answers to the other questions are set forth below:

Question 1. How does the Commission define "out-of-pocket expenses"?

Answer. While the Commission has not defined the specific term "out-of-pocket expenses," I believe that Section 1.525(a) of our Rules prescribes what they are.

"Out-of-pocket expenses" are involved in two situations, (a) agreements for dismissal of broadcast applications, and (b) transfers of construction permits.

In situation (a), Section 1.525(a) of the Commission Rules requires, among other things, that

"The affidavit of any applicant to whom consideration is paid or promised [for dismissing an application] shall, in addition include an itemized accounting of the expenses incurred in connection with preparing, filing and advocating his application, and such factual information as the parties rely upon for the requisite showing that such reported expenses represent *legitimate and prudent, outlays.*" (Italic added.)

This rule was implemented pursuant to Section 311(c) of the Communications Act.

My position in situation (a) is to vote for approval only when I can find that the "expenses incurred" were "legitimate and prudent outlays." I consider those as *bona fide* "out-of-pocket expenses."

The Commission has no similar rule provision as to situation (b). Actions are on an ad hoc basis. My position is that bare construction permits should not be transferred, except in *pro forma* cases, and accordingly, I believe that even "out-of-pocket expenses" should not be allowed in effectuating such transfers. Rather, I believe that the construction permit should be turned in so that others can apply for the facility.

Question 7. In 1965, when the Commission approved D. H. Overmyer's application for these 5 CP's, was it informed that he intended to develop a UHF network? If the Commission was so informed, did it request a showing by Overmyer as to the effect his network interest would have upon the financing of these 5 CP's?

Answer. I disagree with the last two sentences of the Commission's answer to this question. While I did not find that Overmyer was financially qualified, the Commission did, and I believe Overmyer's disclosure of the network proposal was, indeed, a very apparent reason why his financial qualifications should have been re-examined in light of the new and additional capital requirements. Whether Overmyer's warehouse empire was sound enough for his stations begs the question of whether he had adequate financial support for the stations and the network. Even in the absence of capital requirements for the network, I could not find from his financial showing that he was qualified to construct and operate the proposed stations.

Question 9. When Overmyer initially applied in 1964 and 1965 to purchase the CP's which he has transferred to AVC, he submitted cost and revenue estimates to the Commission. In its application to purchase these same CP's, filed approximately two years later, AVC estimated its costs, for the identical equipment, to be nearly double Overmyer's estimates, despite the fact that all existing executory contracts entered into by Overmyer for the purchase, construction and leasing of tangible property were assigned to AVC. What examination did the Commission make of these discrepancies? Are such discrepancies usual? Does the Commission have a procedure to verify such cost estimates submitted by applicant?

Answer. I believe that the direct answers are: (a) None, (b) Yes, (c) No.

¹ 2, 3, 4, 5, 6, 8, 13, 15, 18, 22, 23, 24, 25, 26; March 18, 1968, letter from Chairman Hyde.

It appears to be a not uncommon practice for applicants to specify minimum possible costs so that they can be found financially qualified with the money they have, and, once the construction permit is granted, actual construction and other costs substantially exceed estimated costs. I believe there was a substantial question of how realistic Overmyer's proposals were in the first place.

Question 10. What financial analysis does the Commission staff make of a CP applicant? Net worth? Liquidity? What rules, if any, govern such analysis?

Answer. The *Ultravision* test is sound, but proper administration of the test requires close scrutiny of applicants' estimates—and how realistic they are. This is not always done. I find myself dissenting frequently from the Commission's holdings that applicants are financially qualified.

Question 11. At the time Overmyer was granted these 5 CP's, was the Commission staff satisfied that he and/or the transferee corporations controlled by him possessed adequate liquidity to finance all the stations? If so, submit the Commission's financial analysis which supported this determination.

Answer. I did not find Overmyer financially qualified, as did the Commission majority.

I dissented to the grants for WBMO-TV, Atlanta, Georgia; and KEMO-TV, San Francisco, California.

I was absent when the grants were made for WSCO-TV, Newport, Kentucky; and KSDO-TV, Rosenberg, Texas.

I abstained on the grant for WECO-TV, Pittsburgh, Pennsylvania.

Question 12. In the present proceeding, did the Commission require Overmyer to submit documentation of any other attempts by him to finance the 5 CP's before it authorized the transfers to AVC?

Answer. I believe that the direct answer to this question is "No".

Question 14. Section 310(b) requires a finding by the Commission that the public interest, convenience and necessity will be served by a transfer of the CP. Submit specific findings of the Commission and reasons upon which such findings were based, that in each market area covered by each of the 5 CP's that the public convenience, interest and necessity was served by its transfer to AVC.

Answer. In my opinion, the fact that "the Commission had before it data pertinent to individual markets" does not support a conclusion that the Commission, pursuant to Section 310(b), found that a grant in each market would serve the public interest, convenience and necessity.

The "pertinent market data on a market-by-market basis" referred to were, generally, population figures and lists of other broadcast media serving the area—data, which I believe, are not the sole considerations in determining the public interest of the grants.

Question 16. Could the Commission have made a finding that it was in the public interest to have permitted the transfer of less than all 6 stations to AVC until AVC demonstrated its ability to operate at least one of these UHF stations satisfactorily? If so, was such action deliberated?

Answer. I do not agree with the answer, specifically the last sentence which states that "Ideally, the merits of such a policy would have to be explored in a general rulemaking proceeding, where all interested parties would have ample opportunity to comment."

I don't see such a matter as one of rulemaking, but, rather, one of conditional grant. Pursuant to our rules, a conditional grant can be rejected by an applicant within 30 days of the grant.

Question 17. In a Section 311(c)(3) situation the consideration that can be received by a withdrawing CP applicant is limited to an amount "determined by the Commission to have been legitimately and prudently expended by such applicant and to be expended in connection with preparing, filing and advocating the granting of an application." No other section of the Act limits the amount which can be paid in permit or license transfers. Nevertheless, the Commission has administratively created a rule that the transferor of a CP is limited to out-of-pocket expenses. Has the Commission promulgated a similar rule with respect to station license transfers?

Answer. I disagree with the statement—and the implications thereof—that "restrictions on station sales prices would constitute a form of administrative price-fixing."

The Commission's answer to this question admits that "Where a CP is transferred, the transferor is limited to recovering OPE's." A limitation as to what

the seller of a station could recover would not be administrative price-fixing any more than limitation as to CPs are.

Question 19. What "affirmative factual showing" did D. H. Overmyer make to support a waiver of the Commission's rule 1.597 ("Procedures on transfer and assignment of applications")? Submit any staff analysis supporting this waiver of Commission policy.

Answer. The Commission states that "No showing was necessary because the . . . 'three-year-rule' (Section 1.597) does not apply to transfers of permits." My answer is that it should.

The chief purpose of the rule was to retard trafficking in Commission authorizations.

The policy basis of the rule *does* have application to stations not constructed, because trafficking in Commission authorizations takes place through permittees of bare CP's bringing in, by transfer or assignment, new partners or stockholders with additional money. The original permittee profits by the additional money and increased value of the permit.

Question 20. What studies has the Commission made to determine whether group ownership of broadcasting licenses enhances competition?

Answer. I believe the direct answer is "None".

The Commission has made studies of multiple-ownership, but not to determine whether it "enhances competition".

In the "Top 50 Market Proceeding", Docket 16068, comments were requested on questions, among others, as to multiple ownership's role in competition and diversity of programming. But the Commission, in the Report and Order which was before it on February 7, 1968, stated as follows:

"13. Very little was offered in the comments in response to the specific questions raised in the Notice. Rather, the commenting parties concentrated their efforts on (1) disputing the Commission's conclusion that there has been a significant increase in the concentration of control in the largest markets, (2) arguing that the relevant market for consideration of concentration is the individual TV market where, because of our duopoly rules, there can be no concentration, and (3) attempting to prove that multiple ownership, in general, enjoys no competitive advantages over single-station ownership but, on the other hand, provides greater advantages to the public than does single-station ownership.

"14. In view of the foregoing, the comments, while voluminous, do not appear to have advanced our knowledge substantially in this area. * * *

My dissenting statement to the Commission's adoption of the Report and Order was as follows:

"It seems strange indeed that a bare majority of this Commission will, after admitting that the comments filed offered 'very little . . . in response to the specific questions raised,' insist on terminating this highly significant proceeding without benefit of the oral argument provided for therein. Does the majority feel that it would be less informed after oral argument?"

That dissenting statement was before the Commissioners along with the said Report and Order. However, the Report and Order which was made public on February 9, 1968 was changed to delete both the above-referenced paragraph 13 (from which I quoted in my dissent) and the first part of paragraph 14.

Question 21. Is it in the public interest to encourage group ownership of UHF stations? Is it in the public interest to encourage a network of UHF stations? If so, what competitive protection would be afforded non-network UHF licensees?

Answer. I dissented to the said Report and Order, referred to in the Commission's answer to this question.

I disagree with the Commission's statement that it "does not attempt to protect independent UHF or independent VHF stations from the normal forces of competition." The Commission *does* protect them—as well as network UHF and VHF stations—from the competition of CATV. Such protection—especially of UHF—is the very thrust of the CATV rules.

I appreciate this opportunity to present my views on the questions of the Special Subcommittee On Investigations

Respectfully yours,

ROBERT T. BARTLEY, *Commissioner.*

Hon. JOHN E. MOSS,
*Chairman, Subcommittee on Foreign Operations and Government Information,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN MOSS: This is in response to your letter of May 15, 1968, in which you indicated to Chairman Hyde that you would like each of the members of the Commission to reply individually to the twenty-six questions in Chairman Stagers' letter of April 12, 1968, I agreed generally with most of the answers submitted with Chairman Hyde's letter of March 18, 1968, though I would no doubt have phrased some of them differently. However, there are certain questions to which my answers would have been substantially different. These are as follows:

Question 9. When Overmyer initially applied in 1964 and 1965 to purchase the CP's which he has transferred to AVC, he submitted cost and revenue estimates to the Commission. In its application to purchase these same CP's, filed approximately two years later, AVC estimated its costs, for the identical equipment, to be nearly double Overmyer's estimates, despite the fact that all existing executory contracts entered into by Overmyer for the purchase, construction and leasing of tangible property were assigned to AVC. What examination did the Commission make of these discrepancies? Are such discrepancies usual? Does the Commission have a procedure to verify such cost estimates submitted by applicant?

Answer. I agree both with the answer forwarded with the Chairman's letter and with the supplemental answer furnished by Commissioner Bartley.

Question 10. What financial analysis does the Commission staff make of a CP applicant? Net worth? Liquidity? What rules, if any, govern such analysis?

Answer. I agree basically with the answer submitted by Chairman Hyde, though I agree with Commissioner Bartley that proper administration of the *Ultravision* test requires close scrutiny of applicants' estimates. In addition, I would have added that we have no rule governing the analysis of financial qualifications, our policies simply being set forth in the *Ultravision* case and in later decisions interpreting it. Further, I would have indicated that specific consideration is given to the matter of liquidity. In other words, the applicant's ability to meet costs of construction and of the first year of operation are normally measured in terms of cash in the bank, loan commitments, adequately supported stock subscriptions, marketable securities, or other readily convertible assets. If an applicant relies on real estate, stock in closely held corporations, or other assets which it may be difficult to convert into cash, an additional showing as to feasibility of conversion is required.

Question 12. In the present proceeding, did the Commission require Overmyer to submit documentation of any other attempts by him to finance the 5 CP's before it authorized the transfers to AVC?

Answer. I agree with Commissioner Bartley that the direct answer to this question is "no". The answer submitted with the Chairman's letter indicates only that Overmyer tried to find a partner who would accept a minority position in his UHF stations, but that this was unsuccessful. I think this falls short of a documented showing of significant efforts to find other ways of financing construction of the stations for which Overmyer held construction permits. If that had been his only problem, I suspect that other financing might have been found since I believe that the prospects for UHF stations in the markets concerned are basically good. However, Overmyer's main problem was to obtain funds for his warehouse operations. I have therefore been concerned that the transfer of the stations was cast in the form employed in order to produce more money, in the form of payments and of loans, than could have been derived from an outright sale of the construction permits for an amount reasonably reflecting Overmyer's out of pocket expenses. See my dissenting opinion in connection with the transfer.

Question 13. Page 12 of the Loan Agreement between AVC and Overmyer, dated March 28, 1967, states that as of February 28, 1967 the San Francisco licensee is indebted to the Pacific National Bank of San Francisco for \$350,000 and the Georgia licensee is indebted to the Girard Trust Company for \$300,000. Do these items appear as out-of-pocket expenses on any schedule filed in these pro-

ceedings? Since AVC assumed these debts, as part of its obligations under the Stock Purchase Agreement, isn't the gross consideration which AVC pays to Overmyer thereby increased by \$650,000?

Answer. I think the original answer submitted is accurate. However, I was not aware that any such problem was involved until this question was submitted by Chairman Staggers.

Question 14. Section 310(b) requires a finding by the Commission that the public interest, convenience and necessity will be served by a transfer of the CP. Submit specific findings of the Commission and reasons upon which such findings were based, that in each market area covered by each of the 5 CP's that the public convenience, interest and necessity was served by its transfer to AVC.

Answer. I do not agree with the original answer, except insofar as it indicates that the Commission did have before it, in the document submitted by our staff, information as to other broadcast media serving the broadcast markets in question, UHF set penetration, and perhaps other related matter. However, I do not think that any real effort was made to determine, as to each market individually, specific grounds for a finding that the transfer would be in the public interest. As I indicated in my dissent to the Commission's Order of December 8, 1967, I believe that the quoted language in paragraph 2 of the majority's opinion is totally inadequate. It is merely a conclusory statement which would justify the transfer of any UHF construction permit to a party having stronger financial backing than the transferor. I don't know whether I would have found that the public interest would be served by any of the transfers in any of the individual markets, but certainly I think that a deeper study would have been required for such a conclusion and that a better explanation for such a result should have been given.

Question 16. Could the Commission have made a finding that it was in the public interest to have permitted the transfer of less than all 6 stations to AVC until AVC demonstrated its ability to operate at least one of these UHF stations satisfactorily? If so, was such action deliberated?

Answer. I agree with much of the answer submitted with Chairman Hyde's letter. On a stronger showing, I might have been willing to permit AVC to acquire up to three of the permits, since that would have complied with our interim policy—always assuming, of course, that the price paid did not exceed Overmyer's out of pocket expenses in connection with those permits. It is true that it was a specific condition to the entire agreement that the Commission authorize transfer of all five of the permits. However, I agree with Commissioner Bartley that we could have made a partial grant, which the parties could have then either accepted or rejected.

Question 17. In a Section 311(c) (3) situation the consideration that can be received by a withdrawing CP applicant is limited to an amount "determined by the Commission to have been legitimately and prudently expended by such applicant and to be expended in connection with preparing, filing and advocating the granting of an application." No other section of the Act limits the amount which can be paid in permit or license transfers. Nevertheless, the Commission has administratively created a rule that the transferor of a CP is limited to out-of-pocket expenses. Has the Commission promulgated a similar rule with respect to station license transfers?

Answer. I agree that the Commission has treated transfers of construction permits and of station licenses differently. However, I agree with Commissioner Bartley that the logic of limiting the price of construction permits to the transferor's out of pocket expenses also applies to station transfers if the Commission were to attempt to limit a transferor to the recovery of his investment in the station and its facilities, plus some allowance for any goodwill and going concern value which he may have built up.

Question 20. What studies has the Commission made to determine whether group ownership of broadcasting licenses enhances competition?

Answer. I do not think the Commission has made any adequate studies, at least in recent years, of the problems of group ownership of broadcast stations, and certainly none which bears directly on the question as to whether such ownership enhances competition. It has often been argued that group owners have greater resources and can therefore bring additional competitive strength to a market if they are permitted to acquire a station there. Usually, however, this

is justified on the ground that one or more multiple owners already have ownership interests in the market, and so this is a kind of circular argument that if you once permit a multiple owner in a particular community, you have to allow all the other stations there to be transferred to multiple owners in order to equalize competition. It has always seemed to me that this agreement is self defeating in a number of ways. First, of course, it would lead to the total elimination of individual, local ownership of broadcast stations. In addition, it seems to imply that multiple owners have advantages in dealing with networks, program suppliers, advertisers, and in other important ways. This seems to me an admission that multiple owners, if they possess competitive advantages, do so in a way which benefits them but will ultimately produce anti-competitive results, to the detriment of single station owners and the public.

While the Commission, as is indicated in the original answer, has considered multiple ownership off and on over the years, it has not accumulated much in the way of real studies. The Barrow Report on Network Broadcasting, which was submitted to the Commission by its Special Network Study Staff in 1957, contains some analysis in this area. In addition, of course, our staff had submitted a study of trends in concentration of ownership which led us to adopt our interim policy. And our staff also prepared an analysis of the comments submitted in connection with our proposed tightening of the rules for ownership of the television stations in the top 50 markets, which indicated that the parties filing in that rule making proceeding had not demonstrated that multiple ownership produces any benefits for the public. I assume that these have been made available to the Committee.

I am sure studies in this area would be worthwhile, though I think they would be difficult and might produce inconclusive results. I have really always accepted as a sort of basic article of faith that the public interest is better served by a system of locally based, diversely owned broadcast facilities. I have always been concerned about the trend toward tighter and tighter control by major facilities by fewer and fewer owners, and have dissented to certain actions furthering this process. However, I must confess that these actions on my part have not been based on any clear proof that increased concentration will produce observable evil consequences. I simply believe it is not only unhealthy to have the media of mass communications controlled by relatively few entities, but that the conversion of broadcasting into a domain for publicly held conglomerate corporations results in too great an emphasis upon maximizing earnings, with consequent diminution in public service, especially on the local level.

Question 21. Is it in the public interest to encourage group ownership of UHF stations? Is it in the public interest to encourage a network of UHF stations? If so, what competitive protection would be afforded non-network UHF licensees?

Answer. I disagree with the answer submitted with Chairman Hyde's letter. I don't think it is in the public interest to encourage group ownership of UHF stations any more than it serves that interest to permit concentration in the ownership of VHF stations. The majority, in their action terminating the proceeding relating to multiple ownership in the top 50 markets, said, I thought, that such concentration in UHF is basically undesirable, and would be permitted only if a compelling showing were made that, on the particular facts of a given case, the public interest would be served by permitting further aggregation of broadcast ownership.

Nor am I certain it is in the public interest to encourage a network of UHF stations, at least if such an entity would be a pale copy of the three existing commercial networks. I think there are services which an independent station, either VHF or UHF, can provide to a community which would be lost if such stations around the country were tied together into a network like the ones we now have. The principal advantage of such a network would be that it would make it easier for UHFF stations to acquire programming which might have a better competitive chance against that of the existing networks. As a practical matter, I think no fourth network can come into existence until there are operating stations, VHF or UHF, in enough markets to provide access for advertisers to very nearly all the TV homes in America. That is still a long way off.

I do not understand the third portion of this question, so make no effort to answer it.

Question 22. Has the Commission determined that multiple ownership is a solution to the high cost of originating TV programs? If so, submit a copy of its pronouncements supporting such a determination.

Answer. I agree basically with the original answer to this question, though I think that relatively few multiple owners have made any significant contribution to the development of programming which is generally available for stations throughout the country. I have seen no evidence that this, or any other development in recent years, has solved the problem of increasing costs of TV programs. In fact, I suppose in some sense the added competition of new entrants into program production tends to bid up the costs of literary property, talent, and production facilities. However, I certainly believe there is a need for more competitive entities in the production of television programming, whatever the impact on costs. Further I agree with Commissioner Johnson's response to this question.

Question 23. Has the Commission determined that a single, independent UHF station cannot produce worthwhile TV programs in competition with local network affiliated or independent VHF licensees?

Answer. I agree basically with the original answer. There is nothing about the UHF technology which limits the imagination or the resources of money and experience which can be put into the operation of UHF stations. While some UHF licensees are not as well financed as their VHF competitors, and therefore have some limitation on their programming capability, I certainly hope that in time independent UHF stations will become quite competitive with VHF stations, both those which operate as independents and those affiliated with the networks.

Aside from the above, I am in basic agreement with the answers submitted with Chairman Hyde's earlier letter.

Very truly yours,

KENNETH A. COX, Commissioner.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., July 5, 1968.

Hon. JOHN E. MOSS,
Special Subcommittee on Investigations,
Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MOSS: This is with reference to your letter of May 15 in which you advised Chairman Hyde that each Commissioner was urged to reply individually to the 26 questions in Chairman Staggers letter of April 12, 1968. Please pardon my delay in following up on this.

To begin with I would like to point out that my term on the Commission began July 1, 1966, after Overmyer originally acquired the construction permits involved in this matter. Therefore, I would think it inappropriate to comment on the Commission's responses to questions pertaining to decisions made before I took office. As to other questions, I generally support the Commission's responses which were transmitted to the Committee. However, there are a number of significant questions on which I join my colleagues, Commissioners Bartley and Cox, in disputing the positions taken by the majority, as well as some questions on which I would like to express individual views.

In this connection I would point out that I joined Commissioners Bartley and Cox in dissent when the Commission approved the transfer of Overmyer construction permits to AVC on December 8, 1967.

The specific questions on which I would depart from the majority are:

Question 12. I support the response of Commissioner Cox.

Question 14. I support the responses of Commissioners Cox and Bartley.

Question 16. I support the response of Commissioner Cox.

Question 17. I support the response of Commissioner Bartley.

Question 19. I support the response of Commissioner Bartley.

Question 20. What studies has the Commission made to determine whether group ownership of broadcasting licenses enhances competition?

Answer. In my judgment, a separate response to this important question is called for. In the Commission's original answer, reference was made to the regulations dealing with multiple ownership which have been promulgated over

the years, and to the studies and/or inquiries from which these regulations were drawn.

In the first place, it ought to be pointed out that, as is revealed by the Commission's response, no action has been taken to restrict group ownership of broadcast stations by this agency since 1953.

In the second place, the agency has neither undertaken nor commissioned any genuine studies of the problems addressed by its multiple-ownership policies since that time. I believe the lack of such a study is most unfortunate, in view of the considerable uncertainty which surrounds this critical area of Commission responsibility. When the Commission decided, on the basis of a 4-3 vote, to terminate its rulemaking in Docket No. 16068, in which further restrictions on multiple-ownership had been proposed limiting ownership to three stations in the top fifty markets, the hypotheses at issue in the matter were substantially untested by empirical analysis. Opinions filed in connection with the Top Fifty proceeding, and in related actions taken in recent years, make reference to some of the hypotheses which deserve extended exploration. See *Houston Consolidated Television Co.*, 8 F.C.C. 2d 548, 549 (1967) (opinion of Commissioner Johnson) and *Harvey Radio Laboratories, Inc.*, 6 F.C.C. 2d 898, 900-02 (1966) (opinion of Commissioner Cox). See also my opinion dissenting to the majority's decision to terminate the Top Fifty proceeding, which is enclosed.

The Report on Network Broadcasting produced by the Commission's Network Study Office and published by the House Committee on Interstate and Foreign Commerce in 1958 includes analysis of the role of multiple-ownership policy as an instrument of the statutory objective of preserving competition in broadcasting. H.R. Report No. 1297, 85th Cong., 2d Sess. 106-124, 650-652 (1958). But this analysis ought now, ten years later, to be updated as well as expanded.

Prior to disposition of the Top Fifty proposal, the Commission staff provided the Commissioners with an admirable analysis of comments filed during the proceeding. This analysis did not, however, support the decision adopted by the majority.

Question 21. Is it in the public interest to encourage group ownership of UHF stations? Is it in the public interest to encourage a network of UHF stations? If so, what competitive protection would be afforded non-network UHF licensees?

Answer. I support response of Commissioner Bartley. I would also like to point out that my views on the issues raised by this question have been expressed in official context in dissenting opinions, most directly on the Commission's decision to terminate our Top Fifty rulemaking proceeding, and in the case of the Commission's approval of Metromedia's acquisition of KSAN in San Francisco. I have enclosed copies of my opinion.

Question 22. Has the Commission determined that multiple ownership is a solution to the high cost of originating TV programs? If so, submit a copy of its pronouncements supporting such a determination.

Answer. As the Commission's response to this question indicates, group broadcast owners possess a superior potential to originate television programs. Since television stations average nearly 100 percent return on tangible investment, each additional station adds considerably to a licensee's supply of interest-free capital; moreover, a multiple licensee has more outlets over which to spread the cost and risk of origination than does a single station owner.

However, the critical issue would seem to be whether *in fact* multiple-owners use this extra potential to create more television programs of their own than single-owners do. Under present circumstances, neither market incentives nor regulatory policies oblige broadcasters to pour profits back into extensive programming ventures. The Commission has not undertaken an extensive investigation of patterns of program origination but the record indicates that very few multiple-owners take it upon themselves to undertake program production on a scale which sets them apart from single-station owners.

For example the Commission staff has found that multiple owners owning more than the three stations (two VHF's) proposed as a limit in the recently terminated rulemaking proceeding originate more syndicated programs than do other owners (822 hours v. 7 hours in 1964); but of the 822 hours of original syndication, Westinghouse produced 540 hours, Triangle produced 211 hours, and three other owners accounted for the remaining 172 hours. None of the others produced any syndicated programming at all. Furthermore, although the same

class of group owners receive more quality awards for local programming (CBS in its filing in the rulemaking mentioned 43 such awards, of which 39 went to group-owned stations), 23 of those 39 went to Network owned stations and seven went to Westinghouse.

I welcome your interest in the important issues involved in the Commission's disposition of this matter. Once again I regret my delay in responding.

Sincerely,

NICHOLAS JOHNSON, *Commissioner.*

Before the Federal Communications Commission, Washington, D.C.

File Nos. BTC-5376, BTC-5377, BTC-5378, BTC-5379, BTC-5380

In re Application of

D. H. OVERMYER, TRANSFEROR

and

U.S. COMMUNICATIONS CORP., TRANSFEREE

For Voluntary Transfer of Control of D. H. Overmyer Communications Company, Inc., permittee of Stations KEMO-TV, San Francisco, California; WECO-TV, Pittsburgh, Pennsylvania; WSCO-TV, Newport, Kentucky; and WBMO-TV, Atlanta, Georgia; and for Voluntary Transfer of Control of D. H. Overmyer Broadcasting Company, Inc., permittee of Station KJDO-TV, Rosenberg, Texas.

In re Application of

PHILADELPHIA TELEVISION BROADCASTING Co., ASSIGNOR

and

U.S. COMMUNICATIONS CORP., ASSIGNEE

For Assignment of License of Station WPHL-TV, Philadelphia, Pennsylvania.

File No. BALCT-327

ORDER

Adopted: December 8, 1967. Released: December 11, 1967. By the Commission: Commissioners Bartley, Cox and Johnson dissenting and issuing statements; Commissioner Loevinger concurring and issuing a statement.

1. The Commission has before it the above-captioned transfer applications, under which D. H. Overmyer proposes to transfer control of the permittees of five UHF television station to U.S. Communications Corporation. The Commission also has before it the above-captioned assignment application, which proposes to assign the license for Station WPHL-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 R.R. 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 television 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 Company, Inc., permittee of Stations KEMO-TV, San Francisco, California; WECO-TV, Pittsburgh, Pennsylvania; WSCO-TV, Newport, Kentucky; and WBMO-TV, Atlanta, Georgia, from D. H. Overmyer to U.S. Communications Corporation, are granted.

IT IS FURTHER ORDERED, That, the application for transfer of control of D. H. Overmyer Broadcasting Company, Inc., permittee of Station KJDO, Rosenberg, Texas, from D. H. Overmyer to U.S. Communications Corporation, is granted.

AND, IT IS FURTHER ORDERED, That, the application for the assignment of the license of Station WPHL-TV, Philadelphia, Pennsylvania, from Philadelphia Television Broadcasting Company to U.S. Communications Corporation, is granted.

FEDERAL COMMUNICATIONS COMMISSION,*
BEN F. WAPLE, *Secretary.*

DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

In light of Commissioner Cox's dissenting statement, it is inconceivable to me that a majority of the Commission could vote to grant its consent to this transfer.

If this case should become precedent, I think the Congress may as well repeal Section 310(b) of the Communications Act and recognize that it is public policy that, once a permit is granted, it can be bartered at the convenience of the private parties, without placing on the Commission any responsibility for making a determination that the transfer is in the public interest.

The policy against profiteering from permits is one which has been followed by this Commission prior to the incumbency of any present member.

The Interim Policy, worked out after years of effort, had as one of its prime objectives the prohibition against sales of blocks of stations. Some of us in the majority believe that this would lead eventually to less concentration of the medium into fewer and fewer hands—even in the cases which were grandfathered in.

If I sense a trend in policies of multiple owners correctly, it will not be long before the antitrust laws will come into play, which will result in the divestiture by some of the grandfathered groups.

If there is a majority of the Commission prepared to scrap the Interim Policy, it should be done forthrightly and not on a case-to-case basis.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX

The majority's action here further erodes our interim policy against concentration of control of television facilities in the top 50 markets, but even more serious are the blows 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. As a consequence, I view this action as one of the most serious instances of the Commission's inability or unwillingness to discharge its regulatory functions that I know anything about. And to compound the problem, no one in the majority is willing to state for the record a rational justification for the result reached. Presumably no one will appeal this disposition of the matter, since both parties before us seek this outcome, but I do not think this absolves an agency like this Commission of the duty to state clearly the grounds for important actions which it takes—and I don't think anyone will dispute that this is an important and difficult case.

It is a truism that hard cases make bad law, and I think this represents a classic example. Mr. Overmyer was a very successful operator of a chain of warehouses. He developed a thriving and expanding business which generated substantial income. He became interested in UHF television, and decided to commit a substantial part of his profits to it. He acquired six construction permits in major markets, put one station on the air (in Toledo), and is here seeking approval of the sale of the remaining five permits (for San Francisco, Pittsburgh, Newport, Kentucky (the Cincinnati market), Rosenberg, Texas (the Houston market), and Atlanta).

I do not question Mr. Overmyer's sincerity in acquiring the permits, nor do I suggest that he sought them for the purpose of speculating in permits or licenses. I think he intended to build and operate the stations and expected them to be profitable—as I am sure they will be in time. He also embarked on an ambitious network project, which he turned over to others when he encountered financial difficulties.¹ These problems were encountered in his basic warehouse business

*See attached statements of Commissioners Bartley, Cox, Loevinger, and Johnson.
¹ The network ceased operation after a very short period.

I am satisfied that he is selling the permits because he is no longer able to implement them as planned, but also, I think, to raise funds to meet his commitments in the warehouse business. I hope he is successful in resolving his difficulties in the warehouse field, but do not believe the Commission has any obligation to stretch its rules or policies to accommodate him. I think the majority's action in doing just that is a serious disservice to the public interest which cannot be justified in terms of sympathy for an individual who has fallen into financial difficulties in a non-broadcast field.

I recognize that the Communications Act contemplates the alienability of construction permits, but it is clear that Congress has acquiesced—with approval, I believe—in our long-established policy limiting the price to be received for such a permit to the seller's reasonable out-of-pocket expenses in acquiring the permit. I think this is a wise and necessary policy which should be rigorously enforced in order to prevent speculation in permits.

There are very few businesses in which a man who plans on starting a new enterprise but is unable to open for business can recover all, or substantially all, of his expenditures in trying to establish his projected business. Normally his authorization to engage in the business is of no value because anyone can get one just like it, and his other expenditures may not represent items of any real value to someone else interested in his proposed business field. But anyone who wants to go into broadcasting must have a permit or a license, and it is usually much simpler to acquire an outstanding authorization than it is to prepare and file an original application, run the risk of competing applications, and, if any are filed, the delay, cost and risk of failure involved in a comparative hearing. So one who obtains a permit but later encounters difficulties can usually dispose of it without suffering any out-of-pocket loss. I think that is all anyone is entitled to expect, and our policy has always been to prevent such a permit holder from realizing a profit in disposing of the authorization. I think the majority is breaching that policy here.

We have been quite strict in holding sellers of permits to their actual expenses, and have often required the elimination of improper or doubtful items. Here, however, the majority has allowed Overmyer to claim credit for more than twice the amount spent directly by or for the five permittees. The balance (\$666,514) represents unreimbursed staff services furnished the permittees by other Overmyer companies, including legal, accounting, payroll, personnel, messenger, public relations and other services. The method of calculating this sum, as outlined by our staff, seems very complicated and open to possible abuse. Certainly it represents a novel approach which I think would have to be tested in a hearing before it could be accepted.

But even if we assume that Overmyer has actually reasonably spent \$1,331,900 in acquiring the five permits here involved, I think this transaction still violates fundamental policy. If one accepts this figure, this would mean, under our normal practice, that Overmyer could sell all his permits outright for \$1,331,900. Certainly that would be a clean transaction raising a minimum of questions. But that sum apparently is not large enough to take care of his other financial problems. If he is to be able to use the permits to resolve his difficulties, he must arrange matters so that he can produce a substantially larger amount in the immediate future. So he agreed to sell 80% of his interest in the permits for \$1,000,000—all of which was paid, as a so-called down payment, on March 28, 1967, before the applications were filed with the Commission.

AVC then agreed to lend Overmyer \$3,000,000—again, half of this amount was advanced on May 3, 1967, with the remaining half to be turned over to him on closing of the stock purchase agreement. This large loan is to be secured by the pledge of Overmyer's remaining 20% of the permits, by second mortgages on certain of his non-broadcast properties in which he has an equity of over \$6,000,000, and by the execution of guaranties of the debt by Overmyer and all his companies. Great emphasis is placed on these security arrangements, and they seem adequate—though apparently Overmyer could not raise a comparable sum from anyone other than AVC. But if, in fact, Overmyer wished to retain a 20% interest in the broadcast properties for the indefinite future—and if AVC were willing to settle for 80% of the permits and to make the loans as a separate transaction purely on the basis of the security offered—then why the option which permits AVC to acquire the remaining 20% during a one year period three years after closing under the stock purchase agreement? The price under the option is to be determined by an odd formula which capitalizes gross receipts, rather than net profits as in most cases with which I am familiar, but shall not

exceed \$3,000,000—which just happens to be the amount AVC has agreed to lend Overmyer.

It seems to me that the realities of the situation are as follows. I think Overmyer is willing to dispose of 100% of his construction permits, but not for \$1,331,900 which our policies would allow him to realize—if one accepts his claims as to out-of-pocket expenses. I think he is willing to sell out completely for \$4,000,000. On the other hand, I think AVC would much rather acquire all of Overmyer's interest in the permits, and that it is willing to pay \$4,000,000 to achieve this result. After all, I know of no other way in which AVC can acquire five authorizations in the top 25 markets for so little—or, indeed, at all. Our interim policy on concentration of control in the top 50 markets would limit them to a maximum of three—I shall refer further to this below. In any event, if the company were to seek entry into these five markets in any other way it would find that no channels remain unassigned in Pittsburgh, and that there are one or more applications pending for the last channel in each of the other four. If it went into hearing it would face substantial costs, probably a significant delay, and the very real likelihood that it would not prevail in all four cases—and the possibility that it might lose all of them. Our criteria for comparative cases do not favor non-local corporations with no past broadcast experience whose principals do not propose to be personally involved in management of a station applied for—and if AVC did get one permit, this factor would weigh against it in the remaining proceedings if its opponents there did not have other broadcast interests. So if AVC could not do business with Overmyer, it would have to try to buy permits or operating stations from a number of other parties holding authorizations for these markets. I think no one would deny that this would be difficult to accomplish, and that even if possible, the cost would be much greater.

So for these reasons, as stated above, I think that AVC is willing to meet Overmyer's terms—but they were no doubt told that the Commission would not approve sale of the permits for so high a figure. The result, I think, is the elaborate transaction now before us. If I am right in my appraisal, consider how things will work out. Overmyer will get \$4,000,000 to meet his immediate and urgent needs—in fact, he has already received \$2,500,000 of that sum. While this is cast partially in the form of a loan, I don't think Overmyer will ever repay the \$3,000,000 which he is purportedly borrowing—and I don't think the parties ever contemplated that he would. Instead, having received \$1,000,000 outright for 80% of his interest in these permits, Overmyer is getting an additional \$3,000,000 for the remaining 20%—a mark-up of 12 to 1 for this last fifth of his present holdings. I think this represents profiteering from the sale of permits in violation of our past policies and practices. I think this entire complex transaction has been carefully designed to achieve exactly this heretofore prohibited result.

It is argued first, of course, that AVC may never exercise the option. It is true that is a possibility, but I think it is so unlikely that it can be ignored. AVC is clearly going into television on a large scale, presumably after careful study of the prospects for these facilities. While no one thinks that independent UHF operation in these multi-station markets will be easy, I think that all careful students of broadcast developments anticipate that UHF stations in markets the size of these five will become modestly profitable in a reasonable period of time and that they will eventually be very profitable. Thus I think both parties expect the option to be exercised, and I am morally certain that it will be.

Next it is argued that the option price may be less than \$3,000,000, since that is stated as a ceiling. But as pointed out above, the formula for calculating the price is an unusual one, based on gross receipts instead of income. If the five stations have combined gross revenues of just \$3,000,000 in the fourth year after closing under the stock purchase agreement, then the maximum price will be payable. I think the parties fully intend this result and that Overmyer—having gotten the \$3,000,000 in advance—will never be required to repay the purported loan in that amount.

It is also contended that Overmyer's 20% stock interest may be worth more than \$3,000,000 by the end of four years, and that the option is therefore disadvantageous to him. As indicated above, I think this is quite likely—but if so, the increase in value will be largely due to additional investment by AVC in the construction and operation of these stations, and Overmyer will have no equitable claim to more than the 12 to 1 mark-up he is to get under the agreement. In fact, for all practical purposes the parties have made a present contract for the complete sale of Overmyer's five construction permits for \$4,000,000—they have simply deferred part of the transaction for up to four years in an attempt to get

around our policy of limiting the price for permits to the holder's reasonable expenses in acquiring them. In other words, I think the parties bargained for the sale and purchase of these permits as if our policies didn't even exist; then, having agreed to the overall price, they sought to fit their transaction to the policies which we have been following for years. The result is to violate the spirit of our rules in a way which I find intolerable.

The final aspect of the transaction to which I object is that it violates our interim policy against concentration of control in the top 50 markets. Overmyer acquired or applied for these permits before we adopted our interim policy in June, 1965, and since we stated that we did not presently intend to require divestiture of holdings in excess of the indicated limit, he has grandfather rights to build and operate these five stations—in addition to the one he already has on the air in Toledo. But in saying that we would not require divestiture, we went on to state that if a holder of more than the specified maximum number of stations decided to liquidate his holdings, the parties to whom he sold would have to meet our policy. Thus while Overmyer can sell his permits, he cannot confer his grandfather status on the buyer. Under our policy, AVC is not entitled to control more than three television stations in the top 50 markets. However, the two transactions the majority is approving here—the second one involves acquisition of control of WPHL-TV, a UHF station in Philadelphia—will result in AVC's acquiring control of six stations in the top 25 markets (Philadelphia 4, San Francisco 7, Pittsburgh 9, Cincinnati 16, Atlanta 19, and Houston 25). This is a flagrant violation of our policy—and of the public interest in a diversely controlled broadcast system.

And, again, the majority does not state the grounds for its action. Its order simply recites the conclusory formula that "the applicants have affirmatively and compellingly shown that a grant of the applications would be consistent with the *Interim Policy*." This is the same meaningless justification the majority has used in approving transfers of two other UHF stations in major markets in violation of the interim policy—one in Boston and one in Cleveland²—while in approving an earlier transfer in Boston, they issued no order at all.³ It is true that in the *Harvey* and *Superior* cases individual members of the majority wrote brief concurring opinions. However, none of these really considered the purposes of our Interim Policy or marshalled and facts in the particular case which were claimed to justify different treatment than that we had said we would give in such situations generally. Instead, they talk of need for strong financial support for new UHF operations (though we said when we proposed the rule that we need not rely on multiple owners for the development of UHF), of the desirability of treating UHF as "favorably" as VHF (though I do not think it favors a service to allow it to fall into relatively few hands, and we were trying principally to avoid concentration in UHF), and of the fact that grant of the application would bring a new service at the earliest possible time (which is true in every case). But there has never been a real effort to meet the objections of the minority or to justify the particular relief being granted in concrete terms.

It has been common in the past for certain members of the Commission to say that they did not like the pattern of concentration which has developed, but that they could not reverse the trend established by earlier members of the agency. It was to correct this, and put everyone on notice and treat them all equally, that our interim policy was announced. This was late in the game, but held the promise of preventing our expanding UHF television service from following the pattern of closely held ownership which has developed in VHF. But the majority which is approving this transaction has so eroded the policy that we seem well on the way to an even higher degree of concentration in VHF—and just as high a level in UHF as well. Certainly they cannot claim that their predecessors are responsible for this development, or that they do not know what they are doing. If the public eventually finds itself saddled with an undesirably closely held television system, my colleagues of the present majority will be responsible. Of course they believe this is in the public interest. If this is so, why do they not state the reasons for this conclusion, instead of simply parroting the requirement of the policy that one seeking a waiver must make "a compelling affirmative showing"⁴ in order to avoid designation of his application for hearing? I think they have a duty fully to explicate the grounds for the result they reach.

NOTE: Since the preparation of my dissent I have received a revised draft of the order in which the paragraph in question has been changed somewhat.

² *Harvey Radio Laboratories, Inc.*, 8 RR 2d 660, adopted October 20, 1966; *Superior Broadcasting Corp.*, 11 RR 2d 211, adopted September 19, 1967.

³ *New Boston Television, Inc.*, 7 RR 2d 857, adopted July 27, 1966.

⁴ Interim Policy on Television Multiple Ownership, 5 RR 2d 271, adopted June 21, 1965.

Rather than rewrite the entire section of my dissent dealing with this aspect of the case, with consequent increased delay, I will simply attach this added comment.

The order now reads as follows: "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 television service to the public. It is therefore believed the public interest would be served by a waiver of the *Interim Policy*."

This represents a slight change, but I'm not sure it's an improvement. The original draft at least said that the applicants had made an affirmative and compelling showing in support of their efforts to avoid the operation of our Interim Policy. While I don't think that is true here, at least it recognized the standard we set for these cases—which certainly is a high one requiring something more than a routine conclusion that the public interest would be served by grant of the application in the face of our policy statement.

Look at what is offered in support of this water-down conclusion. The majority now says (1) that this action will foster the development of UHF television stations, and (2) that this is consistent with our efforts to provide a more competitive nationwide television service. I certainly favor the expansion of our growing UHF television service, but I am not willing to disregard sound, long established policies or to ignore pending rule proposals simply because someone offers to build a UHF station. The development of UHF stations would also be fostered if Overmyer were to sell his permits to two or more parties—so that no one would acquire control of more stations than our interim policy contemplates—at prices aggregating no more than his reasonable out-of-pocket expenses in acquiring the authorizations. In any event, I do not think the majority can make a finding, on the basis of what is now before us, that there is such an unusual and urgent need for additional television service in these five communities that we must disregard important policies in other areas in order to rush these stations to completion. UHF is important, but not all-important.

Similarly, I am in favor of a more competitive nationwide television service. I have done what I could to promote that goal ever since I had some part in the efforts of the Senate Commerce Committee in 1956-1957, to galvanize the Commission into action in this direction. But I do not think that our chances of getting an improved competitive climate depend upon our allowing profiteering from the sale of permits or permitting our burgeoning UHF service to fall into the same patterns of concentrated ownership and control which characterize the older VHF service.

In other words, I think the revised explanation of this action has no relevance to the facts of the case or the country's very real long range interest in a widely-based competitive television service in which UHF stations must play a growing part.

Also since my dissent was written, Commissioner Loevinger has added a separate concurring opinion. I do not wish to prolong matters unduly, but would add the following brief comments.

Initially, he says that this transaction involves transfer of five construction permits and one license "from a financially weak, and possibly insolvent, enterprise to a financially strong one." To the extent this puts Philadelphia Television Broadcasting Company, the assignor of the license of WPHL-TV, into the same category financially as Overmyer, I think the statement is clearly mistaken. While Philadelphia Television has lost a substantial amount of money, as is true of virtually every new television station, there is nothing in the record before us to suggest that it is "financially weak, and possibly insolvent." I do not think any argument can be made that we must approve assignment of its license in order to insure that the people of Philadelphia will continue to get a worthwhile and competitively effective service from WPHL-TV.

Commissioner Loevinger concedes that my arguments "are not without some force," but says that on balance he thinks the public interest objectives of competition and diversity will be better served by approving this transaction than by rejecting it. What are the countervailing considerations he advances to justify this conclusion?

First, he notes that a number of licensees now hold more than the number of licenses specified under our Interim Policy, but that we have not proposed divestiture of any of their interests. This overlooks, however, that the proposed rule includes a Note reading as follows:

"NOTE 5: Paragraph (a) (2) of this section will not be applied so as to require divestiture, by any licensee, of broadcast facilities owned prior to 1965. That

paragraph will not apply to applications for assignment of license or transfer of control filed in accordance with § 1.540(b) or 1.541(b) of this chapter, or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if the assignment or transfer to the heirs or legatees does not create interests proscribed by the paragraph. Paragraph (a)(2) will apply to all applications for new stations, and to all other applications for assignment or transfer. *Commonly owned "stations or stations prohibited by paragraph (a)(2) may not be assigned or transferred to a single person, group, or entity except as provided in this Note."*⁵ (Emphasis supplied).

Furthermore, our Interim Policy stated: "Divestiture will not be required, but commonly owned stations in excess of the number set forth in the proposed rule which are proposed to be assigned or transferred to a single person, group or entity will be designated for hearing."⁶

These provisions clearly contemplated that the transfer of concentrated holdings would give us a chance to reduce such concentration. Commissioner Loevinger voted in favor of both the Interim Policy and the proposed rule, so I am at a loss to understand his apparent surprise that the policy is "now construed" to require breaking up a group on transfer. Furthermore, I cannot agree with his conclusion that such a policy would "result in decreased competition and increased concentration." Certainly it cannot result in increased concentration of ownership since the clear effect would be to substitute two or more separate owners for the single individual or entity to whom the group had theretofore been licensed or authorized. It may be true that smaller, more closely held multiple owners are more likely to withdraw from broadcasting—and therefore dispose of their stations—than entities like RCA, Westinghouse and GE. But even such limited reduction of concentrated ownership would inject additional competitive interests into broadcasting. But I think the crux of his position here is contained in the three sentences following:

"Further, the policy will prevent any other large or strong enterprise from acquiring group holdings. The result of such a course will be to leave us finally with a very few large and strong corporations holding the maximum number of licenses now permitted under the rules, while all others will be limited to two or three licenses, and will be prevented by FCC rules from acquiring broadcasting facilities that permit them to compete with or challenge the few large protected group licenses. Thus I believe that the position contended for by Commissioner Cox proceeds from an inadequate and unrealistic economic and market analysis and moves in the direction of promoting monopoly rather than competition."

Again, in view of his support of the policy and the rule proposal, I simply cannot understand his position. The whole *purpose* of these actions was to prevent other large or strong enterprises from acquiring group holdings comparable to the existing concentrations which gave rise to our concern in this area.⁷ So I must confess that I am amazed at his apparent view that we should fight an already

⁵ *Television Multiple Ownership Rules*, Docket 16068, adopted June 21, 1965, 5 RR 2d 1609, at 1620.

⁶ *Supra*, Note 4, at 272 (Par. 6).

⁷ It is an interesting historical fact that Commissioner Loevinger was one of the principal movers in the effort to tighten our multiple ownership rules, as was natural in view of his background in the antitrust field. When I used to dissent from actions resulting in local concentration in small communities, he would say that I was worrying about inconsequential aspects of the concentration problem, and that we should act, instead, to prevent concentration on the national level through the ownership of facilities in the maximum permissible number of major markets. That is precisely what we are trying to do, but he seems to have lost his enthusiasm for the project. See, also, his dissent in connection with the assignment of WCBM and WCBM-FM to Metromedia, Inc., Minute #463-A-63, meeting of November 27, 1963, where he said:

"Of more significance, the licenses held by assignee cover large concentrations of population. Assignee's AM and FM licenses are in the same communities, namely New York City, Philadelphia, Cleveland, Kansas City, and Los Angeles. The total population of these metropolitan areas is about 25 million people. An additional 2,600,000 people live within the areas covered by assignee's television licenses outside of New York, Los Angeles and Kansas City, where assignee has television as well as AM and FM stations. The transfer involved here will add the sixth largest metropolitan area with over one and three-quarters million people to the population encompassed within assignee's broadcasting markets.

"It seems to me that these circumstances in themselves suggest the existence of an issue involving the most important and delicate function entrusted to this Commission. The most significant task of this Commission is to insure diversity and dispersion of control of the media of mass communications and to prevent any tendency or incipient development toward monopoly or concentration in this field. The proper performance of this task requires, at the minimum, a careful inquiry, full examination and deliberate judgment concerning any transaction that will significantly increase the market scope of an enterprise that includes a substantial percentage of the population within the market of the licenses which it already holds. However, the Commission here permits such a transaction with casual, cavalier and perfunctory formalities."

undestorable degree of concentration by allowing other major group owners to develop. We would not be protecting the grandfathered group owners—we simply indicated we would tolerate them. Admittedly it would be more logical—and I think desirable—to reduce existing concentration to our proposed lower level. If Commissioner Loevinger wishes to lead a move in that direction, I will be happy to support him. If he is saying that the present owners of five VHF stations in the top 50 markets are presently a monopoly—whose interests he seems to think I would be promoting by preventing AVC from acquiring six UHF stations in the top 25 markets—then we would be doing more than just trying to restrict further development of concentrated ownership. We should be moving to deal with the existing monopoly. I do not think that present group ownerships—however undesirable—constitute monopoly in any accepted sense. If Commissioner Loevinger feels that we now have a monopoly power in broadcasting which can only be countered by the creation of equally powerful group holdings, then I think he should set forth his grounds for this belief and suggest appropriate action to deal with the problem. Actually, the holders of multiple station interests have always contended that they enjoy no competitive advantage *vis a vis* independently owned stations in the communities where they operate. While I am inclined to doubt their claims, if they do have such an edge over individual competitors this should be a reason for reducing concentration, rather than allowing it to grow. In any event, I think that if AVC were allowed to acquire three of the six stations here involved, it would be able, with its resources, to compete effectively against the multiple owners in these markets. I think these comments are quite applicable here.

I do not think it needs all six stations to become an effective competitor.

Secondly, Commissioner Loevinger says the contention that the transferor may profit from this transaction has more weight than the argument concerning competition, but that "accounting involving substantial sums in complex corporate organizations is not yet an exact science." I think this may come as a shock to the accounting profession, but surely it is clear here that Overmyer has not put more than \$1,331,900 into the acquisition of his permits—in fact, he claims no more than that. I don't think it requires any precise accounting to see that, appraised realistically, this transaction is really equivalent to a sale of his interests—though in two steps—for \$4,000,000, which nets him a substantial profit. I do not think the staff concluded that this transaction does not afford any profits to Overmyer as Commissioner Loevinger says. They recognized that the loan arrangement had to be carefully examined and simply said that "they" are consistent with the public interest. This view seems to have rested largely on the fact that the loans are fully secured by collateral, that they bear interest at a premium rate, and that the principal is repayable at the end of three years. I have no quarrel with the loan agreements as to their validity or legal effectiveness as between the parties—but I object strenuously to the result which is to be achieved through these business arrangements. I think we have to look underneath the surface to the real nature of what the parties are accomplishing. I don't think the staff ever reached that stage.

Finally, Commissioner Loevinger refers to the cost in manpower, money, and time that would be involved in a hearing on this matter, and the delay in institution of new service in these five markets that would result. In the first place, if Overmyer had been content to sell his permits to two different buyers for no more than he reasonably expended in obtaining them, he could have obtained approval of the transfers, without hearing, some time ago. He, not the Commission, chose to follow a course which presents the problems I have discussed. Even now, he need not go to a hearing—and I doubt if he would, though we cannot deny his applications without affording him that opportunity. He can still comply with our rules and policies and get rather routine approval for the disposition of his permits. If delay in instituting a service is to be advanced as an argument against resort to the hearing process when serious issues are presented, then we simply cannot discharge our obligations.

CONCURRING STATEMENT OF COMMISSIONER LEE LOEVINGER

I concur in the Commission Order permitting the transfer of the Overmyer interests because it seems to me that this will increase competition and diversity of source in the field of television broadcasting.

The transaction now before the Commission involves applications for approval of the transfer of Construction Permits for 5 UHF television stations and the license of one UHF television station from a financially weak, and possibly in-

solvent, enterprise to a financially strong one. Two objections are urged against the proposal. First, it is argued that a Commission policy against permitting transfers that will result in a licensee holding more than three UHF licenses is violated; and second, it is objected that the transferor here will profit from sale of the construction permits, which is also contrary to Commission policy. These arguments are not without some force, and the issues are not free from all doubt, but, on balance, I think that the public interest objectives of competition and diversity will be better served by permitting the proposed transaction than by forbidding it.

Present FCC rules set absolute numerical limits on the number of licenses (or construction permits) that can be held by a single licensee, and the limit for UHF television licenses is seven. Because such a numerical limitation is a crude measure of concentration the effort has been made to devise a more refined and discriminating rule. The most recent such effort resulted in the adoption by the Commission of an interim policy subjecting to exceptional scrutiny any transaction that would result in one licensee holding more than two VHF or three UHF television licenses in the top 50 markets. That policy expressly recognizes that present licensees holding more than such number may continue to do so, and no divestiture is proposed or has been contemplated by the Commission.

A significant number of licensees now hold more than the number of licenses specified under the interim policy. If that policy is now construed or applied so that whenever any licensees (or permittees) seek to transfer their holdings the Commission will require that the group be broken up, this will inevitably result in decreased competition and increased concentration. One thing quite certain is that of the present group licensees it will be the weak ones (like Overmyer) rather than the strong ones (like RCA, Westinghouse and GE) which will from time to time find it necessary or advantageous to transfer their stations. Consequently the weaker of the group licensees will eventually be broken up and only the few very largest and strongest will survive. Further, the policy will prevent any other large or strong enterprise from acquiring group holdings. The result of such a course will be to leave us finally with a very few large and strong corporations holding the maximum number of licenses now permitted under the rules, while all others will be limited to two or three licenses, and will be prevented by FCC rule from acquiring broadcasting facilities that permit them to compete with or challenge the few large protected group licensees. Thus I believe that the position contended for by Commissioner Cox proceeds from an inadequate and unrealistic economic and market analysis and moves in the direction of promoting monopoly rather than competition.

The contention that the transferor here may in fact profit from this transaction has more weight than the argument concerning competition. However, accounting involving substantial sums in complex corporate organizations is not yet an exact science. The Commission staff has examined and analyzed the showing made by applicants and has concluded that the financial arrangements do not, in themselves, afford any profit to the transferor for his Construction Permits, or otherwise violate Commission policy. I do not see that there is anything to be gained by holding a hearing on this issue.

A hearing is warranted only where we can specify factual issues and the nature of evidence that may be relevant to resolve such issues. A hearing is not justified merely because we are confronted with a difficult decision which it would be pleasant to defer. Difficult decisions very seldom become easier with the passage of time or the amassing or argumentative material in a diffuse hearing.

A hearing is required as a preliminary to denial of an application, since each applicant has a statutory last chance to try and persuade the Commission to change its mind before entering a final order of denial. But I do not think that the transaction here is so inconsistent with the statutory scheme or Commission precedent and policy as to warrant denial. On the other hand, a hearing in such case as this would be a profligate expenditure of manpower, money and time. It would, at the very least, delay the institution of new, competitive, UHF television service in five major markets for a period of years, perhaps many years. It might forever preclude the establishment of another vigorous, competitive UHF group of stations. In comparison, the potential disadvantage of approval are slight. Accordingly, I concur with the majority of the Commission in voting to grant the application.

I strongly regret the majority's faithlessness to Commission policy and its cynical refusal to attempt even a token effort at defending its result with reasons. I join the articulate and thoughtful opinions of my colleagues Commissioners Cox and Bartley. See also my opinions in Harvey Radio Laboratories, Inc., 6 F.C.C. 2d 808, 903 (1966) (dissenting statement); ABC-ITT Merger, 7 F.C.C. 2d 245, 278 (1966) (dissenting opinion); 7 F.C.C. 2d 336, 343 (1967) (concurring statement); 9 F.C.C. 2d 546, 581 (1967) (dissenting opinion of Commissioners Bartley, Cox, and Johnson); Paris-County Broadcasting, Inc. 6 F.C.C. 2d 894 (1967) (concurring statement); Farragut Television Corporation, 8 F.C.C. 2d 279, 285 (1967) (dissenting statement); Houston Consolidated Television Co., 8 F.C.C. 2d 205, 206 (1967) (dissenting statement); Flower City Television Corp., 9 F.C.C. 2d 249, 262 (1967) (dissenting opinion); Superior Broadcasting Corps., 10 F.C.C. 2d 100 (1967) (dissenting statement of Commissioner Kenneth A. Cox, in which Commissioners Bartley and Johnson join).

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., June 16, 1967.

CAPITAL CITIES BROADCASTING CORPORATION EXCHANGES CHANNEL 12, PROVIDENCE,
FOR CHANNEL 13, HOUSTON

The Commission granted assignment of the license of VHF television station KTRK-TV (Channel 13), Houston, Texas, and auxiliaries, from Houston Consolidated Television Company to Capital Cities Broadcasting Corporation for a consideration of \$21,289,500 (BALCT-321).

Also granted was the application (BALCT-322) for assignment of the license of VHF television station WPRO-TV (Channel 12), Providence, Rhode Island, from Capital Cities Broadcasting Corporation to Providence Television, Inc., for a consideration of approximately \$16,000,000.

Capital Cities' applications involved an exchange of a station in the 12th largest television market (WPRO-TV, Providence) for one in the 25th television market (KTRK-TV, Houston).

Grant of the assignment of WPRO-TV to Providence Television, Inc. gives Poole Broadcasting Corporation, parent corporation of Providence, its second television station.

Action by the Commission en banc, by Commissioners Hyde (Chairman), Bartley, Lee, Cox, Loevinger and Johnson on June 14. Commissioner Bartley dissenting and Commissioner Johnson dissenting and issuing a statement.

[Attachment]

DISSENTING STATEMENT OF COMMISSIONER NICHOLAS JOHNSON

This case constitutes Commission approval of a multiple station owner's acquisition of a fourth station in one of the top fifty markets—albeit an exchange of one such station for another.

The Commission's action is, thus, in apparent conflict with its proposed Top Fifty Market Policy. 30 FR 8166, 5 P & F Radio Reg. 2d 571 (1965). That policy would prohibit a single owner controlling more than a total of two VHF and one UHF television stations in the fifty most populous television markets. The proposed policy is, in that respect, a refinement of this Commission's multiple ownership rules which limit the number of stations anyone can own to a total of seven AM and seven FM radio, and five VHF and two UHF television stations. 47 C.F.R. § 73.35; 47 C.F.R. § 73.240; 47 C.F.R. § 73.636 (1967).

For reasons stated in my dissenting opinion in Harvey Radio Laboratories, Inc. [WXHR, Boston], 6 F.C.C. 2d 898, 903 (1966), I do not believe the Commission should take case-by-case actions inconsistent with its proposed Top Fifty Markets Policy until it has finally passed upon that policy. Consistent with my reasons and vote in WXHR I dissent here.

I believe that questions of the ownership and responsible operation of the major outlets of information and opinion in a free society are among the most important confronting the country, the Congress, and this Commission. See generally, *e.g.*, ABC-ITT Merger, 7 F.C.C.2d 245, 278 (1967), Paris-Bourbon County Broadcasting, Inc., 6 F.C.C.2d 894, 9 P & F Radio Reg. 2d 122 (1967). There are numerous illogical and inconsistent features of our current media ownership laws and policy. For example, although a single owner may not control two AM radio stations (or two television stations) with overlapping signals, 47 C.F.R. § 73.35; 47 C.F.R. § 73.636 (1967), there is nothing to prevent the common ownership, in a single market, of an AM and an FM radio station, or an AM and FM radio station and a UHF or VHF television station. Concentrated regional ownership, newspaper ownership of broadcast properties, or local newspaper-AM-FM monopolies, may be given great weight in comparative hearings and virtually ignored in considering unopposed applications or license renewal proceedings. See *Farragut Television Corp.*, ___ F.C.C.2d ___, ___ (1967) (dissenting statement) [FCC 67-611, May 22, 1967]. Indeed the Top Fifty Market proposal grew out of the Commission's awareness that it was illogical to equate the issues involved in ownership of television stations in the most profitable and populous markets with the issues involved in joint ownership of five geographically diffuse VHF television stations in the 100 smallest markets.

Not only are the present Commission policies toward ownership of broadcast properties inconsistent and illogical, there are other relevant factors that should be considered. Just by way of a few examples, what is the effect of our present ownership rules on the potential for establishing a fourth network? Are multiple owners better able to compete as affiliates with networks? What is the effect of multiple ownership on the broadcast product of a licensee? What is the effect of our ownership rules on entry into UHF? What "local service" is needed, and is being provided in fact, by local stations today? What is the impact of the type of ownership (conglomerate, other media interests, total area served, media monopolies) on the service and program product provided? How much diversity do we want at what cost in terms of effective organization, or unremunerative programming, and what has been our experience in terms of the ability and actual performance of multiple owners?

I believe these, and comparable issues are interrelated and ought to be viewed and evaluated as such. I would like to see this Commission undertake such evaluation. Meanwhile, it does not ease the ultimate resolution of such issues, in my judgment, to take actions contrary to an interim policy concerning control in media while evaluating its wisdom.

Before the Federal Communications Commission, Washington, D.C.

Docket No. 16068

In the Matter of Amendment of Section 73.636(a) of the Commission's Rules relating to Multiple Ownership of Television Broadcast Stations.

REPORT AND ORDER

Adopted February 7, 1968; Released February 9, 1968

By the Commission: Commissioners Bartley, Cox and Johnson dissenting and issuing statements; Commissioner Loevinger concurring and issuing a statement in which Commissioner Wadsworth joins

1. The twofold purpose of the Commission's multiple ownership rules is to promote maximum competition among broadcasters and the greatest possible diversity of programming sources and viewpoints. The rules appear in Sections 73.35, 73.240, and 73.636. These sections govern multiple ownership of stations in the standard, FM, and television broadcast services respectively. Each section is divided into two main parts: (1) the so-called "duopoly" or "overlap" portion which provides limitations on the common ownership or control of broadcast stations in the same broadcast service which serve substantially the same area, and (2) the "concentration of control" portion which proscribes the grant of a license for an AM, FM, or TV station to any party if the grant "would result in concentration of control" in the particular broadcast service "in a manner inconsistent with public interest, convenience or necessity."

2. The concentration of control part sets forth a number of specific factors that will be considered by the Commission in determining whether a particular grant would result in a concentration of control contrary to the public interest. In this regard, the AM and FM rules state: "In determining whether there is such a concentration of control, consideration will be given to the facts of each case with particular reference to such factors as the size, extent and location of areas served, the number of people served, classes of stations involved and the extent of other competitive service to the areas in question."

The TV rule uses the identical language except for the absence of the words "classes of stations involved."

3. The concentration of control portions go on to state that although the aforementioned factors will be considered in determining whether the grant of a license would result in undue concentration of control, in any event such a concentration will be deemed to exist if the grant would result in a party's having an interest in more than a specified maximum number of stations in each service. That maximum is seven AM stations, seven FM stations, and seven TV stations no more than five of which may be VHF.

4. The present proceeding deals with a proposed amendment to the concentration of control portion of the multiple ownership rule pertaining to television broadcast stations (Section 73.636(a)(2)).

5. In a Public Notice issued December 18, 1964 (FCC 64-1171, 29 F.R. 18399, 8 Pike & Fischer, R.R. 2d 909), the Commission, citing figures, expressed its concern over the marked increase in multiple ownership of television stations in recent years, especially of VHF stations in the largest markets where the number of viewers is greatest and where diversity of interests and viewpoints should be maximized. Pending further study of the matter it announced an interim policy as follows:

"Absent a compelling affirmative showing, we will designate for hearing any application filed after December 18, 1964 for the acquisition of a VHF station in one of the top 50 television markets, if the applicant or any party thereto already owns or has interests in one or more VHF stations in the top 50 markets. We shall treat likewise any application to acquire interests in two or more VHF stations in these markets if the applicant now has no interests in VHF stations in these 50 markets. We are adopting this policy because, under presently existing circumstances, we cannot normally make the required finding that grant of an application for a second VHF station in the top 50 markets will serve the public interest without giving the proposal the detailed scrutiny of a hearing."

6. Subsequently, on June 21, 1965, after further study of the matter, the Commission released a Notice of Proposed Rule Making and Memorandum Opinion and Order in the instant docket (FCC 65-547, 30 F.R. 8166, 5 Pike & Fischer, R.R. 2d 1609) which proposed adoption of an amendment to the concentration of control portion of the TV multiple ownership rule which provided for ownership of not more than three TV stations or more than two VHF stations in the top fifty television markets.

7. At the same time, the Commission terminated the interim policy expressed in the December 18 Public Notice and substituted therefor a new interim policy as follows:

"Absent a compelling affirmative showing to the contrary, we will designate for hearing any application filed after June 21, 1965, for a new television station, assignment of license, or transfer of control, the grant of which would result in the applicant or any party thereto having interests in violation of those set forth in proposed Section 73.636(a)(2)(ii) in the attached Appendix [the Appendix referred to is the same as the Appendix attached hereto and mentioned at the end of paragraph 6 above]. Divestiture will not be required, but commonly owned stations in excess of the number set forth in the proposed rule which are proposed to be assigned or transferred to a single person, group, or entity will be designated for hearing. However, no hearing will be designated in any of the foregoing situations which involve applications for assignment or transfer of control filed in accordance with Sections 1.540(b) or 1.541(b) of the Commission's rules, or applications for assignment or transfer of control to heirs or legatees by will or intestacy if the assignment or transfer does not create common interest which would be proscribed by the above-mentioned section in the attached Appendix."

The new interim policy was published in a Public Notice released on June 21, 1965 (FCC 65-548, 30 F.R. 8173, 5 Pike & Fischer, R.R. 2d 271), the same date on which the Notice of Proposed Rule Making and Memorandum Opinion and

Order was released in this proceeding. The latter document, in addition to proposing an amendment of Section 73.636 of the Rules, disposed of petitions for reconsideration of the December 18 interim policy.

8. The Commission now has before it for consideration comments filed in response to the Notice herein. It also has under consideration the petitions for reconsideration mentioned in the previous paragraph which the notice announced would be considered as comments herein without prejudice to the filing of other comments by the parties who had filed petitions for reconsideration.¹

9. The notice, after having presented statistics showing that there is an apparent trend toward more VHF stations coming under group ownership in the largest markets, and a corresponding decline in the number of single-station owners, stated that the Commission was concerned that under the present limitation of five VHF stations per owner there might be a continuation of the trend. It also expressed concern that the future growth of UHF—which has its greatest immediate potential in the largest markets—might follow the VHF pattern. The proposed rule was designed to counter the apparent VHF trend and to prevent the development of a similar trend in UHF.²

10. The Notice of Proposed Rule Making (para. 19) asked that parties focus their comments "upon the question of need for the changed rules and the appropriateness of the specific rule proposed. In arguing need, or lack of need, for a new rule, parties may submit programming showings in a manner which seeks to demonstrate that the programming was made possible solely by virtue of a multiple ownership situation which could not arise under the proposed rule. Parties opposing the proposed rule should concentrate primarily upon the question of public benefits which may be ascribed to multiple ownership in excess of the level proposed herein. In short, the issue posed is not as between multiple ownership and single ownership, but as between the present level and a more limited degree of such ownership."

11. Elsewhere in the Notice (paras. 16-18) comments were requested on six specific questions, as follows:

"Is the existing ownership limit, the one proposed here, or some other regulation, best suited to present circumstances?"

"Whether or not the present list of evidentiary factors [in Sec. 73.636] should be expanded to include other factors, such as the overall effect on a local competitive situation of an added multiple owner, the nature of any distinctive program service a multiple owner may seek to offer, etc.

"Is multiple ownership necessary for a licensee to undertake program production in competition with networks and other program suppliers? If so, what degree of multiple ownership is necessary?"

"Will the proposed rule have any effect on the possibilities for establishment of a fourth television network?"

"Is there any necessary correlation between a licensee's ability to present 'quality' programming and multiple ownership? If there is any such correlation, is it strong enough to outweigh the strong policy considerations favoring the widest possible diversity of ownership?"

"Given the fact that we propose no compulsory divestiture of existing stations, what long-term increase in diversity of ownership may the proposed rules be expected to accomplish? More specifically, what increases in the number of individual owners in the top fifty markets may be expected as a result of assignments and transfers and the growth of UHF?"

¹ Comments were filed by the following parties: American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc., General Electric Broadcasting Company, Inc., Metromedia, Inc., Newhouse Broadcasting Corporation, Plains Television Corporation, Springfield Television Broadcasting Corporation, Storer Broadcasting Company, ten television stations (filing jointly), Westinghouse Broadcasting Company, Inc., and the Council for Television Development (more than 100 television stations). The comments for the Council included a research report by United Research, Incorporated, an independent research organization. In addition, relevant comments were considered from the following: Petition for Reconsideration filed by Meredith Broadcasting Company; Petition by Ninety-nine Television Stations for Relief from the "Interim Policy" of December 18, 1964; Petition of the Council for Television Development for Relief of the "Interim Policy" of June 21, 1965; and Petition to Rescind by WLAC-TV, Inc.

² Paragraph 11 of the Notice explains why the top 50 market concept was chosen: *The Top-Fifty-Market Concept.*—We are proposing the 50-market cutoff for three reasons. These are (a) the substantial degree of ownership concentration reached in these markets; (b) the high proportion of the total population resident in these areas and consequently the very large audiences reached by the individual VHF stations; and (c) the availability of ample economic support for individual, local ownership of both VHF and UHF stations in these markets.

12. The Commission has studied all of the comments filed. Only one—filed by Springfield Television Broadcasting Corporation—expressed the view that there was an undue concentration of control in television broadcasting. However, Springfield believes that the proposed rule would be ineffective without the further requirement of divestiture. All other parties expressed the view that there was no undue concentration of control and opposed the proposed rule.

13. We have of course arrived at a decision in this matter upon the basis of our examination of the comments and our continuing experience in the broadcast field. Based thereon, we are of the opinion that the proposed rule should not be adopted and that the proceeding should be terminated.

14. First, we note that since the institution of the instant rule making proceeding many new UHF stations have been activated in the major markets. This has lowered the previous degree of concentration of station ownership in these markets and the development of UHF is providing as many separate owners and separate viewpoints as would have occurred with a more restrictive multiple ownership rule in the absence of these stations.³ Equally important, it is observed that insofar as UHF stations are concerned, an absence of the type of restriction proposed in the rule herein may well serve to make for a more rapid development of such stations and enhance the chances for development of a fourth commercial TV network. It would significantly contribute to the entry of persons who have the know-how and the financial resources to enter into and carry on UHF television broadcasting during this most crucial period.⁴ Indeed, this consideration of possible benefits to television service through entry of the multiple areas, although not as critical as in the UHF area, is also relevant to the public interest judgment to be made in this field with respect to VHF operation.

15. We have determined that the proposed modification of our rules should not be adopted, and that the problem of concentration in the top 50 markets should continue to be dealt with upon the basis of case-by-case consideration within the standards of the present multiple ownership rules. While there are of course the benefits of predictability in the adoption of a specific limit for the 50 largest markets, we believe that the greater flexibility permitted by an *ad hoc* approach is preferable. We already have a standard in the rules limiting total ownership and control by any one party, and will continue carefully to scrutinize every acquisition, whether in the top 50 markets or in other communities, to prevent undue concentration.

16. Thus, " * * * the fundamental purpose of this facet of the multiple ownership rules is to promote diversification of program and service viewpoints as well as to prevent any undue concentration of economic power contrary to the public interest * * * (par. 10, Report and Order on *Multiple Ownership*, Docket No. 8967, 18 F.C.C. 288, 291-2, 9 Pike & Fischer, R.R. 1563, 1568 (1953)). Under Section 310(b) of the Communications Act, every applicant is therefore required to establish that a grant of its application would serve the public interest, taking into account the benefits and any detriments involving undue concentration.

17. In particular, in light of the special problems concerning the top 50 markets set forth in the Notice of Proposed Rule Making herein, we will expect a compelling public interest showing by those seeking to acquire more than three stations (or more than two VHF stations) in those markets. The compelling showing should be directed to the critical statutory requirement of demonstrating, with full specifics, how the public interest would be served by a grant of the application—that is, the benefits in detail that are relied upon to overcome the detriment with respect to the policy of diversifying the sources of mass media communications to the public. However, within the total limits now contained in the rules, we believe the *ad hoc* approach will better enable us to deal with particular situations in particular communities than would a new fixed limit. Our conclusion in this respect is further reinforced by the present critical phase of

³ Since the end of 1964 when we first adopted an interim policy limiting ownership in the larger markets, there has been a sharp increase in UHF activity in these markets. The number of UHF stations in operation has doubled—today there are 39 commercial UHF stations on the air as compared with 20 at the end of 1964. In addition, there are presently 67 out-standing construction permits for UHF stations in the top 50 markets as compared with 33 at the end of 1964. These are additional actual and potential voices in these markets beyond the 157 VHF stations.

⁴ We note that during 1966 in the top 50 markets there were 29 UHF stations on the air (excluding WHCT, the pay TV station at Hartford, Connecticut, and KSNB-TV, in San Francisco, California, which is a satellite with no revenues). Of these, 8 were profitable and 21 operated at a loss. The total revenues for the 29 stations were \$13,326,696 and the overall loss was \$9,667,281.

UHF development and the need to have the flexibility to take action which on balance promotes the public interest in this vital area upon which the Congress and the American people, through purchase of all-channel receiver sets, have staked so much.

18. In the Notice (par. 20) we stated that oral argument would be held in this matter after comments had been received, because such argument would be appropriate and helpful. However, in view of the comments filed it is obvious that there will not be conflicting points of view presented in oral argument and that it would therefore serve no useful purpose. Accordingly, we dispense with such argument.

19. In view of the foregoing, IT IS ORDERED, That the interim policy set forth in the Public Notice of June 21, 1965, is terminated.

20. IT IS FURTHER ORDERED, That the rule proposed in the Notice of Proposed Rule Making and Memorandum Opinion and Order released June 21, 1965, in this proceeding is not adopted and this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

[Attachments]

DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

It seems strange indeed that a bare majority of this Commission will, after admitting that the comments filed offered "very little * * * in response to the specific questions raised," insist on terminating this highly significant proceeding without benefit of the oral argument provided for therein. Does the majority feel that it would be less informed after oral argument?

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

"TOP FIFTY" MARKETS STATION OWNERSHIP [IN RE AMENDMENT OF SECTION 73.366 (a) * * *]

Few issues before this Commission have greater impact on the American people than who is to control the radio and television stations of this nation.

I dissent to the majority's termination of the Commission's only proceeding dealing with multiple station ownership and its implications for a free society. I also disagree with the "return" to *ad hoc* consideration—another way of saying case-by-case avoidance of these most significant issues.

The majority is terminating this three-year-old proceeding with nothing to show for its efforts, except complacent acquiescence in matters as we find them—the status quo, sometimes defined as "the mess we're in now."

In discussing the proposed rule, it should be clear what very significant questions of broadcast ownership are *not* being addressed.

We are not concerned here with the ownership of broadcast properties by companies engaged in non-broadcast activities—problems which were suggested in the ITT-ABC merger.

We are not concerned with the problems of cross-ownership of communications media—the joint ownership of newspapers, magazines, programming sources and networks, cable television systems, book publishers and broadcast stations.

We are not concerned directly with the ownership of broadcast properties (or other communications media) in a single market or region. (The Commission's rules prohibit ownership of stations with overlapping signals—the so-called "duopoly rule.")

In December of 1964 the Commission issued an interim policy indicating that applications for acquisition of VHF stations in the top 50 markets would be designated for hearing if the result would be that one owner would have more than one VHF station in such markets.

The majority said: "We do not believe that this degree of multiple ownership concentration in the largest population centers is desirable. While we do not now propose a divestiture of existing interests, we have determined that the trend toward concentration in the VHF service is sufficiently serious to require the immediate adoption of an interim policy."

3 P & F Radio Reg. 2d 910-911 (1964). And in June of 1965 rulemaking was begun to bar the prospective acquisition of more than three television stations in the top 50 markets (no more than two of which could be VHF's).

In the notice of rulemaking the Commission majority said: "It is axiomatic that American industry generally should be effectively competitive and that undue concentrations of power should be avoided * * *. Basic competitive principles are particularly important in the licensing of broadcast stations: First, because we are dealing with the most influential of all communications media; and second, because we are required for technical reasons to limit and control entry into the broadcast field."

5 P & F Radio Reg. 2d 1611 (1965). And even today the majority notes that: "The twofold purpose of the Commission's multiple ownership rules is to promote maximum competition among broadcasters and the greatest possible diversity of programming sources and viewpoints." paragraph 1. With this consistent set of statements and a factual situation that has, if anything, become worse over the past three and one-half years, it is hard to understand why the majority abruptly ends these proceedings.

The most valuable television stations in America today are those in the top fifty markets, and they are increasingly owned, not by local residents, but by large, often publicly-held, conglomerate industrial enterprises. These are the television stations that sell for \$10 to \$20 million each, and that attract commensurate annual advertising revenues. Each has within its signal area between 15 and 20 million viewers. Thus, three stations in such markets would enable the owner to reach as many as 40 million persons; seven stations could reach 90 million.

The television industry earns an average 100% annual return on investment in tangible property. These near-monopoly profits are made possible through the use of public property—spectrum space. No individual is entitled, as a matter of legal or moral right, to more than one piece of such rich pie. Our commission of office does not impose upon us the obligation to serve such *private* interests; we have sworn to serve "the public interest."

This Commission has long purported to start from the premises that diversity of control of broadcasting and local ownership of broadcast properties are desirable. Thus, the question before us *ought* to be, "How is the *public's* interest served by having a non-resident, corporate, multiple owner control one of the major sources of news, opinion and entertainment for a city of millions?" We have not addressed *that* question.

These questions are important. As Congressman John Dingell has said recently:

"Clearly the Commission had a congressional mandate to take a strong stand against common ownership of broadcast facilities. For the history of the Communications Act of 1934 reveals unequivocally that local control and management, that diversity of ownership were paramount considerations when this legislation was enacted."

114 Cong. Rec. H389-390 (daily ed. Jan. 25, 1968).

It is sometimes urged that a multiple owner may be the only entity willing to undertake operation of a local radio or television station. But for the multiple owner, it is argued, the community will have no programming service at all. But that argument can scarcely be made in communities with the financial strength of the largest metropolitan areas in this country.

The majority offers no arguments why multiple ownership should be encouraged as *servicing* the public interest. It only point to two reasons why the proposed rule should *not* be adopted: UHF development might be impeded and establishment of a fourth network might be hindered. However, even if the potential good from the rule could be counterbalanced by such potential harm there is little *evidence* that either effect would result from adoption of this proposed rule. In its footnote 3 the majority says: "Since the end of 1964 when we first adopted an interim policy limiting ownership in the larger markets, there has been a sharp increase in UHF activity in these markets." This scarcely supports the view that the policy has been inhibiting to UHF growth. And in footnote 4 the majority notes that of the 29 UHF stations in these markets, 21 operated at a loss in 1966—which may suggest that UHF entry in these markets is growing about as fast as it can. In any event, there is little evidence that multiple owners enter UHF faster than anyone else. The hoped-for fourth network is merely a part of the majority's goal of improvement in growth of UHF. There is no evidence that group ownership would increase the chances for that network. The last to try (Overmyer) recently disposed of his construction permits. And although

some multiple owners in these markets do a significant amount of independent programming today, they are few.

The majority's reliance on the shibboleth "benefit to UHF" is not unusual. This Commission has hung so many decisions on the UHF peg that one wonders if the day will come when the whole hatrack will come tumbling down from its own weight. Restrictive CATV rules are to benefit UHF. Increased consumer costs of all-channel sets are to benefit UHF. Large chunks of spectrum are denied to other potential users in order to benefit UHF. The ITT-ABC merger was justified, in part, as a benefit to UHF. And now the demise of the top-fifty rule will hopefully benefit UHF. It is almost a knee-jerk reaction.

As a substitute for further consideration the majority offers a continuation of the interim policy:

"In light of the special problems concerning the top 50 markets set forth in the Notice of Proposed Rulemaking herein, we will expect a compelling public interest showing by those seeking to acquire more than three stations (or more than two VHF stations) in those markets."

17. This is the same "compelling public interest showing" that a Commission majority has so far found to justify waiving the hearing requirement in every case brought to the Commission under the previous interim policy. Thus a majority found that a compelling public interest showing for doing violence to the rule was made when WGN of Colorado, Inc., acquired a VHF in Denver, Colorado; WKY Television Systems acquired a UHF in Milwaukee, Wisconsin; Storer acquired a UHF in Boston, Massachusetts; Kaiser acquired a UHF in the Boston, Massachusetts, market; Capital Cities sold a VHF station in Providence, Rhode Island, and acquired a VHF in Houston, Texas; Kaiser acquired a UHF in Cleveland, Ohio; Baldwin-Montrose Chemical Company acquired VHF's in Minneapolis, Minnesota, Los Angeles California, and Portland, Oregon; the Newhouse communications group acquired a minority interest in a UHF in Denver, Colorado; American Viscose acquired six UHF's in top-fifty markets; and ITT was to have acquired VHF's in New York, Chicago, Los Angeles, Detroit, and San Francisco. In each case the interim policy required a "compelling public interest showing." Past experience indicates that this "requirement" is demonstrably meaningless. The Commission's policy with regard to multiple ownership will be what is now in its rules, and no *ad hoc* determinations will tighten those standards. Seven AM's seven FM's and seven TV stations, of which five can be VHF's—so long as no signals overlap—can be acquired by any multiple owner regardless of how many millions of Americans he influences.

It also seems strange to me that the majority would express its lack of interest in ownership questions at the very time others in government are evidencing renewed interest. The Special Investigations Subcommittee of the House Interstate and Foreign Commerce Committee recently held hearings on one of the transfer cases where the majority found that a "compelling public interest showing" had been made. The Department of Justice intervened in the ITT-ABC merger on grounds that the merger was anti-competitive. In any case, it seems irresponsible for the FCC at anytime to refuse to consider the problems on anything more than an *ad hoc* basis.

Within the past two weeks we have been asked a number of questions about our ownership rules and practices by the Chairman of the House Committee on Interstate and Foreign Commerce, Mr. Staggers. Included are: "What studies has the Commission made to determine whether group ownership of broadcasting licenses enhances competition? Is it in the public interest to encourage group ownership of UHF stations? Is it in the public interest to encourage a network of UHF stations? If so, what competitive protection would be afforded non-network UHF licensees? Has the Commission determined that multiple ownership is a solution to the high cost of originating TV programs? If so, submit a copy of its pronouncements supporting such a determination. Has the Commission determined that a single, independent UHF station cannot produce worthwhile TV programs in competition with local network affiliated or independent VHF licensees?" I believe these questions are deserving of better than the brush-off represented by the Commission's action today.

There are several immediate steps the Commission could take to further its understanding of multiple ownership problems. We ought to hold oral argument in this case, with elements of the staff instructed to participate and put

forward the strongest case possible for the rule—and to subject the position of those who have commented to searching scrutiny. I think that much might be learned by such an adversary proceeding. The Commission's standard for ownership structure is "maximum competition" and "greatest possible diversity." One of the questions raised in this proceeding is what the public gets in return for permitting one owner to acquire a number of profitable properties—in contrast to promoting "maximum diversity" by limiting multiple ownership. Hopefully, all would acknowledge that the economic self interest of the multiple owners—clearly powerful spokesmen within the broadcasting establishment—are not, alone, the equivalent of a "public interest" basis for our present course. The majority, of course, say nothing about whether multiple owners presently provide better programming, competition to networks, support for UHF, or any other substantial public benefits. The evidence presented in the written record of this proceeding is, at best, mixed.

As is often the case when the Commission is making seat-of-the-pants judgments, the Commission refers to its "continuing experience in the broadcast field—sometimes referred to as 'accumulating insight.'" This is the ultimate justification for whatever we do. I would be more confident in the Commission's exercise of that judgment if I thought it were really committed to confronting the implications of media ownership that are woven into the very fabric of the society our government was established to preserve. An oral hearing on this matter would be a slight step in that direction. I regret our inability to take it.

CONCURRING OPINION OF COMMISSIONER LEE LOEVINGER REGARDING MULTIPLE OWNERSHIP OF TELEVISION STATIONS, IN WHICH COMMISSIONER JAMES J. WADSWORTH JOINS

The issue before the Commission now is whether to impose a new rule limiting the number of television stations which any single licensee may acquire in the top 50 markets to three, no more than two of which may be VHF stations. It is not proposed to divest the holdings of any licensee now having more than that number of stations, as permitted under present rules, but the proposed rule would prohibit any other licensee from acquiring more than the specified number of television stations.

The Commission has long been concerned with multiple ownership in the broadcasting field, and for many years has sought to prevent concentration of control of broadcasting facilities. The first formal Commission proceeding in this field was 30 years ago, in 1938, when the Commission initiated the Chain Broadcasting Investigation. This culminated in a report in 1941 which found that the networks then in operation (NBC and CBS radio networks) impeded competition, stated that no additional licenses would be granted the networks, and held that the networks would be required to divest stations where they owned more than one AM station in a market. However, no specific numerical limitation was put on station ownership.

The first FCC rule specifically limiting multiple ownership was adopted by the Commission on June 21, 1940, when it prohibited ownership by one person of two or more FM stations with overlapping service areas, and, in effect, limited any licensee to six FM stations.

In 1948 the Commission instituted a rulemaking proceeding which proposed a rule limiting one licensee to the ownership of 7 AM, 6 FM and 5 TV stations. The possibility of differentiating between VHF and UHF, as well as numerous other kinds of limitations, were all considered. On November 7, 1953, the Commission adopted a Report and Order which established a limitation of 7 AM, 7 FM and 5 TV licenses which might be held by one person. 9 RR 1563 (1953). On September 17, 1954, the Commission amended the rules to permit the ownership by a single licensee of 7 TV stations of which no more than 5 might be VHF, 11 RR 1519 (1954). At the time of adopting this last amendment, the Commission considered a wide range of proposals for limiting television holdings, including limitations based on population, area or region, differentiation between VHF and UHF, and other possibilities. The Commission stated that the 1954 amendment was adopted in order to promote the development of UHF and because a nationwide system of broadcasting requires some multiple ownership of stations. The rules as amended in 1954 have remained in effect without change.

as to the limits of ownership. (Cf. Multiple Ownership Rules, 2 RR2d 1588 (1964), 3 RR2d 1554, 1637 (1964).)

On December 18, 1964, the Commission issued a public notice stating that in recent years "there has been a marked increase in the extent of multiple ownership, especially in television" and particularly in VHF. 3 RR2d 909 (1964). The Notice stated that the Commission was conducting an overall review of the problem of concentration and diversification and that, as an interim policy, it would designate for hearing any application for the acquisition of a VHF station in one of the top 50 television markets if the applicant owned one or more stations at the time of application, unless there was "a compelling affirmative showing." On June 21, 1965, the Commission adopted another public notice, modifying the interim policy and proposing a new rule on the subject. The proposed rule would prohibit acquisition of more than 3 television stations or more than 2 VHF television stations in the 50 largest television markets, as well as the long standing limitation of more than 7 television stations, of which no more than 5 are VHF, in any markets. 5 RR2d 271, 1609 (1965). The notice stated that the new interim policy of the Commission would be to require a hearing on any application for acquisition of a license which would result in any party having more licenses than would be permitted under the proposed rule, but that no divestiture of existing licenses was proposed. Voluminous comments and material having been submitted, nearly all in opposition to the proposed rule, and the Commission having had more than two years of experience and observation with the interim policy, the issue now before us is whether the proposed rule should be adopted.

There will probably be those who argue that any Commissioner who voted for the 1964 and 1965 notices must, to be consistent, vote for adoption of the proposed rule. The basic concern with multiple ownership and concentration of control remains, and the facts have not changed greatly since 1965. However, my position is that voting to propose a rule, or institute a rule-making proceeding, does not involve any commitment as to the position to be taken on adoption of the rule. On the contrary, I believe, as I have often stated, that the Commission should institute rulemaking proceedings, gather evidence, consider arguments and make as full an analysis as possible before reaching any conclusion, rather than after it has decided. Although it has been argued that the Commission should exercise its judgment on the merits before proposing rulemaking (see dissenting statement of Commissioner Johnson, A.T. & T. etc., — FCC 25 — (1968), FCC 68-73, 68-74), I emphatically reject that position. I believe that the spirit, and probably the letter of administrative due process, as well as basic principles of national decision-making, require hearing and considering the evidence and the arguments before reaching a judgment rather than afterwards. While I still believe the present subject warranted re-examination and reconsideration after the passage of a decade since adoption of the multiple ownership rules, I do not consider myself bound or in any degree constrained by the institutional opinion which accompanied initiation of the present proceedings.

Thus I am compelled to make an analysis of the television market structure and the objectives which we seek to achieve within that market. There is no real dispute that our objectives are competition and diversity of ownership. The television market is a peculiarly complex one, not altogether analogous to the conventional industrial model. Competition in the television station market has at least three aspects; for advertising, for audience, and for product or programming. The three are interrelated as programs are the means of attracting audience, and advertisers seek those stations which have the largest audience. Competition for audience is altogether local as stations cannot, within the terms of their licenses, reach more than specified areas within relatively close range of their stations. Competition for advertising is both local and national. By and large network advertising simply goes to network affiliated stations, and there is little opportunity for competition between stations. There is competition for national non-network advertising in the several local markets, and there is competition among stations for local advertising. There is some competition for programs, but not very much. The great spectacular programs with much audience appeal are mostly national programs carried by the networks. There is competition among the networks for such programs, but individual stations are simply unable to compete in this field. What competition there is between stations with respect to programs is in the effort to produce or secure more attractive local or special programs.

The most obvious economic fact about television programming is that it is extraordinarily expensive. It is reported that an hour television network show costs about \$200,000. Newsweek, Jan. 22, 1968, p. 94. The Ford Foundation has given the Public Broadcasting Laboratory \$12,600,000 with which it will produce some 52 shows of about 2 hours each. This comes to a cost of over \$240,000 per show and it is reported that the actual out-of-pocket expenses, exclusive of overhead administration and similar costs, come to about \$90,000 per show. Variety, Jan. 12, 1968, p. 17. ABC, the smallest of the three national television networks, has announced significant cutbacks in public affairs and other programming since it lost the financial support promised by its proposed merger with ITT. Within the last year an effort has been made to start a fourth national television network, which has failed financially with only one month of operations. Television markets are the metropolitan areas and so far there has been no indication that smaller communities can even support television stations. It is well known to the Commission that television costs are increasing. At the same time, the advertising revenue which supports television operations has apparently reached a plateau. National non-network advertising revenue, the largest single revenue source, was nearly 2% less in 1967 than in the previous year. Local advertising which amounts to less than half of national in amount increased only 1% during the same period. Broadcasting, Jan. 29, 1968, p. 40. These facts warn that we should carefully examine the probable economic consequences before undertaking to make any changes which might affect the ability of television stations to survive or compete.

The conventional wisdom of economic analysis and antitrust policy favors growth of enterprises through internal expansion, rather than through merger. Brown Shoe Co. v. United States, 370 US 294, 345, footnote 72 (1962). However, as a practical matter, there is no such possibility for television stations. Technical parameters of operation limit the range of reception, and these are fixed as is the geographical location. Therefore, each station has a limited local market within which it can attract only a share of the audience determined in large part by the number of other stations assigned to that market by the Commission. The amount of advertising that any station can accept is likewise limited by the amount of time available. The Television Code of the National Association of Broadcasters establishes limits for the amount of commercial time any station may carry, and the Commission favors compliance with the Code. So television stations do not have the possibility of growth through internal expansion that is open to most other businesses.

In the television market, vertical integration means the expansion into program production. Most, if not all, television stations now engage in this activity to some extent; but the cost of program production constitutes an economic barrier to extensive activity of this kind by any enterprise without very large capital resources. The real problem is where the resources to engage in program production are to be secured.

Conglomerate merger with a large company outside the broadcasting field is not foreclosed by any FCC rules or precedents. But the nature of the opposition to the attempted merger by which ABC sought to strengthen its competitive position will certainly deter, and probably prevent, other potential merger partners from exposing themselves to similar attacks. Big business is notoriously, and rightly, reluctant to invite such attack, and small business would be small help in financing television program production.

Thus, as a practical matter, the only method of expansion (beyond the normal growth of the market itself) available to television stations is a kind of horizontal expansion by acquisition of or merger with stations in other local markets. This does not necessarily imply that there should be no check or limits on such expansion by television broadcasters. It does imply that limits on television expansion must be analyzed and examined within a different frame of reference than the one applied to ordinary unregulated markets.

Existing FCC rules do impose a very specific and rigid limit on the number of broadcasting licenses any licensee can hold. A single licensee can hold no more than 7 television licenses of which no more than 5 can be VHF, and no two of the licensed stations held by one licensee can be in the same market or have overlapping service areas. Thus each market is assured of as many separate television voices as there are television stations in that market under present rules.

These rules have been in effect since 1954 so we have had an opportunity to observe what has happened under them. In fact, this proceeding was instituted because of Commission concern with what appeared to be a tendency toward increasing concentration in television station ownership in the top 50 markets in the period from 1956 to 1964. However, as comments in this proceeding have pointed out, the data cited in the Commission Notice were misleading because they purported to show concentration in the top 50 markets by statistics which included among "multiple owners" all licensees with one station in the top 50 markets and an interest in any other television station in any other market, whether it was in the top 50 markets or in some smaller market. Thus, the data on which the Commission originally acted analyzed the situation in the top 50 markets on the basis of statistics which related in part to those markets and in part to other markets. This is clearly an erroneous mode of analysis.

In any event, the objectives we are seeking in our concern with broadcasting economics are diversity and competition—the number of separate voices speaking in each community or market. In this proceeding, for purposes of analysis and convenience, we have grouped the top 50 markets and consider them together. In this frame of reference our primary concern must be with numbers, rather than with ratios or percentages, and as we are dealing with relatively small numbers the ratios are likely to be misleading.

Based on the best available data I can obtain, which is in part from material filed in this proceeding and in part from FCC records, the following are the changes in television station ownership that have taken place in the top 50 markets since 1956.

TOP 50 TELEVISION MARKETS: CHANGES IN OWNERSHIP INTERESTS 1956-68

	1956	1968
(A) Total number of authorized television stations has increased from.....	151	to 264
(B) Number of VHF television stations has increased from.....	130	to 158
(C) Total number of separate television station owners has increased from.....	104	to 163
(D) Number of separate VHF station owners has increased slightly from.....	88	to 91
(E) Total number of owners of single stations in the top 50 markets has increased from.....	78	to 125
(F) Number of owners of single VHF stations in the top 50 markets has decreased very slightly from.....	65	to 63
(G) Total number of multiple station owners has increased from.....	26	to 38
(H) Number of multiple VHF station owners has increased slightly from.....	23	to 28
(I) The category "multiple station owners" includes all licensees owning 2 or more stations in the top 50 markets and is not by itself a measure of concentration.		

In sum, during the last twelve years under the present rules, both the number of television stations and the number of station owners has increased substantially in the top 50 markets. The same development has taken place in all national broadcasting markets as a group, and in the field of radio as well as television. Without going into detail, from 1956 to 1968 the number of authorized television stations in the United States increased from under 600 to more than 1,000 (including VHF, UHF, commercial and educational stations), the number of AM stations increased from less than 3,000 to more than 4,200, and the number of FM stations increased from under 600 to approximately 2,400 (including educational stations).

The term "concentration," in economic or legal discourse, means the market share held by a limited number of the firms in any given market. While a variety of measures are used to indicate concentration, the most commonly used measure is the market share of the leading four firms in a market. Ratios based on other relatively small numbers are not uncommon, and some quite sophisticated methods of calculating concentration in a market have been suggested. See Michael O. Finkelstein and Richard M. Friedberg, *The Application of an Entropy Theory of Concentration to the Clayton Act*, 76 Yale L. J. 677 (March 1967). However, the term loses all significant meaning when it is used to refer to numbers and ratios of the size involved in the top 50 market analysis with which we are now concerned. By any generally accepted test, there has been no increase in concentration of television station ownership in the top 50 markets up to the present time. On the other hand, without attempting to impose some arbitrary mathematical test, it is self-evident from the figures cited above that in the top 50 markets there has been a very substantial increase in the numbers of television stations and in the numbers of separate enterprises—in short, in the number of separate voices in the markets under examination here.

The point within the broadcasting field at which there is economic concentration in television network operation. There are only three national television networks. But it is as clear as anything can be in this uncertain field that there are only three television networks because there is inadequate advertising revenue, programming, and audience demand to provide economic support to more than three networks, if that many. It is cliché in the television industry that this is still a two-and-a-half network economy. Current events are giving us an unfortunate demonstration of the truth of that cliché.

The most realistic hope for increasing the number of television networks and the number of substantial national program sources is to encourage the growth of more strong enterprises engaged in television station operation. The present multiple ownership rules are far more likely to do that than the proposed new rule.

Some of the difficulties in this field are suggested by the action of the President in asking and of the Congress in voting to establish the Corporation for Public Broadcasting, to provide another source of programs that will be socially and culturally beneficial to the country, even if not economically profitable. It would be inconsistent for the government to impose new and more stringent limitations on the development of private enterprise in television while at the same time establishing a corporation to use government funds for the purpose of providing programs which private enterprise is unable to provide economically, in part because of such limitations imposed by the government.

There is a maxim taught in medical schools that is relevant here. An axiom of medical practice is "Premium non nocere"—first, and above all, do not harm. If you cannot help the patient, at least do not administer medication or treatment that will hurt him. It seems to me that this principle should be equally applicable in the field of regulatory action. Before we impose new rules we should be reasonably sure that they will improve the situation, or at least not make it any worse. With respect to achieving competition and diversity in television programming, the proposed rule appears likely to make matters worse rather than better.

As the data set out above demonstrate, there is no evidence of increasing concentration in television stations ownership in the top 50 markets. On the contrary, there have been growing numbers of both stations and owners during the last twelve years under the present rules. We do know that there is concentration in television network operation and in the number of mutual television program sources. This is due in large part to the very large and increasing cost of television program production and distribution which precludes any but large and financially strong enterprises from engaging in such an undertaking. Accordingly, if we are to have any hope of developing new sources of television programming in the private sector we must permit the development of financially strong enterprises in the television field.

The proposed rule would impose no handicap on the present networks, or other large multiple owners, as they would not be divested of their present station holdings. The proposed rule would prevent any new enterprise from acquiring as many stations as the networks now have and it would break up multiple holdings in the event that any licensee undertook to sell or transfer his licenses. This would, obviously, affect only the financially weak among the present multiple owners. The large and financially strong will not be forced or tempted to sell their holdings; the financially weak may do so. Thus the proposed rule would tend to perpetuate the present network oligopoly and protect the present multiple owners against new or increased competition, while preventing or discouraging the growth and expansion of smaller enterprises in the television field and the entry of strong new enterprises. Thus it appears to me that the proposed rule is likely to do significant harm to the cause of diversity and competition in the field of television broadcasting without countervailing benefits. The present rule on multiple ownership were developed in a series of proceedings extending over a number of years and involving full consideration of all the arguments now before us. These rules have been effective in preventing concentration of station ownership and there is no showing of a need to make the present rules more stringent. Accordingly, I conclude that the proposed rule is unwarranted and unwise, and vote against adoption of the proposed rule and for termination of the present proceeding.

(File No. BALCT-330)

IN THE MATTER OF S. H. PATTERSON (ASSIGNOR) AND METROMEDIA, INC. (ASSIGNEE)
FOR ASSIGNMENT OF LICENSE OF STATION KSAN-TV, SAN FRANCISCO, CALIF.

ORDER

Adopted March 20, 1968; released March 21, 1968

By the Commission: Commissioners Bartley, Cox and Johnson dissenting and
issuing statements

1. The Commission has before it the above-captioned assignment application under which S. H. Patterson proposes to assign the license and assets of UHF Station KSAN-TV (Channel 32) San Francisco, California to Metromedia, Inc.
2. Metromedia is now the licensee of the following VHF television stations:

Station	Location	ARB ranking
WNEW-TV.....	New York.....	1
KTTV.....	Los Angeles.....	2
WTTG.....	Washington, D.C.....	10
KMBC-TV.....	Kansas City.....	23

3. On February 9, 1968 the Commission released its Report and Order *In the Matter of Amendment of Section 73.636 (a) of the Commission's Rules Relating to Multiple Ownership of Television Broadcast Stations*¹ (Docket No. 16068) in which it stated, in part:

"In light of the special problems concerning the top 50 markets set forth in the Notice of Proposed Rule Making herein, we will expect a compelling public interest showing by those seeking to acquire more than three stations (or more than two VHF stations) in those markets. The compelling showing should be directed to the critical statutory requirement of demonstrating, with full specifics, how the public interest would be served by a grant of the application—that is, the benefits in detail that are relied upon to overcome the detriment with respect to the policy of diversifying the sources of mass media communications to the public."

Since as shown Metromedia already has four VHF television stations in the top 50 markets, the above statement is applicable to the subject application. A review of the applicants' showing in this case indicates that the criterion of overriding public interest has been satisfied.

4. The application shows that KSAN-TV went on the air in March of 1954; that it went silent in June of 1958 because of operating losses; and that on February 18, 1966, the "U" resumed operation as a satellite of Station KICU-TV, Visalia, California. As such satellite, KSAN-TV operates at a minimum power of 16.2 kw and carries about 28 hours of KICU-TV programming weekly. It has no local studios. The assignor-licensee shows that lack of financial resources makes it impossible for KSAN-TV to effectively compete with the other TV stations operating in the San Francisco markets. Finally, S. H. Patterson shows that for approximately one year before granting an option to Metromedia to purchase the station, he made efforts to sell Station KSAN-TV to a purchaser whose broadcast interests were not in conflict with the Commission's *Top Fifty Interim Policy* in effect at that time (5 RR 2nd 271), but that no such buyer could be found.

5. Applicants claim Metromedia is one of the most independent of all the Commission's multiple owners. Metromedia noted that except for the Kansas City station which is ABC affiliated, Metromedia's three other television stations are independent. The showing was further made that the assignee herein faces substantial TV competition in each of its present markets. In New York and Los Angeles, each network owns and operates a VHF station, while additional independent VHF and UHF outlets are in the hands of major multiple owners.

6. In the San Francisco market, relevant to the consideration of the subject application, KSAN-TV competes with four VHF stations and one UHF station.

¹ FCC 68-135.

KSAN-TV is one of two operational commercial UHF stations and according to available figures it has no earnings. The four VHF stations in San Francisco are: KRON-TV, NBC affiliated and licensed to the San Francisco Chronicle; KPXN, CBS affiliated and licensed to Westinghouse; KGO-TV, owned and operated by ABC; KTVU, an independent licensed to a subsidiary of Cox Broadcasting Co. After examining these facts it is clear to the Commission that this formidable array of competition makes the acquisition of KSAN-TV by Metromedia consistent with the objectives of diversification of mass media spelled out in the Report and Order, *supra*.²

7. In addition to the general considerations that negative a finding of failure to comport with the Commission's policy of diversification of mass media, there are affirmative considerations that compel a finding that the public interest would be served by a grant of the subject application.

8. Metromedia, Inc., represented that if the application is granted, it will undertake immediate steps to improve the technical facilities and programming of KSAN-TV, with a view to enhancing the station's competitive position. First, with regard to the improvement of the technical facilities, there is now pending at the Commission an application BPCT-4041 to increase the power of Station KSAN-TV from 16.2 kw to 180 kw. KSAN-TV proposes to originate programs from the transmitter site as soon as possible. It further represented that it will subsequently apply for authority to increase power to 1600 kw ERP and to operate from a new site at Mt. Sutro. Thus we have a commitment from the assignee, implemented by an application already on file, to increase the power of KSAN-TV and to improve the facilities of the station to accommodate program originations.

9. Metromedia thoroughly surveyed the needs and interests of the San Francisco market and proposes that following a grant it will increase the hours of operation for KSAN-TV from 28 hours per week to 48 hours per week, and that with the improved facilities that are to be constructed by the applicant at Mt. Sutro ("which will be within the term of a normal license period"), it will increase the hours of operation to 80:30 per week. The percentage breakdown for such programming as proposed by Metromedia is: News—2.17%; Public Affairs—0.21%; and all other programs, exclusive of Entertainment and Sports, 6.21%.

10. The assignee cited a number of illustrative programs planned for Channel 32. Among the proposed programs are *Panorama*, a 2½ hour per day, Monday through Friday discussion and interview program and *Community Dialogue*, a weekly one hour interview program. This program will bring the views and activities of bay area community leaders to the audience. Both of the above programs will be produced from the San Francisco studios. In addition, Metromedia will present a number of public interest programs that will originate from other Metromedia station studios, and specials from San Francisco as the situation indicates.

11. Basically then, Metromedia proposes two things for KSAN-TV. (1) To improve the facilities of the station and (2) to ultimately change KSAN-TV from a satellite operation to an originating station. Concerning the changing of satellite stations to originating stations, the Commission has stated:

"It has been our hope—fulfilled in many instances—that satellite stations would develop with time into more nearly full scale operation, with local studios and local origination." *In the Matter of the Amendment of Commission's Rules Relating to Multiple Ownership of Standard FM and Television Stations*. 3 RR 2d 1554 at 1563.

12. Aside from the Report and Order, it is obvious that changing a UHF station from a satellite station to an originating station is in the public interest. The illustrative programs proposed corroborate the assignee's representations concerning public service programming, and the assignee's representation to increase KSAN-TV power to 180 kw is not something in the distant future, but the proposal is presently on file with the Commission.

13. Our conclusions are therefore: (1) The assignor is not in a position to improve the facilities at KSAN-TV in order to compete with the other television stations in the market; (2) efforts were made by the licensee to sell KSAN-TV to buyers who did not have the broadcast interests mentioned in the then *Top Fifty Interim Policy* statement; (3) because of the nature of the competition in the San Francisco TV market, and the independent stature of the assignee, a grant here will be consistent with the Commission's policy to promote diversification of

² The AVC Co. permittee of Channel 20 has scheduled an on the air date of April 1, 1968.

broadcast media; (4) because of the Metromedia proposals both as to improving facilities and proposed programing, better TV service will be rendered to the public by the station following consummation of this transfer; (5) because of all the considerations involved a grant here will affirmatively be in the public interest. Therefore the criterion mentioned, *supra*, is satisfied in this case.

14. In view of the above, it is ordered that the above application is granted.

FEDERAL COMMUNICATIONS COMMISSION,*
BEN F. WAPLE,

Secretary.

DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

The \$1,000,000 consideration for KSAN-TV is to be divided equally between S. H. Patterson, the licensee of KSAN-TV, and Sierra Broadcasting Co., licensee of KICU-TV, Visalia, California, pursuant to an option agreement between Patterson and Metromedia and a further agreement between Sierra Broadcasting and Metromedia.

An opposition to the assignment has been filed by Mr. Keith Dare, former General Manager of KICU-TV, alleging that the agreements were used to (a) prevent forfeiture of the KSAN-TV permit in Docket No. 15902, (b) to stave off foreclosure proceedings against KICU-TV, and (c) to assure Metromedia that it could later pick up an operating station. Dare urges that the KSAN-TV license be cancelled and channel 32 be made available to other parties.

I would not approve the device here employed whereby half the consideration for assignment of KSAN-TV is paid to the licensee of another station. Also, I believe that Dare's opposition raises serious—and unsatisfactorily answered—questions as to whether the satellite operation of KSAN-TV proposed in Docket No. 15902 was, in fact, for the purpose of effectuating an assignment of the permit, and whether, therefore, the permit should be cancelled and channel 32 be made available to other parties.

The \$1,000,000 purchase price is for what appears to be little more than the license of KSAN-TV. The station shows depreciated assets of \$55,671. It operated from 1954 to 1958 and was silent from 1958 to 1966, when it resumed broadcasting as a satellite of KICU-TV. KSAN-TV broadcasts only 28 hours a week, carrying KICU-TV's afternoon programing. KSAN-TV has no studios. Metromedia's agreement was for KICU-TV to continue furnishing programs (28 hours per week) to KSAN-TV for six months after Metromedia's take over. Thus, there is no going operation in the usual sense of a television station for Metromedia to take over for its \$1,000,000. In my opinion, the transaction amounts to the sale of a license by Metromedia and should be rejected in favor of opening the channel to applications by other interested parties.

Accordingly, I vote to set these matters for hearing, and, in view of Metromedia's extensive acquisitions and sales of stations, include an issue with respect to its trafficking in broadcast licenses.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX

I have a great deal of sympathy for the transferor, but do not believe the proposed transfer is in the public interest. Like a good many others who went into UHF broadcasting in the early 1950's, S. H. Patterson no doubt hoped that his station in San Francisco would shortly become a profitable operation. Instead, it encountered continuing losses. Despite that fact, he kept it on the air for more than four years—longer than many other early UHF stations—and I therefore recognize certain equities in his favor. For that reason I did not favor deleting his construction permit when we considered that course with respect to a long list of idle UHF permittees in June, 1965.¹ I was pleased to hear that the station had been returned to the air, though I learned later that the service it provided San Francisco was a very nominal one which apparently has not served any significant need there since it seems not to have attracted any measurable audience.

In the light of all this I think Mr. Patterson is entitled to sell his station—but I do not think he is entitled to sell it in derogation of the public interest in a

*See attached dissenting statements of Commissioners Bartley, Cox and Johnson.

¹ I was out of the city when the Memorandum Opinion and Order in Docket Nos. 15889 to 15910 was adopted. However, I had participated in the oral argument in those proceedings and in the instructions given to our staff as to preparation of the Order.

diversely owned, locally based television service, or that he is entitled to hold out for a price, far in excess of the value of anything he really owns, which is likely to be paid only by a purchaser who, like Metromedia, poses problems of concentration of control. I therefore dissent.

I concur in what Commissioner Bartley has said. I agree that there are questions about the details of this transaction which need to be examined in a hearing. I also agree that, in view of the very limited operation of KSAN-TV and its very minimal physical assets, this is essentially a transfer of a bare construction permit for a price which I think violates established Commission policy. I also concur in Commissioner Johnson's views.

But there are other aspects of the matter I would like to consider. The majority recognizes that this application falls within the language of the Report and Order issued February 9, 1968, in Docket No. 16068, in which they rejected the proposal to tighten our multiple ownership rules as to television stations in the top fifty markets. They therefore concede that the applicants here must make "a compelling public interest showing," with "full specifics" as to how the public interest would be served, or more specifically, "the benefits in detail that are relied upon to overcome the detriment with respect to the policy of diversifying the sources of mass media communications to the public." In other words, in that Report and Order the majority conceded that allowing one entity to own more than three stations in the top 50 markets (not more than two of which can be VHF) is *prima facie* contrary to the public interest in diversity of control of the broadcast media. They therefore recognize—both in Docket No. 16068 and here—that applicants proposing ownership in excess of that level must show countervailing benefits which overcome this detriment to the public interest. I dissented in Docket No. 16068—in part because I did not believe the majority would really hold applicants effectively to that test. I think this is a case in point, and that it indicates the course the majority are likely to follow in most other cases of this kind.

Let us consider the grounds upon which the majority find that "the criterion of overriding public interest has been satisfied." First, they recite the facts as to Mr. Patterson's operation of KSAN-TV: (a) That the station operated for four years, before going dark because of operating losses; (b) that on February 18, 1966, it resumed operation as a satellite of KICU-TV in Visalia, California, which is owned by Mr. Patterson's son, but that it operates with low power for only about 28 hours per week, has no local studios, and Mr. Patterson lacks the financial resources necessary to permit the station to compete effectively with the other San Francisco stations; and (c) that for approximately a year before granting an option to Metromedia, Mr. Patterson tried to sell the station to a purchaser whose broadcast interests were not in conflict with the Commission's interim policy as to the top 50 markets which was then in effect. I'd like to comment on these points in order. The facts as to operation of the station in the pioneer days of UHF and the losses incurred therein give rise to certain equities justifying (1) continuation of the construction permit for the station despite the fact that it had been off the air for seven years and (2) allowing Mr. Patterson to sell the station and transfer its license. But these considerations have no bearing on the question of whether we should allow the station to be sold to an entity already owning more stations in the major markets than the Commission regards as normally consistent with the public interest. Similarly, the stunted character of KSAN-TV's present operation indicates how little it is now contributing to the people of San Francisco and how little Mr. Patterson has to sell but it does not justify sale to a multiple owner already having four stations in the top 25 markets.

The only one of these matters which is reasonably relevant to the issue here is the one involving efforts to sell the station in conformity with our Interim Policy—and that seems of very doubtful factual accuracy. Presumably this claim—advanced in an amendment filed September 8, 1967—is made because in a number of earlier actions waiving our Interim Policy, the majority gave some weight to claims that the transferor had tried to effect a sale which would not violate that policy. Of course, the necessary implication is that Mr. Patterson realized that our Policy would apply to a sale of KSAN-TV, conscientiously tried to sell to others whose acquisition of the station would not call for a hearing, and that it was only when such efforts failed that he agreed to sell to Metromedia, even though it already owned more than the permitted number of stations in the top 50 markets. I don't believe this claim fits the facts.

The chronology in this matter was as follows:

June 17, 1965: The Commission granted Mr. Patterson's application for additional time within which to complete construction.

October 12, 1965: Mr. Patterson gave Metromedia an option to buy the station.

February 16, 1966: The station went back on the air as a satellite of KICU-TV. July 1, 1966: Metromedia began paying Mr. Patterson \$10,000 per month over and above the contract price of \$1,000,000. (These payments presumably now total \$210,000).

June 28, 1967: Metromedia exercised its option.

August 1, 1967: The parties filed the pending transfer application.

It thus appears that Mr. Patterson says that efforts to sell the station to others were made in the period between October, 1964 and October, 1965. Since the negotiations with Metromedia and the preparation of the necessary agreements must have required considerable time, it seems likely that the negotiations with potential purchasers claimed not to have had interests in conflict with our Interim Policy must have taken place in late 1964 or the first half of 1965.

The amendment in question indicates negotiations with only two other possible purchasers, D. H. Overmyer and King Broadcasting Company. In the summer of 1965, both of these already owned (or were in the process of acquiring) stations in the top 50 markets. King Broadcasting has operated VHF stations in Seattle and Portland, Oregon, since November 25, 1948, and December 15, 1956, respectively. Overmyer's application for a UHF station in Toledo was designated for hearing on February 5, 1964, and received a favorable examiner's decision on March 10, 1965. He acquired his other permits by transfer, applications for which were filed as follows: San Francisco, November 10, 1964; Rosenberg (Houston), February 8, 1965; Pittsburgh, May 11, 1965 (actually this was originally filed in February 1965, but was returned and resubmitted on the date indicated); Newport (Cincinnati), August 28, 1964; and Atlanta, August 13, 1964. We first adopted our Interim Policy on December 18, 1964, in a Public Notice which announced that, absent a compelling affirmative showing, we would designate for hearing any application for the acquisition of a VHF station in one of the top 50 markets if the applicant already owned one or more VHF stations in such markets. On June 21, 1965, we revised the Policy to indicate that applications for the acquisition of more than three television stations, or more than two VHF stations, in the 50 largest markets would be designated for hearing.

It appears that Mr. Patterson must be in error with respect to the timing of the negotiations with Overmyer, because they must have taken place some time before November 10, 1964, when Overmyer filed an application to acquire another San Francisco station. It is clear that we had no Interim Policy at that time, so Mr. Patterson cannot say that his negotiations with Overmyer constituted "efforts to sell station KSNV-TV to a purchaser whose broadcast interests were not in conflict with the Commission's *Top Fifty Interim Policy* in effect at that time (5 RR 2nd 271)." The majority's citation is to our June 21, 1965, Notice which was issued long afterward. In any event it seems evident that negotiations with Overmyer were broken off because Mr. Patterson considered his offer (\$250,000) inadequate. It may have been insufficient to resolve the transferor's financial problems, but in view of the station's history, its inferior facilities, and its lack of audience a quarter of a million dollars really seems not unreasonable—in fact, even that sum would have reflected largely a valuation placed on the bare license for the station. Surely the \$1,000,000 paid by Metromedia—plus the additional \$210,000 in monthly installments—represents the value of a UHF permit for the nation's seventh largest market rather than the worth of its physical assets or its desirability as a going concern.

Similarly, it seems unlikely that the negotiations with King Broadcasting represented a conscious effort to find a buyer in compliance with our Interim Policy. Prior to June 21, 1965, our Policy did not apply to the acquisition of UHF facilities in the major markets, so that sale to King, or anyone else, during that period would not have raised any problem. It is true that after that date KSNV-TV could have been sold to King, but not to Metromedia, in compliance with our revised Interim Policy, but it seems likely, from the overall chronology, that the King negotiations took place earlier. In other words, as suggested above, I think that the claim of efforts to sell to someone whose holdings would not conflict with our Interim Policy was probably advanced—because the majority had given credit for such attempts at compliance in approving earlier transfers. I

don't think any real effort was made to find a buyer in compliance with the Policy, and the majority's unquestioning acceptance of the statement that such a buyer could not be found seems downright credulous. If the price quoted had been reasonable, there is no reason to believe that others would not have been interested—including some who would not have run afoul of our Interim Policy. I think the transferor's real efforts were addressed toward finding a buyer who would pay at least \$1,000,000 for the station.

The majority next notes applicants' claim that Metromedia is one of the most independent of the country's multiple owners, with three of its four television stations operating as independents facing substantial competition. They point out that KSNV-TV competes with five local commercial stations, four VHF and one UHF,⁴ with the former owned by the *San Francisco Chronicle*, Westinghouse Broadcasting Company, American Broadcasting Company, and Cox Broadcasting Company, and the UHF station by Kaiser Broadcasting Corporation. They then say it is clear to them "that this formidable array of competition makes the acquisition of KSNV-TV by Metromedia consistent with the objectives of diversification of mass media spelled out in the Report and Order [in Docket No. 16068]." This seems to mean that since the Commission has permitted San Francisco's television service to be controlled by a local newspaper and by major broadcast multiple owners, "the objectives of diversification" are somehow served by allowing the transfer of the only independently owned station to yet another multiple owner. I must confess that the logic of this escapes me. If followed consistently, since nearly all the existing stations in the top markets are controlled by multiple owners or newspapers, this policy would seem to imply that all the new stations coming on the air in these communities should be licensed—and the few existing independently owned stations should be transferred—to still other multiple owners,⁵ all in the name of "diversification."

In addition, the majority say "there are affirmative considerations that compel a finding that the public interest would be served by a grant of the subject application." Of course, they said in Docket No. 16068 that such "a compelling public interest showing" must be made. So let us consider what they find "compelling" enough to meet this hopeful new standard which they announced just last month.

Unfortunately, as might have been expected, they do not require very much. They simply say that Metromedia promises "to improve the technical facilities and programming of KSNV-TV, with a view to enhancing the station's competitive position." It proposes to increase power, in two stages, to move to a new transmitter site, to increase hours of operation, to present certain indicated programming,⁶ and thus ultimately to change KSNV-TV from a satellite operation to an originating station. I agree that this will all be in the public interest since it represents a much more useful service to the San Francisco audience—but by the same token it will simply be a prudent use of Metromedia's new facility, and a reasonable effort to convert its investment into a profitable enterprise. There has been no showing that another purchaser without Metromedia's other station holdings would not propose to do substantially the same things. So the majority have approved conversion of the last independently owned station in San Francisco into a link in another absentee-owned broadcast chain, and has given Metromedia even greater access to the minds of the American public. They

⁴ An additional UHF station will soon go on the air in San Francisco—reportedly about April 1. This is the facility which the majority recently permitted Overmyer to transfer to AVC. This suggests that San Francisco would receive substantial additional service even without approval of this transfer.

⁵ But we pursue a directly contrary policy in the initial licensing context, giving a strong preference to the applicant who has the least in the way of interests in the mass media. *Policy statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965). However, as is evidenced by the action here—and in the whole string of transfers of licenses or permits in the top 50 markets approved by the majority in the last two and a half years—the Commission can be relied on to correct this monetary deviation through the transfer process.

⁶ I would like to have examined its programming proposals in detail, but have not found time to do so. However, neither our staff's summary nor the majority's comments suggest anything extraordinary. Metromedia identifies seven or more problem areas with which it proposes to deal through news and a weekly half-hour series entitled "Community Dialogue." It further proposes a Monday through Friday program (2 to 2½ hours in length) similar to one it has presented on its station in Washington, and promises "fresh and innovative programing" not already available in the market. This will surely be better than the four hours a day KSNV-TV now relays from Visalia, but the majority makes no claim that Metromedia will bring San Francisco anything substantially different from the programming already available there.

recognize that this is detrimental "to the policy of diversifying the sources of mass media communications to the public;" they state that this can be overcome only by a compelling public interest showing; but they then turn around and accept showings no better than any financially qualified applicant would make.

It seems clear that if the assignor is not fully competitive in the market, if he says he first tried to sell to buyers without significant media interests (even though this seems improbable on the face of things), if the other stations in the market are controlled by strong multiple owners, and if the transferee proposes to improve the station's facilities and programming,⁵ the majority will be glad to ratify the transaction. In fact—and in all seriousness—I think that any licensee or permittee of a television station in a major market who finds a better-financed buyer who meets our minimal legal qualifications can expect majority approval of his sale. I think this means that we can expect to hear more *talk* of promoting diversification and of special affirmative showings, but that we will see a continuing trend toward more and more concentration of control over our vital broadcast media. I do not think this will promote the true interests of the American public, but it will be very profitable for the beneficiaries of this benevolent attitude toward those moving to acquire greater and greater holdings in television and radio.

MAJOR MARKET OWNERSHIP

(Voluntary assignment of license of Station KSAN-TV, San Francisco from S. H. Patterson to Metromedia, Inc.)

DISSIDENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The Commission here approves the purchase of the license for San Francisco's KSAN-TV by Metromedia, Inc. Metromedia, one of the nation's largest collectors of broadcast licenses, will hereby acquire its fifth television station. Each is in one of the top twenty-five metropolitan markets.

The company also owns six AM and six FM radio stations, all of which are also in the top twenty-five markets. Related interests other than stations include Foster and Kleiser (outdoor advertising), Metro Transit Advertising, the Ice Capades, Dolper Productions, Dickie Raymond, Inc., Metro TV Sales (station sales representative), and Playbill Magazine. It is headquartered in New York City.

I believe very strongly that, before we decide that adding to a broadcasting empire of this magnitude serves the public interest and therefore merits our approval, we are obligated to hold a hearing. I say this despite my appreciation of the admirable vigor of Metromedia's performance in the markets where its stations furnish effective independent challenge to network affiliates. A majority of my colleagues have chosen to grant this application for transfer without a hearing. Therefore I must dissent.

Until three weeks ago, this case would have been governed by the Commission's Interim Policy pertaining to concentration of control over broadcast licenses in the major markets. This policy, announced June 21, 1965, stated that, "absent a compelling affirmative showing to the contrary," an application for a new station or for a transfer which would give the applicant more than three television stations in the top fifty markets (or more than two VHF stations) would be designated for a hearing. *Public Notice: Interim Policy Concerning Acquisition of Television Broadcast Stations*, 5 P & F Radio Reg. 2d 271 (1965). This Interim Policy was designed to prevent further concentration until the Commission decided whether to adopt a rule, proposed the same day, permanently proscribing future increases in major market concentration beyond the three station limit. *In the matter of: Amendment of Section 73.636(a) of the Commission's Rules Relating to Multiple Ownership of Television Broadcast Stations*, 5 P & F Radio Reg. 2d 1609 (1965). On February 7, 1968, with Commissioners Bartley, Cox and myself dissenting, the Commission decided not to adopt the proposed rule, to abandon the Interim Policy, and to terminate the proceeding altogether. We retained, however, at least in theory, the requirement that a "compelling affirmative showing" be made before more than three television stations could be acquired in the top fifty markets. FCC 68-138, Report and Order Adopted February 7, 1968.

⁵This is a paraphrase of the considerations recited in Paragraph 13 of the majority's opinion.

Unfortunately, the Commission never took this requirement seriously even before it formally abandoned the interim policy. As I observed in dissenting to our action of February 7, the majority discovered in the applicant's pleadings a showing "compelling" enough to justify waiving the requirement in literally every one of the ten cases where the question was raised. The majority's summary approval of the instant transfer demonstrates, to no one's great surprise, that it is going to continue to feel "compelled" to ignore its supposed commitment to blocking increased concentration in the major markets. Henceforth, as predicted in my dissenting opinion on February 7:

The Commission's policy with regard to multiple ownership will be what is now in its rules, and no *ad hoc* determinations will tighten those standards. Seven AM's, seven FM's and seven TV stations, of which five can be VHF's—so long as no signals overlap—can be acquired by any multiple owner regardless of how many millions of Americans he influences.

It is curious to me why the majority has felt it necessary to retain its lip service commitment to the three-station limit, when its actual policy is and always has been quite clearly otherwise.

The present acquisition by Metromedia, in addition to revealing the persistence of the majority's relaxed attitude toward concentration, also illumines, I believe the dangers inherent in this attitude.

Metromedia is now an enterprise which controls important gateways to the minds of millions of the most strategically located members of the nation's body politic. Specifically, Metromedia can reach, by means of its TV-AM-FM stations in the first, second and seventh largest markets (New York, Los Angeles and San Francisco-Oakland), a total of more than 20 million individual citizens—decisive majorities of the population in each of the nation's two largest states. With two broadcasting outlets in each city, Metromedia reaches Philadelphia (Cleveland, and Baltimore, the fourth, eighth, and eleventh markets, totaling more than eight million additional citizens. With one outlet, the company covers an additional three and one-half million people in Kansas City, Missouri and Washington, D.C., the national capital.

That, it need hardly be added, amounts to considerable power—private power which counts for a great deal in all arenas where public decisions of national consequence are made.

Unlike other accumulations of private power with public implications, however, Metromedia's acquisitions have all been conferred by a public agency, an agency which has today in a too casual manner sanctioned a substantial addition to the company's holdings.

When one moves from the national scene to the particular metropolitan area affected by this decision, the potential dangers of acquisitions like the present one appear even more clearly. The San Francisco market, as we have reconstructed it by today's decision and by two recent actions which similarly ignored the Interim Policy, shows in microcosm what television ownership in the United States will look like even after the additional competition of UHF broadcasting is fully established. UHF was proclaimed in the Commission's original allocations plan as the vehicle by which the FCC would guarantee diversification in control over television communication. *Sixth Report on Television Allocation*, 1 P & F Radio Reg. 91: 601 (1952). There is, however, many a slip between the cup and the lip. And as the Commission has administered its allocations design of 1952 and nurtured the growth of UHF broadcasting, diversity has continually slipped from its original position as the central object of the Commission's esteem.

In San Francisco there are now four commercial VHF television stations. Not one of these stations—not a one—is independent of control by other powerful new media or significant outside interests. (KQED, Channel 9, one of the nation's outstanding educational stations is, of course, a non-commercial station with deep roots in the San Francisco community.) CBS-affiliate KPIX is licensed to Westinghouse, which, like Metromedia, owns five television stations in the major markets in addition to a number of radio stations and is headquartered in New York City. KTVU is owned by a subsidiary of Cox Broadcasting, part of a substantial communications complex which includes newspaper and CATV interests and is headquartered in Atlanta, Georgia. KGO-TV, an ABC affiliate, is owned and operated by the ABC network with main offices in New York City. The only VHF in town not controlled by a substantial outside interest is NBC-affiliate KRON-TV—and it is owned by the Chronicle Publishing Company. Chronicle publishes San Francisco's *only* morning newspaper—and is presently linked to the city's only afternoon paper by a joint operating agreement (now of qu

tionable antitrust validity. See, *United States v. Citizen Publishing Co.*, Civil No. 1969, D. Ariz., Jan. 31, 1968.). The paper has also evinced an incipient interest in CATV.

What sort of change will UHF television make in the structure of the television industry in San Francisco? One station will, of course, be controlled by Metromedia. Its dimensions as a national communications enterprise have already been detailed. One of the other two commercial UHF outlets allocated to San Francisco is not yet operating. The construction permit is held by American Viscose Corporation, a diversified holding company which very recently acquired *sua* UHF outlets in one blow, for which FCC approval was obtained without a hearing (FCC 67-1312, Memorandum and Order Adopted December 8, 1967). The other is operated by Kaiser Broadcasting, beneficiary of two waivers of the Interim Policy (*Harvey Laboratories, Inc.*, 6 F.C.C. 2d 898 (1966); *Superior Broadcasting Corp.*, 10 F.C.C. 2d 100 (1967)), and owner of six television station licenses or construction permits.

This then, is the monument the FCC has built and left in San Francisco. These are the interests which control the diet of information and entertainment fed to the citizens of San Francisco, California. Such interests expect, and doubtless will continue, to exercise that control into the far future—at least as long as they find it profitable.

Was it necessary or wise for the FCC to so structure the media in San Francisco, or in any of the other large cities of the nation of which San Francisco is typical? Was it in the public interest to vest all of the city's television stations in the hands of large organizations, each of which adds to media concentration in either the national or local markets, or which puts the broadcast station somewhat down on the organization chart of a large conglomerate enterprise? I doubt that the answers to these questions are in the affirmative. I certainly do not think that they can defensibly be answered in the affirmative without a hearing.

To express concern over concentration of control over the mass media is not to prescribe a wooden rule to govern every case. Nor should objection to the power of an organization be understood to impugn the motives or present practices of its officers and owners. On the contrary, the record of Metromedia as a Commission licensee is in the first rank, both as a promoter of competition and of public service.

But it is not merely *abuses* of power which the FCC is bound to rectify. We must be equally concerned with the *potential* for abuse in the structure of the mass communication system we are building. We cannot content ourselves with the notion that we will be able to deal adequately with abuses when and if they occur. For, after all, abuses in the management of the media are not easily, nor, one suspects, frequently discovered. Indeed, even if it were feasible, it would be neither wise nor possibly even constitutional for this or any other government agency to police too vigilantly the news policies of the Commission's broadcast licensees. As the Department of Justice stated to the Court of Appeals, when reviewing the FCC's approval of last year's abortive ABC-ITT merger, a "continual process of demanding explanations as to why particular news items or programs were or were not shown would come dangerously close to the kind of program censorship which is barred by the First Amendment and Section 326 of the Communications Act." *Brief for the United States*, p. 108, *United States v. F.C.C. et al.*, No. 21147, D. C. Cir., 1967.

Moreover, to the extent that abuses are discovered, they are not easily countered. Certainly it is improbable that multiple licenses, once conferred on an organization, would be taken away simply because the organization falls into new and apparently less trustworthy hands. Experience has taught that, once institutional arrangements are fixed in place, the government's formal power to protect the public interest becomes essentially negligible in fact. Government cannot be relied upon to make significant rearrangements, or to affect to a significant extent the internal direction of the institution's policies.

Finally, and most important, a representative government simply cannot abide unnecessary private accumulations of power over the press, quite apart from the degree to which it can effectively control abuses. When the power to inform the people is held by a relative few, the tendency is irresistible for government to begin to regard those few, rather than the electorate, as its constituency. Indeed, in particularly acute situations, a public official is effectively compelled to defer to the masters of the media. Democracy cannot safely run any unnecessary risk of such subversion of its basic processes.

Whether the putative benefits cited by the majority will in fact materialize, or whether they outweigh the risks of increased concentration attendant upon this

intent acquisition, cannot be determined on the record before the FCC at this stage. Only the data and analysis obtainable through a hearing would justify the decision which the Commission has seen fit to render on the basis of the pleadings alone.

The fact is that the majority is uninterested in undertaking such an investigation, because it has made in this, as in so many other cases, an *a priori* judgment that concentration is a policy consideration of insignificant weight. The Commission's opinion states that Metromedia was the *only* purchaser turned up by the assignors, the only hope therefore of activating an otherwise moribund UHF station. This claim may seem a bit suspect, in view of the size of the San Francisco market, the growing number of UHF receivers, and, indeed, the \$1 million consideration paid by Metromedia for what Commissioner Bartley points out is little more than a bare license. And, in fact, it is known to the Commission and its staff that at least one other offer for the station was made but that the assignors considered it (\$250,000) "inadequate." Commissioner Cox's thorough analysis seems considerably more creditable.

Moreover, the Commission's treatment of this case effectively removes an incentive a prospective assignor of a license might have to look first for a buyer without substantial additional media interests. Our rhetorical commitment to encourage diversification through the administration of transfer policy is belied by the majority's eagerness to accept the assignor's representation that "no . . . buyer could be found . . . whose broadcast interests were not in conflict with the Commission's *Top Fifty Interim Policy*. . . ." That commitment is also called in question by the Commission's brush-off of a complaint described in Commissioner Bartley's dissenting opinion.

The complaint before us alleges that the present transaction is the culmination of a scheme to prevent the license for Channel 32 in San Francisco from being declared forfeit and made available to all interested applicants in a comparative proceeding. As an absentee owner with extensive broadcast interests, Metromedia's chances for success in such a proceeding would likely be quite slim (*Policy Statement on Comparative Broadcast Hearings*, 1 F.C.C. 2d 393, 39 (1965); *Farragut Television Corp.*, 3 F.C.C. 2d 279, 285 (1967) (dissenting opinion of Commissioner Johnson).

With respect for my colleagues, but regret at their indifference to the danger of concentration, I dissent.

ITEM 27

SUBCOMMITTEE STAFF MEMORANDUM

SUBJECT: MULTIPLE OWNERSHIP RULES RELATING TO TELEVISION LICENSES

It is academic that the Communications Act of 1934 establishes guidelines for the Federal Communications Commission to follow to avoid undue and unreasonable concentration of ownership of commercial broadcasting and television media. Section 309(a) requires a determination by the Commission of whether the granting of the license serves the public interest, convenience and necessity. Similarly, construction permits and station licenses are not to be transferred, assigned or disposed of "in any manner" except upon a finding by the Commission that the public interest, convenience and necessity will be served thereby (Section 310(b)).

The Congress has specifically declared that, "All laws of the United States related to unlawful restrictions and monopolies and to communications, contracts or agreements in restraint of trade are hereby declared to be applicable to . . . interstate or foreign radio communication." (Section 313(a).) Broadcast licenses are prohibited from controlling or owning cable wire, telegraph or telephone lines if the purpose or effect may be to substantially lessen competition or restrain trade. (Section 314.)

Throughout the history of the Federal Communications Commission as well as the Federal Radio Commission, before it, care has been taken to avoid the possibility of a monopoly or of unreasonable concentration of ownership of the means of public communication administered under the Congressional Act.

The Federal Communications Commission adopted its first rules regulating multiple ownership of television broadcast licenses in 1941. (Docket No. 506 6 F.R. 2284, May 2, 1941.)

This rule provided, in part, that no person could directly or indirectly, own, operate or control more than one television broadcast station, except upon a showing "... (a) that such ownership, operation, or control would foster competition among television broadcast stations or provide a television broadcast service distinct and separate from existing services, and (b) that such ownership, operation or control would not result in the concentration of control of television broadcasting facilities in a manner inconsistent with public interest, convenience, or necessity." * * * An provided, further, that the Commission will regard the ownership, operation or control of more than three television broadcast stations as constituting a concentration of control of television broadcasting facilities in a manner inconsistent with public interest, convenience, or necessity." A footnote defined control as "... not limited to majority stock ownership, but includ[ing] actual working control in what ever manner exercised." (Emphasis added.)

On May 16, 1944, following a petition by NBC claiming that a larger number of stations was necessary to permit the development of television networks and national programs, the Commission amended its rule to permit one licensee to hold five television licenses.

In 1953, the Commission issued a *Report and Order* relating to multiple ownership of AM and FM radio licenses as well as TV licenses. This *Order* confirmed existing rules allowing any one licensee to own five television stations. It also confirmed the earlier definition of "control." (Docket No. 8967, 9 RR 1563.) In that proceeding the Commission denied the contention made by a group of broadcasters and other parties that the determination of whether to issue a license in every instance when multiple ownership would be a problem should be processed on a case-by-case basis rather than pursuant to the clearly defined limitation to five licenses. The Commission stated *inter alia*, "It is our view that the operation of broadcast stations by a large group of diversified licensees will better serve the public interest than the operation of broadcast stations by a small and limited group of licensees. Simply stated, the fundamental principle of this facet of multiple ownership rules is to promote diversification of ownership in order to maximize diversification of ownership and service viewpoints as well as to prevent any undue concentration of economic power contrary to the public interest." The Commission related its determination to its desire to license stations to broadcasters "who are prepared and qualified to serve the varied and divergent needs of the public. . . ." In this *Report and Order* the Commission did not distinguish between the ownership of VHF and UHF stations.

Commissioner Hennock who concurred in part and dissented in part from the 1953 *Report and Order* objected to the possibility that under the Commission's rules, station owners could concentrate ownership of broadcast stations within a single region. She argued in favor of limiting ownership of television stations to no more than one station "in one state or geographic region which may be considered as an integrated economic unit."

The next Commission proceeding relating to TV multiple ownership rules occurred in 1954 (Docket No. 10822, 11 RR 1519). In its *Notice of Proposed Rulemaking*, the Commission announced that it looked toward amendment of the rules in order to permit ownership of additional TV stations to advance the development of UHF. In this proceeding, the Commission amended its rule by distinguishing for the first time between VHF and UHF stations, and by permitting the ownership of seven stations by any one person or group including no more than five VHF stations.

Four Commissioners voted in favor of this change. Commissioner Hennock dissented; Commissioners Sterling and Bartley did not participate; and Commissioner Doerfer, one of the four Commissioners voting in favor of the change, concurred separately.

It is interesting to note that the Commission relied to a great extent for this amendment upon its judgment that "... the prestige, capital and know-how of the networks and other multiple owners would be most effective in aiding UHF. We are persuaded that the entry of these multiple owners will furnish a substantial impetus to UHF." (*Id.* at 1523, of., 1519.) (Emphasis added). The dissenting Commissioners stated that in their opinion the amended rule would facilitate assistance to UHF in markets where high VHF-only saturation existed. Commissioner Hennock noted in her dissent "that the increased concentration of mass media control will be small benefit to the public. It will be no benefit at all to independent UHF broadcasters, who are in a critical condition because of lack of network programming, to see the networks acquire UHF stations in the largest,

most profitable markets." She also objected to the fact that the multiple ownership rule made no distinction between ownership of stations in large major market areas and other smaller market areas, and under the amended rule multiple owners would be allowed to have "overlapping services." (*Id.* at 1524, 1525).

On July 13, 1962, the Commission issued a *Notice of Proposed Rulemaking* relating to modifications mainly in the technical application of multiple ownership rules, inviting comments for consideration.

Pursuant to the Notice, a *Report and Order* was issued in May 1964 (FCC 64-448, 2 RR 2d 1589, Docket No. 14711.) For the most part the *Report* discussed the technical problems of restrictions relating to the overlap of AM and FM station signals. Citing the declining number of daily newspapers, the Commission observed that while it applied a looser concept of multiple ownership and overlap in the past, "We are persuaded that it is no longer necessary to tolerate overlap in the situations allowed in the pioneering days of the broadcast service as the only means of initiating any service at all." "Under these circumstances (declining number of newspapers), we feel that the impact of individual broadcast stations has become significantly greater."

Although for the most part this decision related to radio broadcast stations, it also applied, in part, to television station ownership as well.

The Commission made specific reference to assignments and transfers: "(c) It is beyond dispute that television has a considerably greater impact upon the public today than does either of the aural services. Moreover, there are many fewer television channels available than in the aural services. For these reasons, we have concluded that a more restrictive overlap rule is required for television and we have based the final rule on prohibited overlap of Grade B. service contours. * * * In many areas of the country today, Grade B. television signals provide the only available service or, in any event, a service which many viewers have been willing to put up relatively complex antennas to get. * * * the more restrictive standard we have chosen for television will have the effect of limiting future ownership to a maximum of two stations in most states and, thus, will act indirectly to curb regional concentrations of ownership as well as overlap itself," (At 1599.)

The Commission continued: "As stated in the Notice, the new rules will not require any licensee to divest itself of stations presently owned. However, we reaffirm our original proposal that the new rules must be applied to assignments and transfers. The rule will operate in two ways with respect to these transactions. First, a proposed assignee or transferee will be subject to the rule in the same way as any licensee of an existing station seeking a construction permit for an additional new facility. Second, no assignees or transferees will be permitted to acquire 'packages' of more than one station in the same service involving overlapping contours prohibited by the rule." (At 1601-2.)

Commissioners Hyde and Lee dissented stating in part: "We are particularly concerned regarding the possible impact of the new restrictive regulations upon the further development of UHF television. This is an area where encouragement rather than restrictions would be appropriate if the Commission's licensing policy is to be consistent with its asserted interest in the use of the UHF channels. The new regulations, it seems to us, may tend to inhibit rather than encourage the full development of nationwide competitive television."

Later, in 1964, the Commission further amended its multiple ownership rule in a *Memorandum Opinion and Order* by adjusting the amendment to technical matters relating to multiple ownership. (FCC 64-904.)

Apparently concerned with the problems of overlapping by UHF stations owned by the same persons and parties raising the problem of duopoly, the Commission stated that the stricter duopoly rules (provided in the earlier *Report and Order*, by minimizing Grade B contour overlap) would not apply to UHF stations on the air before the date of the adoption of the new rule.

Interestingly, this looser interpretation of the duopoly rules, which was promulgated to encourage the development of UHF stations, is not confined to the overlapping of commonly owned UHF stations, but could be applied to situations where a commonly owned UHF station overlapped a VHF station owned by the same persons. (Cf. 3 RR 2d 1554 at 1562.)

In the same year, the Commission "grandfathered" all multiple owned FM and TV stations with overlapping Grade B contours (resulting from the expanded definition of impermissible overlap under the amended rules). These stations

would, but for the grandfather clause, have been in violation of the duopoly rules after the amendments to the multiple ownership rules.

The Commission also exempted from operation of the expanded duopoly rules "involuntary assignments or transfers made necessary by reason of death or legal disability, and assignments and transfers to beneficiaries under a will or by intestacy where no new or increased overlapping would be created by the commonly owned stations." (Order, December 16, 1964; 3 RR 2d, 1637.)

Two days following the December 16 Order, on December 18, 1964, the Commission in a *Public Notice* announced its decision to designate for hearing all applications filed after that date for the acquisition of a VHF station in one of the so-called "top 50 markets" by applicants theretofore having an interest in one or more VHF stations in those top 50 markets. Similarly, the Commission announced that all applications to acquire an interest in two or more VHF stations in the top 50 markets by applicants with no other VHF interest in the top 50 markets would be designated for hearing. The Commission stated that these hearings would be designated "absent a compelling affirmative competitive showing." (FCC 64-1171, 3 RR 2d 909.)

In announcing this policy, the Commission elaborated upon the concentration of ownership of VHF-TV stations within the top 10 markets, representing 40% of all TV households:

Within the top 10 markets there were in 1964, 40 VHF stations of which 37 were held by multiple owners and the remaining 3 licensed to companies owning daily newspapers in the same cities.

Within the top 50 markets there were in 1964, 156 VHF stations, of which 111 were licensed to multiple owners and 17 of the remaining stations were owned by persons with joint interests in daily newspapers in the same markets.

The 8 multiple owners then holding the maximum of 5 VHF licenses held 40 VHF licenses, of which 22 were in the top 10 markets, 32 in the top 25 markets, and 38 in the top 50 markets.

Between 1956 and 1964:

The number of multiple TV station owners increased from 81 (23.3%) to 134 (40.9%);

The number of TV stations owned by multiple owners increased from 203 (43.4%) to 372 (65.7%);

The number of individually owned TV stations declined from 265 to 194.

The Commission described this trend as a "congealing of multiple ownership interests." It added: "We do not believe that this degree of multiple ownership concentration in the largest population centers is desirable." The Commission restated its "... purpose ... to prevent undue concentration of control in the broadcasting industry, and to encourage the development of the greatest diversity and variety in the presentation of information, opinion, and broadcast material generally." (3 RR 2d 909 at 910-11.) It observed that it was to be guided by Congressional policy against monopoly in the communications field and the desirability enunciated by the courts that the broadcasting industry is to be one of free competition.

Commissioner Hyde dissented. He stated that he believed, that the so-called "new approach" enunciated by the Commission would limit the effectiveness of competition of non-national network broadcasters. He asked, "If the percentage of population theory now being advanced is to be followed to its logical conclusion, how can national networks, national publication, and other national services be justified?" He indicated his belief that the proposed policy of the majority would, in effect, constitute a "freeze" against timely consideration of applications filed "in accordance with substantive rules and policies."

The *Public Notice* by the Commission, adopting the Top 50 Market policy added that the Commission was then conducting an overall review of the problem of concentration and diversification of the broadcast media and of allied interests in other public opinion media. The Commission added that it would continue to give close examination to other applications presenting substantial multiple ownership considerations.

A second *Public Notice*, adopted on June 21, 1965, stated that the study of concentration in the broadcast media by the Commission had been completed. The Commission stated that it was rescinding the previous policy (of December 18, 1964) and substituting for it the following: Absent a compelling affirmative showing, the Commission would designate for hearing any application filed for a new TV station, assignment of license, or transfer of control, the grant of which would result in the applicant or any party having interests in more than

three television broadcast stations or more than 2 VHF television stations in the 50 largest television markets. "Divestiture will not be required, but proposals to assign or transfer commonly owned stations in excess of the number set forth in the proposed Rule to a single person, group, or entity will be designated for hearing." (Emphasis added.) The Commission excepted from the hearing procedure applications for assignment or transfer of control filed in accordance with Sections 1.540 (b) or 1.541 (b)1 of the Commission Rules, or applications for license assignment or transfer of control to heirs or legatees "if the assignment or transfer does not create common interests which would create increased overlap by commonly controlled stations, (FCC 65-548, 5RR2d 271). Commissioners Hyde, Lee and Wadsworth dissented from this action.

On the same date, the Commission issued its *Notice of Proposed Rule Making and Memorandum Opinion Order*, amending the Commission's rules relating to multiple ownership of television broadcast stations. (Docket 16068, FCC 65-547, 5RR2d 1609).

In the course of adopting the modified procedure, designating for hearing only those applications, assignments or transfers which would result in the ownership of more than 2 VHF stations by the same interests within the market, the Commission stated that its policy of holding hearings "... is necessary to prevent the compounding of situations which we believe may be contrary to the public interest. In this situation, we could not justify making grants without hearing." (5RR2d 1617.)

Commissioner Lee dissented. It was his belief that this restriction in multiple ownership permissibility within the top 50 markets would deter the growth of UHF. He observed that a change in Rules at this stage would protect the present multiple owners against future competition. He stated his belief that though "very few ... if any" stations in the top markets were likely to be sold in the foreseeable future. (*Id.* 1619.)

Commissioner Hyde dissented stating that there was "nothing to indicate that application of the proposed Rules will conduce to more effective competition." He suggested that if the new Rule were adopted, the Commission would be committed to theories which would be incompatible with the present structure of the broadcast industry. It was possible, in his opinion, that competitive applications might be filed at license renewal time against operators who were already multiple owners within the top 50 markets in violation of the Rule at the time the Rule was adopted.

Commissioner Wadsworth dissented without an opinion.

In 1966, the Commission issued its first waiver under the new interim policy. In re application of Channel 2 Corp. (Assignor) and WGN of Colorado, Inc. (Chicago, Illinois) (Assignee) FCC 66-219.

This involved an application for the assignment of a VHF station in Denver, Colorado to WGN which owned two VHF stations within the top 50 market (New York and Chicago) as well as a VHF station in Duluth, Minnesota. Channel 2 in Denver had been losing money since its origination. The Commission opinion stated that one of the owners of the Denver station had testified that "more than \$4,000,000 has been placed into the station in a good faith effort to make it a viable and competitive source in the Denver market. ..." The Commission opinion does not indicate the actual amount of loss sustained by this operation and it must be assumed that the entire \$4,000,000 did not represent actual losses. The majority opinion stated it had given "significant weight" to efforts by the Assignor to sell the station to a non-multiple owner but that attempt was unsuccessful. The majority opinion differed to the Assignee's claim to improve the channel's program service. The Commission said it had given "less decisional weight" to this fact.

Commissioner Cox dissented. He stated that the Interim Policy was not designed to improve programming, but rather to block "the further aggravation of an already serious condition of concentration of control over the most potent known means for reaching and influencing the minds of the people of this country." He stated that the unsuccessful attempts to locate purchasers who were not multiple owners did not prove that "such efforts to find alternatives more in accord with our policy as to constitute the affirmative compelling showing required to permit a transfer in contravention of the Interim Rule. ..."

This "loss station" was transferred for a consideration of \$3,500,000.

On March 24, 1966, the Commission approved the assignment of a UHF station in Milwaukee to a multiple station owner (WKY Television System, Inc.). (FCC Report No. 5930, March 24, 1966).

The Commission concluded a "compelling affirmative showing" had been made where the transferor had: (1) sustained substantial operating losses and had not been able to achieve competitive independence from the three network outlets in its market area; (2) the transferee was "able . . . and committed" to achieve competitive status for the station; and (3) the Transferor had unsuccessfully attempted a sale to non-multiple owners. The Commission gave "significant weight" to the third factor.

Commissioner Cox concurred in this result stating that although he was concerned with the drift towards concentration of ownership of television stations in major cities, he believed this instance was distinguished from the preceding case (KCTO in Denver) because it involved: (1) a UHF station; (2) the total consideration did not in fact equal the accumulated losses from the operations of the station; and (3) the transferee was active in markets with less than one-half of the viewers than in those in which the Denver transferee was active.

In July, 1966, a third transfer to a multiple owner in violation of the Interim Rule was permitted. (WIHS-TV (UHF) Boston to Storer Broadcasting, FCC Report No. 6094, July 29, 1966.) Commissioners Hyde, Lee and Wadsworth voted in favor of the waiver. Commissioners Barkley and Cox dissented and Commissioners Loevinger and Johnson did not participate.

Commissioner Cox stated in his dissent that, "A more glaring violation of the interim policy would be difficult to imagine." He thought the public interest in diversification of control in television service had been completely ignored. He observed that the grant of this application gave Storer seven television stations—5 VHF and 2 UHF all in the top 26 markets. He stated that on the basis of the arguments presented in this proceeding, any UHF station losing money in the top markets could apply for approval of a transfer in violation of the interim policy and all multiple owners would eventually have seven stations in the top 50 markets "as long as the supply of frequencies last. I think this is contrary to the public interest and represents a development having extremely serious implications for the future of our society. It is not enough to adhere to a policy of diversity in the abstract. Such a policy has to be applied in specific cases, and these can often be very difficult in terms of the interests of the individuals concerned."

In October, 1966, the Commission again waived the interim rule by permitting the transfer of WXHR-TV, Channel 56, Cambridge, Mass., to a corporation 50% owned by the Boston Globe Newspaper Company and 50% owned by the Kaiser Broadcasting Corporation. FCC Report No. 6193, October 21, 1966.

The station had been off the air for a period of time preceding the assignment. Chairman Hyde speaking for the majority stated that the applicant had made a "compelling showing justifying a grant of the application without hearing under our Interim Policy." Commissioners Loevinger, Lee and Wadsworth concurred. Commissioners Bartley, Cox and Johnson dissented.

Commissioner Cox observed that the majority did not indicate in any way what the so-called compelling showing consisted of. He expressed a fear that on the basis of this decision, every future transfer application must be approved in violation of the Interim Policy in the future. "I think it all boils down to the fact that the transferor wants to get the most money possible out of its rather tenuous hold on a UHF channel in Boston, and quite logically decided it could do better in this regard if it sold to a well financed multiple owner. Kaiser simply wants to get as many UHF stations as it can in the top markets before the Commission adopts an effective limit, if it ever does so."

Commissioner Cox stated his adamant belief that the continued dilution of the objective of the multiple ownership rules is a serious blow to the public interest.

Commissioner Johnson dissented because he did not believe any transfers should be permitted until the proposed Interim Policy is finally resolved.

In June, 1967, the Commission consented to the exchange by Capital Cities Broadcasting Corporation of a Providence, Rhode Island, VHF channel for a Houston, Texas, VHF channel. FCC Public Notice, June 16, 1967. Commissioner Johnson dissented. "I believe that questions of the ownership and responsible operation of the major outlets of information and opinion in a free society are among the most important confronting the country, the Congress, and this Commission. There are numerous illogical and inconsistent features of our current media ownership laws and policy. For example, although a single owner may not control two AM radio stations (or two television stations) with overlapping signals, there is nothing to prevent the common ownership, in a single

market, of an AM and an FM radio station, or an AM and FM radio station and a UHF or VHF television station. Concentrated regional ownership, newspaper ownership of broadcast properties, or newspaper-AM-FM monopolies, may be given great weight in comparative hearings and virtually ignored in considering unopposed applications or license renewal proceedings."

In September, 1967, the Commission approved assignment of a construction permit for a UHF station in Cleveland, Ohio, to a corporation 50% owned by Kaiser Broadcasting Corporation and 50% owned by the Assignor. *In re Application of The Superior Broadcasting Corporation (Assignor) and WKBF, Inc. (Assignee)*. FCC 67-1050/5210. The Commission stated in a four sentence opinion "the applicants have affirmatively and compellingly shown that a grant of the application would be consistent with the *Interim Policy*." The Commission did not amplify by describing any of the compelling reasons.

Commissioner Cox dissented, joined by Commissioners Bartley and Johnson. He stated: "This represents the most extreme departure the majority has made thus far from our interim policy against increasing concentration in the major markets. It seems to me that this is almost a point of no return insofar as our pending rulemaking is concerned."

Commissioner Cox argued that the construction permit itself might be invalidated because there was a question as to whether valid reasons existed for the Assignor's extension of time under its construction permit. He reasoned that if the Assignor would be found financially unqualified to build and operate the station, then its construction permit should be cancelled and additional applications could apply in a comparative hearing proceeding for the license. If a comparative proceeding were conducted for initial grant of the license, then Kaiser Broadcasting Corporation would probably not be qualified as the licensee because of its interests in five other TV construction permits within the top 50 markets: "Thus we have here the situation which has plagued us so often—and has recently caused expressions of concern in Congress—namely, the transfer of a permit or license to a party who could not have prevailed in a comparative proceeding . . ."

He expressed his fear that the evident pattern being set by the Commission permitted concentration of the ownership of UHF and VHF stations in the major markets by large multiple owners "we will be faced with an irreversible centralization of control over our vital mass media." He concluded that he did not think "the majority has addressed itself to the long range problem of increasingly centralized control of the makers of American opinion."

On November 8, 1967, the Commission approved waiver of hearing in the transfer of control of three TV stations each of which are in the top 50 market: Minneapolis, Los Angeles and Portland. *In re Applications of Chris-Craft Industries, Inc. (Transferor) and Baldwin-Montrose Chemical Company (Transferee)* FCC 12-1242/8004.

On December 8, 1967, the Commission granted the application of D. H. Overmyer to transfer five UHF construction permits—all within the top 25 markets (San Francisco; Pittsburgh; Newport, Kentucky [within the Cincinnati market area]; Atlanta and Rosenberg, Texas [within the Houston market area] to U.S. Communications Corporation, subsidiary of AVC Corporation. *In re Application of D. H. Overmyer (Transferor) and U.S. Communications Corporation (Transferee)*, FCC 67-1312/9408, File No. BTC-5376-7-8-9-80. Commissioners Cox, Bartley and Johnson dissented.

The Commission's opinion was stated in a single two sentence paragraph of the opinion:

"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 television service to the public. It is therefore believed the public interest would be served by a waiver of the *Interim Policy*."

Commissioner Cox dissented on two grounds, (1) that the majority again eroded the Interim Policy and (2) that the transferor would receive more than his out-of-pocket expenses, in violation of long standing Commission policy.

Commissioner Cox argued that it was possible that AVC would not have been granted any of the five licenses in a comparative hearing and that there was "very real likelihood that it would not prevail" in at least four cases in view of the Commission's criteria to award licenses to local operators in comparative hearings.

Once again, Commissioner Cox expressed his concern over the pattern of concentration of ownership of UHF, as well as VHF stations, Commenting on the Interim Policy:

"This [adaption of the Interim Policy] was late in the game, but held the promise of preventing our expanding UHF television service from following the pattern of closely held ownership which has developed in VHF. But the majority which is approving this transaction has so eroded the policy that we seem well on the way to an even higher degree of concentration in VHF—and just as high a level in UHF as well. Certainly they cannot claim that their predecessors are responsible for this development, or that they do not know what they are doing. If the public eventually finds itself saddled with an undesirably closely held television system, my colleagues of the present majority will be responsible."

In his opinion, concurring with the majority, Commissioner Loevinger stated his belief that a hearing would not be warranted in this case "merely because we are confronted with a difficult decision which it would be pleasant to defer. Difficult decisions very seldom become easier with the passage of time or the amassing of argumentative material in a diffuse hearing." He added that the result of enforcing a 50 market Interim Policy would be that only the large well established multiple owners would continue to survive as group licensees and that the weaker group licensees would eventually be broken up. Commissioner Cox answered that point:

"It may be true that smaller, more closely held multiple owners are more likely to withdraw from broadcasting—and therefore dispose of their stations—than entities like RCA, Westinghouse and GE. But even such limited reduction of concentrated ownership would inject additional competitive interests into broadcasting."

He added:

"I am amazed at his (Commissioner Loevinger) apparent view that we should fight an already undesirable degree of concentration by allowing other major group owners to develop."

On January 9, 1968, the Commission approved transfer of a Construction Permit for a UHF station in Denver, Colorado, from Harcourt, Brace & World, Inc. to The Denver Post, controlled by Samuel I. Newhouse who also controls Newhouse Broadcasting Corp. which controls six TV stations, three AM stations, and four FM stations. FCC Report No. 6944, January 9, 1968. Five of the TV stations are in the top 50 markets. Commissioners Hyde, Lee, Loevinger and Wadsworth joined in the majority. Commissioners Cox, Bartley and Johnson dissented. Commissioner Cox stated: "I do not think we should approve this further concentration of ownership and control in the major markets simply because Harcourt has lost interest in its proposed broadcast operations and would like to recover the relatively nominal sum it had spent in acquiring this permit. I certainly think this is a classic case for application of our Interim Policy, with no significant public interest considerations to tip the balance the other way."

On February 7, 1968, the Commission took its final action on its Interim Policy restricting multiple owners to three TV stations (no two of which could be VHF stations) in the top 50 television markets. In this proceeding, the Commission simultaneously terminated the Interim Policy and the proposed rule making proceeding of Docket No. 16068. *In the matter of amendment of Section 73.636 (a) of the Commission's Rule relating to Multiple Ownership of Television Broadcast Stations.* FCC 68-135/11378, 12 RR 2d 1501. The Commission stated it would "continue carefully to scrutinize every acquisition, whether in the top 50 markets or in the other communities, to prevent undue concentration."

The Commission added "in particular, in light of the special problems concerning the top 50 markets set forth in the Notice of Proposed Rule Making herein, we will expect a compelling public interest showing by those seeking to acquire more than three stations (or more than two VHF stations) in those markets. The compelling showing should be directed to the critical statutory requirement of demonstrating, with full specifics, how the public interest would be served by a grant of the application—that is, the benefits in detail that are relied upon to overcome the detriment with respect to the policy of diversifying the sources of mass media communications to the public. . . . Our conclusion in this respect is further reinforced by the present critical phase of UHF development and the need to have the flexibility to take action which on balance promotes the public interest in this vital area"

Commissioner Loevinger concurred the majority opinion. Stating that television stations did not have the possibility of growth through internal expansion, he advocated horizontal expansion "by acquisition of or merger with stations and other local markets" limited by Commission analysis and examination of such expansion. Arguing that there had been "no increase in concentration of television station ownership in the top 50 markets up to the present time," he argued that the Commission's multiple ownership rules without the Interim Policy were the most realistic hope for increasing the number of television networks and the number of substantial national program sources by encouraging the growth of "more strong enterprises engaged in television station operations." He stated his opposition to the Interim Policy because it would prevent any new enterprise from acquiring as many stations as the networks now have and it would break up multiple holdings in the event that "any licensee undertook to sell or transfer his licenses." "This would, obviously affect only the financially weak among the present multiple owners."

Commissioners Bartley, Cox and Johnson dissented. In his dissent, Commissioner Johnson stated that few issues before the Commission have a greater impact on the American people than deciding who it is who will control radio and television stations. Observing that a multiple owner of seven stations within the 50 top markets would have within his reach approximately 90,000,000 Americans, Commissioner Johnson questioned whether the Commission's action was addressed to the question of whether the public interest would be served by multiple owner control of so important a source of news, opinion and entertainment.

He characterized the majority's reliance upon the "benefit to UHF" as a reason for terminating the Interim Policy as a "knee-jerk reaction." He expressed his fear that past experience, including the Commission's record of waiving the hearing requirement in every case brought under the Interim Policy indicated to him that the Commission's renewal of the requirement of a "compelling public interest showing by those seeking to acquire more than three stations" would be meaningless.

He urged the Commission to hold oral arguments on the question of whether or not the Interim Policy should be made into a permanent rule. He stated his belief that the important questions raised relating to broadcasting were never confronted by the FCC in the proceedings under the Interim Policy: multiple ownership of public media, including multiple ownership of TV stations, cross ownership of radio and TV stations and newspapers, magazines, program sources, networks and cable television systems, as well as publishers of books. He raised the question, which in his opinion was not answered in these proceedings, as to whether multiple owners presently provide better programming, competition or networks, support for UHF, or any other substantial public benefits. In his opinion, the result of the Commission's action terminating the Interim Policy would be that any multiple owner "regardless of how many millions of Americans he influences" would now be eligible seven AM stations, seven FM stations, and seven TV stations (of which five could be VHF stations).

The dissenting statement of Commissioner Bartley raised the question: "it seems strange indeed that a bare majority of the Commission will, after admitting that the comments filed offered 'very little . . . in response to the specific questions raised', insist on terminating this highly significant proceeding without benefit of the oral argument provided for therein. Does the majority feel that it would be less informed after oral argument?"

Submitted to the Special Subcommittee on Investigations by Zelig Robinson, Special Legal Consultant, July 15, 1968.

ITEM 28

STAFF MEMORANDUM TO CHAIRMAN STAGGERS AND MEMBERS OF THE SPECIAL SUBCOMMITTEE ON INVESTIGATIONS

In accordance with the instructions of the Chairman the staff herewith submits a report summarizing the facts and circumstances attending the FCC's approval, without a hearing, of the acquisition and transfer of the 5 Overmyer CP's. The material herein is taken from documents submitted by Overmyer to the Commission and from documents prepared by the Commission staff.

A. Construction permits (CP's) transferred to Overmyer without competing applicants and without hearings:

City	Applicant	Date of Grant
Newport (Cincinnati).....	D. H. Overmyer Broadcasting Co., Inc.....	Mar. 10, 1965
Atlanta.....	D. H. Overmyer Communications Co., Inc.....	May 12, 1965
Pittsburgh.....	do.....	July 28, 1965
Rosenberg (Houston).....	D. H. Overmyer Broadcasting Co., Inc.....	Aug. 12, 1965
San Francisco.....	D. H. Overmyer Communications Co., Inc.....	Oct. 20, 1965

B. Overmyer companies above, with exception of San Francisco, were only minimally capitalized (\$500 for Cincinnati, \$1,000 for Pittsburgh, Atlanta and Houston—San Francisco, \$50,000) necessitating following financial representations in permit applications to FCC:

1. That Overmyer would personally guarantee bank loan commitments needed to help finance stations.
2. That Overmyer would use his personal resources to whatever extent necessary to aid construction and operation of stations.
3. That Overmyer would cause the resources of D. H. Overmyer Warehouse Company and its affiliates to be used to whatever extent necessary to aid construction and operation of stations.
4. That Overmyer would cause said Warehouse Company to loan certain initial construction funds to the companies.
5. That Overmyer's personal net worth at August 31, 1964, was \$5,905,658.
6. That D. H. Overmyer Warehouse Co. & Affiliates' net worth at August 31, 1964, was \$5,224,194 and at August 31, 1965, \$7,711,344.

C. Overmyer's 5 CP applications were granted despite noncompliance with Communications Act and FCC policy requirements:

Communications Act of 1934, sections 308(b), 310(b) and 319(a), requires that a CP applicant demonstrate his financial qualifications, and that the FCC make a determination, based on the record, as to an applicant's financial qualifications before making such grant.

FCC POLICY

1. Verified copies of loan or credit agreements showing amount of loan, terms of repayment, collateral, if any.
2. A balance sheet demonstrating current assets sufficient to meet current liabilities.
3. Proof that non-liquid assets are available to meet proposed CP commitments where liquid assets appear insufficient to meet current liabilities.
4. Proof that close corporation stock can be relied upon as a readily available source of funds.
5. Reasonable assurance that loan and credit letters are genuine commitments to extend funds.
6. A showing that applicant can financially construct and operate station for one year. If ad revenue necessary during this period, evidence to support estimate required.

OVERMYER APPLICATIONS

All bank and warehouse loan letters unverified. Terms of agreement vague.

Overmyer's personal balance sheet at August 31, 1964, revealed a \$963.14 difference between current assets and current liabilities.

Liquid assets insufficient but no proof submitted of availability of non-liquid assets.

Overmyer's personal balance sheet at August 31, 1964, revealed assets of close corporation stock valued at \$5,224,194 for which no proof of ready availability was submitted.

Bank loan letters patently noncommittal.

Cost and income data not sufficiently detailed or related to period to ascertain qualifications. Ad revenues virtually unsupported.

D. Overmyer could not complete construction during time allotted and received extensions to do so. Within eight month period prior to seeking FCC transfer approval (June 30, 1967), Overmyer requested following extensions:

City	Expiration date	Extension application	Extension grant
Atlanta.....	Jan. 27, 1966	Jan. 10, 1966	Jan. 27, 1967
Pittsburgh.....	Dec. 7, 1966	Nov. 23, 1966	Mar. 7, 1967
Cincinnati.....	Apr. 1, 1967	Mar. 29, 1967	Dec. 8, 1967
Houston.....	do.....	do.....	Do.
San Francisco.....	May 20, 1967	Apr. 19, 1967	Do.

10. Omissions and commissions in above extension applications:

It was implicit in these applications that—

1. Overmyer's intentions to fulfill his construction obligations and operate the stations once completed remained unchanged.

2. Overmyer was planning to retain controlling interest in the permittees despite seeking further monetary assistance.

3. Overmyer's original financial plans for the five permittees were as previously represented to the FCC.

However, in order to keep CP's in saleable status and avoid hearings on whether he should be allowed to continue as a permittee, Overmyer willfully failed to notify the FCC in extension applications of the following crucial facts:

That substantial liens had been filed against his organizations in late fall of 1966 (should have been disclosed in Atlanta & Pittsburgh applications).

That these liens impaired the permittees financial stability and would preclude fulfillment of Overmyer's financial representations made to FCC (should have been disclosed in Atlanta & Pittsburgh applications).

That Overmyer intended to sell the 5 CP's (should have been disclosed in Atlanta & Pittsburgh applications).

That a buyer for the 5 CP's had been found, a Stock Purchase Agreement executed (on March 28, 1967) and \$1 million received as a down payment with respect thereto (should have been disclosed in Cincinnati and Houston applications which were filed one day after execution of Stock Purchase Agreement and in San Francisco application which was filed 22 days thereafter).

That a \$3 million Loan Agreement had been consummated with the proposed CP assignee on March 28, 1967 (should have been disclosed in Cincinnati and Houston applications which were filed one day after execution of Loan Agreement and in San Francisco application which was filed 22 days thereafter).

That all of permittees' stock had been pledged as collateral security for funds extended pursuant to said Stock Purchase and Loan Agreements (should have been disclosed in Cincinnati and Houston applications which were filed one day after execution of Stock Pledge Agreement and in San Francisco application which was filed 22 days thereafter).

That \$1.5 million was received pursuant to said Loan Agreement on May 3, 1967 (should have been disclosed in Cincinnati, Houston and San Francisco applications, all pending at this date).

F. Overmyer's failure to disclose such substantial changes violated FCC Rule 1.65:

"As we have said on numerous occasions, compliance by applicants with this section (1.65) is crucial to the adequate administration of the Commission's functions." (Matter of Bernard Rappaport, FCC 67-787, July 5, 1967.)

Rule 1.65 requires reporting by applicant of all substantial changes in his application within 30 days of the change. (Overmyer was an "applicant" by virtue of his extension applications.)

G. Overmyer's failure to disclose substantial changes violated FCC Rule 1.613 and 1.615:

Rules 1.613 and 1.615 require filing of contracts and other agreements and the reporting of transactions affecting the ownership of permittee's stock within 30 days after the change.

H. FCC failed to raise issue of Overmyer's noncompliance with these rules despite long standing practice of doing so.

In *Gross Broadcasting Company*, Channel 51 San Diego, the Commission stated that it would cancel Gross' CP for violation of Rule 1.65 unless he desired an evidentiary hearing.

I. On June 30, 1967, more than seven months after mechanics liens adversely affected Overmyer's ability to construct stations and more than three and one-half months after agreements to sell the CP's to AVC were finalized, Overmyer applied to FCC for transfer consent.

J. FCC approved transfer, without a hearing, on December 8, 1967, by a 4 to 3 vote, waiving its interim policy relating to the acquisition of television stations in major markets and circumventing its out-of-pocket expense policy.

1. *Interim policy*—as adopted June 21, 1965, provided that absent a compelling affirmative showing the FCC would designate for hearing any application for the acquisition of more than three TV stations or more than two VHF stations in the top 50 TV markets. This policy was terminated by FCC on February 9, 1968, in favor of an ad hoc approach for top 50 TV market acquisitions, despite continuing inquiry by Special Subcommittee into Overmyer transfer. Hearings begun by Special Subcommittee on December 15, 1967.

2. *Out-of-pocket expense policy*—a transferor only allowed to recover expenses legitimately and prudently expended on construction of station. By virtue of stock option arrangement, wherein it was provided that Overmyer would receive up to \$3 million from AVC for 20% interest he still retained in permittee companies, said policy was breached.

K. FCC approved transfer *without* a finding in the public interest and despite glaring irregularities in application documents and computations.

FCC Order merely stated that grant would "foster development of UHF and be consistent with FCC effort to provide more competitive nationwide TV service." But no public interest determination made for *each* television station concerned. Overmyer's self-serving affidavits and unaudited statements accepted *without question* by Broadcast Bureau, which made no independent analysis and sought no independent proof of application data. A responsible analysis would have brought to light such discrepancies as the following:

1. That the \$666,514 out-of-pocket expense charges for employee services of affiliated Overmyer companies was erroneous:

- Service not performed in periods indicated.
- Services not performed by employee and/or to degree indicated.
- Charges out of proportion to services.
- Inadequate allowance for Toledo.
- Improper expenses included in base.
- Base period too short.
- Should have used ratios to other expenses rather than time estimates.
- Not based on realistic sequence of events.

2. That AVC option price to purchase Overmyer's remaining 20% stock interest in permittee companies was one of form, not substance. Virtually impossible for maximum price to be less than \$3 million, the same amount Overmyer borrowed from AVC pursuant to Loan Agreement.

Option price based upon (a) gross receipts for 12 months preceding date of purchase (provided each station operating 112 hours per week during preceding 18 month period) or (b) share of total broadcast revenues for respective markets.

RESULTS BASED ON (A)

1. AVC estimated gross receipts for first year of operation would be \$3,920,000.
2. Gross receipts should not decrease in succeeding years.
3. Maximum deduction for 20% of liabilities less current assets is \$500,000 thereby reducing price to \$3,420,000.
4. AVC estimated 2 stations will operate 95 hours a week and 3 stations, 85 hours a week.
5. It would appear that few, if any, UHF stations in major markets presently operate 112 hours a week.

Conclusion: Assuming stations could qualify under this formula, price would not be less than \$3 million.

RESULTS BASED ON (B)

1. When option agreement made the price would have been \$5,230,000.
2. Five months after the agreement, the price would have been \$5,760,000.
3. Broadcast revenues will increase according to industry estimates.
4. Maximum deduction for 20% of liabilities less current assets is \$500,000 thereby reducing price to \$4,730,000.

Conclusion: Price would not be less than \$3 million.

3. Items included in unaudited Communications Companies balance sheet of little value to AVC as it is obligated to pay debts which are offset by capitalized expenses. AVC takeover of 5 CP's actually involved more than \$10,300,000. However, it was not determined what *additional* costs were necessary to place the stations on-the-air.

VALUE OF 5 STATIONS AT MAR. 31, 1967

	Total	To Overmyer
Communications companies liabilities and capital stock.....	\$3,644,297	\$306,546
Leasing company equipment.....	3,367,384	358,840
Charges for staff services.....	666,514	666,514
Total.....	7,678,195	1,331,900
Retained by Overmyer.....	331,900	331,900
Total.....	7,336,295	1,000,000
AVC loan to Overmyer.....	3,000,000	3,000,000
Total.....	10,336,295	4,000,000

L. Only through the full evidentiary hearing process could the FCC have properly handled the Overmyer acquisition and transfer of the five CP's. At the time Overmyer applied for the CP's, hearings were in order to determine his financial qualifications; later, upon his application for consent to their transfer a hearing was mandated to determine whether he was guilty of misrepresentation and violating the Commission's Rules, and whether U.S. Communications Company (subsidiary of AVC Corp. to which AVC assigned all its interest in Stock Purchase, Loan and Pledge Agreements) should have been allowed to acquire six major market television stations.

Bay Broadcasting Company, FCC 68D-28, March 29, 1968, is one recent illustration of the efficacy of fact finding to support the Commission in making a determination whether the public interest, convenience, and necessity would be served by a CP grant. Although this proceeding involved two mutually exclusive applications to operate on Channel 38 in San Francisco, the need to fully evaluate qualification evidence is even more critical when, as in Overmyer, only one applicant seeks the privilege of a permit.

ITEM 29

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., November 6, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with the Special Subcommittee's investigation of the Overmyer transaction a request was made in a letter of April 12, 1968, for all papers in Commissioners' files relating to (a) original grants of CPs to D. H. Overmyer, (b) all subsequent proceedings and activities in connection therewith, and (c) the application for consent to transfer the CPs from Overmyer to AVC Corporation. In addition, the Special Subcommittee requested in a letter of May 7, 1968, all telephone records of outgoing and incoming long distance calls which were made by each Commissioner for the period November, December, 1967 and January/April, 1968. The latter request was made in "con

nection with the Special Subcommittee's continuing investigation of the WBBM-TV program, 'Pot Party at a University', and was raised as to the Overmyer investigation at the Subcommittee hearing of July 19, 1968 (Tr. 265-277).

I believe that other than these requests, the Commission has cooperated fully with the Subcommittee. As to these requests, I have set out the essence of my position in the hearings (Tr. 268). I have also stressed, in the hearings and in informal liaison with you and the Committee, my desire to cooperate with the Committee and indeed to have the opportunity to discuss the matter with your Committee. It raises a *policy* question of the most serious import not only to this agency but all the administrative agencies and therefore merits, I believe, the fullest and most careful attention of the Committee. I have emphasized the word "policy" because that is what is crucially involved here.

In sum, what I seek is the opportunity to sit down with you, Mr. Chairman, and with your Committee, and discuss this most important matter. I will, of course, be glad to do so at your earliest convenience.

Sincerely yours,

ROSEL H. HYDE, *Chairman.*

80th Congress }
1st Session }

SUBCOMMITTEE PRINT

MEMORANDUM OF LAW

RIGHT OF ACCESS BY SPECIAL SUBCOMMITTEE
ON LEGISLATIVE OVERSIGHT TO CIVIL AERO-
NAUTICS BOARD FILES AND RECORDS

STAFF REPORT

PREPARED FOR THE
SPECIAL SUBCOMMITTEE ON LEGISLATIVE
OVERSIGHT
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES



OCTOBER 17, 1957

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

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III

091

LETTER OF TRANSMITTAL AND SUMMARY

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON
LEGISLATIVE OVERSIGHT OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C., October 17, 1957.

HON. MORGAN M. MOULDER,
*Chairman, Special Subcommittee on Legislative Oversight,
House of Representatives, Washington, D. C.*

DEAR MR. MOULDER: Pursuant to the authority delegated by House Resolutions 99 and 191, the Special Subcommittee on Legislative Oversight has been engaged in an investigation into the operation of certain independent regulatory agencies of the Federal Government. The purpose of the investigation has been, in the words of the Speaker, to—

go into the administration of the laws to see whether or not the laws as intended by the Congress were being carried out or whether they were being repealed or revamped by those who administer them.

The staff of the subcommittee has been met at the outset by a refusal on the part of the Civil Aeronautics Board to allow it to have full access to the Board's files and records. By Civil Aeronautics Board Staff Notice No. 333, issued on September 30, 1957, the Board directed that the following files and records shall not be made fully available:

- (a) Personal files of Board members;
- (b) Security classified materials and materials held confidential under statute;
- (c) Communications and memorandums between Board members and between Board members and their assistants and the statements made by Board members in the course of their deliberations;
- (d) Communications between the Board and its staff, on the one hand, and the President or other departments and agencies, on the other;
- (e) Materials and files relating to pending matters.

In addition, the Board has asserted the authority to screen files and records before they are made available to the subcommittee, with a right to the Board in its discretion to remove any and all documents coming within the above categories.

In accordance with your instructions, I have prepared a memorandum of law relative to the subcommittee's right of access to Civil Aeronautics Board files and records. This memorandum demonstrates conclusively that the Board's refusal to allow full access to its files and records is without basis in precedent or law.

For your convenience, I am here listing the specific conclusions of law contained at the end of the memorandum:

(1) House Resolutions 99 and 191 authorize the Special Subcommittee on Legislative Oversight to engage in a broad, general investigation of the opera-

tions of the administrative agencies subject to its jurisdiction. Such an investigation, the Supreme Court itself has acknowledged, is not at all affected by the limitations on congressional investigatory authority laid down by the Court in its recent decision in *Watkins v. United States* (354 U. S. 178, 1957).

(2) The arrogation by the Civil Aeronautics Board to itself of the power to fix at the outset broad categories of files and records to which the Subcommittee may not have access is without basis in precedent or law.

(3) "Executive privilege" is not available to an independent agency like the Civil Aeronautics Board as a possible basis for the withholding of information from the Congress. The Civil Aeronautics Board, as the Supreme Court has recognized, is an independent agency whose members are not subject to the removal power of the President. Such a body cannot in any proper sense be characterized as an arm or an eye of the Executive. It is instead an arm of the Congress, wholly responsible to that body.

(4) The doctrine of absolute "Executive privilege" itself is not supported in law. The cases cited by its proponents are not truly relevant on the power of the Executive to withhold information from the Congress. On the other hand, there are many decisions squarely rejecting the doctrine, even in courtroom cases. In addition, Dean Wigmore (the leading authority on the subject in this country) flatly repudiates the doctrine.

(5) The doctrine of the separation of powers does not support the claim of absolute "Executive privilege."

(6) The House of Representatives may authorize an investigation as broad, as searching, and as exhaustive as is necessary to make effective its constitutional powers. The House is the "grand inquest of the Nation" and can authorize the broadest possible investigation into the workings of agencies like the Civil Aeronautics Board.

(7) Countless prior precedents in the House and Senate support the authority of the Congress to authorize an investigation such as that engaged in by this subcommittee and the power of the subcommittee to have complete access to the files and records of agencies being investigated.

(8) Court decisions clearly uphold the authority of the Congress to investigate the operations of executive and administrative agencies. A recent case rejects the claim of the Executive to be able to withhold internal documents from such an investigation, the Court there saying:

"If the legislative department were to be shut off in the manner proposed from access to the papers and records of executive and administrative departments, boards, and commissions, it could not properly perform its legislative functions" (Opinion of the Justices, 328 Mass. 655, 661 (1951)).

(9) Congressional investigatory authority is not subject to the limitations imposed on the powers of inquiry of courts. Such power of the Congress, the Supreme Court and the Congress itself have recognized, is analogous to the investigatory power of a grand jury.

(10) The determination of what files and records of an agency like the Civil Aeronautics Board are open to this subcommittee must be made by the subcommittee itself. It is basic that the agency being investigated may not be the ultimate arbiter of its own claim of privilege.

(11) The Civil Aeronautics Board's claim of privilege for communications between Board members and their assistants and statements made by Board members in the course of their deliberations is utterly unsupported in law. In the one case in which the Board refused to allow a congressional committee to question members on statements made by a Board member (the Denny-Tipton incident before the Antitrust Subcommittee of the House Committee on the Judiciary in 1956), the position of the Board was contrary to a mass of relevant precedents.

(12) The Civil Aeronautics Board's claim that it has the authority to determine what classified materials will be made available to this subcommittee is contrary to the practice followed in the work of other congressional committees.

(13) The statutes authorizing the Civil Aeronautics Board to hold certain materials confidential, as the Board's General Counsel himself has recognized, have no application to the Congress itself.

(14) The Civil Aeronautics Board cannot claim privilege with regard to communications between the Board, on the one hand, and the President or other departments and agencies, on the other. Such an assertion of privilege cannot defeat the right of this subcommittee to investigate the relationships between the independent regulatory agencies and the executive branch.

(15) The Civil Aeronautics Board does not have the legal right to bar this subcommittee from access to files relating to all pending matters.

(16) There is no privilege recognized in law or congressional precedents for the personal files of agency members.

(17) The Civil Aeronautics Board is impinging upon the functions of this subcommittee in asserting in itself a power to "screen" its files and withdraw documents which the Board feels should not be disclosed. It is basic in law and congressional precedent that it is the subcommittee itself, not the agency being investigated, which must judge the merits of claims of privilege for particular documents.

(18) The Congress has the clear legal right to examine any and all files and records of an independent agency like the Civil Aeronautics Board. It is for the congressional committee concerned to determine what documents will be looked into and which among them will be made public. It is a usurpation of power for an agent of the Congress to presume to lay down the ground rules under which investigations by its principal must proceed. The basic question remains: Is the Civil Aeronautics Board a creature of the Congress or is the Congress a creature of the Civil Aeronautics Board?

I trust that the above will enable you and the subcommittee to see clearly the lack of real basis for the Civil Aeronautics Board's position. Like the Emperor's new clothes in the Hans Christian Anderson children's tale, the claim of "privilege" made by the Board stands exposed in all its nakedness by a candid examination of its lack of substance.

Respectfully submitted.

BERNARD SCHWARTZ,
Chief Counsel-Staff Director.

MEMORANDUM OF LAW

I. JURISDICTION OF SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT

The Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce was created pursuant to House Resolutions 99 and 191 to review, study, and examine the execution of the laws by the administrative and independent agencies of the Government within the jurisdiction of the committee. The purpose of the subcommittee, as stated by the Speaker himself, is—
 to go into the administration of the laws to see whether or not the laws as intended by the Congress were being carried out or whether they were being repealed or revamped by those who administer them.

Acting under the authority thus vested in it, the subcommittee has commenced a general investigation of the following regulatory agencies:

- Civil Aeronautics Board
- Federal Communications Commission
- Federal Power Commission
- Federal Trade Commission
- Interstate Commerce Commission
- Securities and Exchange Commission

The subcommittee's inquiry has, of necessity, been along the lines of a broad, general survey of the working of these agencies in order to determine whether they have properly administered their enabling statutes in accordance with congressional intent. Unlike the normal investigating committee, its job has been, not only to probe into specific cases of administrative abuse brought to its attention, but to study all aspects of the work of the different agencies within its competence. Such an investigation cannot properly be conducted if the subcommittee and its staff are limited in their access to files and records to those for which they must make specific express demand.

It should be emphasized at the outset that an investigation of the type being undertaken by the subcommittee is not at all affected by the limitations on congressional investigatory authority laid down by the Supreme Court in its recent decision in *Watkins v. United States* (354 U. S. 178 (1957)). The *Watkins* case concerned an investigation of a private individual. The present inquiry is one into the operation of Government agencies created by the Congress itself. In such an inquiry, there is none of the danger of so-called "exposure for the sake of exposure" against which the *Watkins* opinion inveighed. To such an investigation, the strictures of the *Watkins* court can have no application.

The opinion of the Chief Justice in *Watkins*, indeed, contains a clear recognition of this distinction between the *Watkins* type of investigation and the present subcommittee's study. "The public,"

categorically declares the Chief Justice, "is, of course, entitled to be informed concerning the workings of its government." And he goes on to state expressly:

We are not concerned with the power of the Congress to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government. That was the only kind of activity described by Woodrow Wilson in Congressional Government when he wrote: "The informing function of Congress should be preferred even to its legislative function." * * * From the earliest times in its history, the Congress has assiduously performed an informing function of this nature.

The Watkins court's emphasis upon the preferred position of investigations by the Congress into the workings of Government agencies has a sound basis both in precedent and theory. As will be shown, from its earliest days, the Congress (and, before it, the Parliament and colonial legislatures) has zealously exercised its authority to scrutinize closely the operations of the different departments and agencies. The role of Congress as the overseer of administration is, in fact, as significant as its position as the legislative organ of the Federal Government. As well stated by a Member of the House in 1945:

If the Congress is to effectively discharge its full duty it must at the very least supervise each grant of power which it makes with great care, and must assume the function not only of passing legislation, but of seeing that that legislation is carried out in accordance with congressional intent. In the absence of the exercise of this second function, Congress will be only half effective at best, for no law is better than its administration (hearings before Joint Committee on Organization of Congress (1946) 38).

Yet, important though the congressional role as overseer of administration may be, it can hardly be gainsaid that it has not been performed as effectively as might be desired. Observers of the legislative process must unfortunately still echo, at least in part, the words of Woodrow Wilson, written over half a century ago, that—

it is quite evident that the means which Congress has of controlling the departments and exercising the searching oversight at which it aims are limited and defective (Wilson, Congressional Government (1894) 270).

Wilson's comment appears particularly appropriate, so far as the Federal regulatory agencies are concerned. The development of the administrative process in this country has been not dissimilar to the manner in which Topsy described her own developmental processes. By 1957, however, there is no doubt that that process has all but fully "grewed." Yet, despite the fact that the regulatory agencies have now been in existence for the better part of a century, there has been no real congressional effort to keep them under serious scrutiny. There have, it is true, been a great many ad hoc investigations into particular facets of the work of different agencies—but nothing, till now, like the overall study that is vitally needed. It is the job of the Oversight Subcommittee to remedy this congressional "oversight," through the investigation in which it is now engaged.

II. THE POSITION OF THE CIVIL AERONAUTICS BOARD

In one agency—the Civil Aeronautics Board—the subcommittee has been met at the very outset with a refusal to allow access to pertinent files and records. In reply to a request to allow members of the subcommittee's staff to receive and examine Board records,

documents, and information pertaining to agency business within the jurisdiction of the subcommittee, the Civil Aeronautics Board on September 30, 1957, issued staff notice No. 333, directed to all its employees.

The pertinent portions of this notice (printed in full, infra, p. 64) are as follows:

* * * (a) The personal files of the Board members shall not be available for inspection;

(b) Security classified materials and other materials held confidential under sections 1104, 902 (f), 18 U. S. C. 1905, or applicable executive orders shall be permitted to be inspected or their contents divulged only upon permission of the security officer or the Board as to security classified materials, and upon permission of the Board as to the other enumerated materials;

(c) Communications and memoranda between Board members, and between Board members and their assistants relating to matters acted on by the Board, and the statements made by Board members in the course of their deliberations, shall not be permitted to be inspected nor shall their contents be divulged;

(d) Communications not heretofore made public between the Board or its members or staff, on the one hand, and the President, his immediate staff, the State Department, and other executive departments and Government agencies, on the other, and relating to section 801 and 802 matters shall not be permitted to be inspected nor shall their contents be divulged except on permission from the White House or the department or agency involved;

(e) Other nonpublic communications between the Board, its members, and its staff, on the one hand, and other departments and agencies of the Government, on the other, will be permitted to be inspected or their contents divulged only upon permission from such department or agency, or, in the event permission is refused, upon order of the Board; * * *

* That internal materials and files relating to pending matters shall not be made available, nor shall inspection thereof be permitted or their contents divulged except upon order of the Board.

* That the representative not be permitted to inspect at will nonpublic or internal files in either pending or closed cases.

An Chairman Moulder points out, in his letter of reply to this Civil Aeronautics Board notice (printed infra, p. 62):

The refusal of the Board to make its records available to representatives of a duly authorized subcommittee of the Congress is without basis in precedent or law.

It constitutes an unjustified attempt by an administrative agency to limit the areas in which a congressional investigation can be conducted. More than that, it is an attempt to claim privilege from congressional scrutiny by an agency which is itself not a part of the executive branch, but is wholly a creature of the Congress itself. The restrictions imposed by the Board upon the subcommittee's investigation will be discussed in detail in later portions of this memorandum. If permitted to become operative, they would in effect relegate the subcommittee to examination of routine and presumably innocuous lower echelon correspondence and memorandum files—and, of course, the Board's official dockets, publicly maintained and available. In Mr. Moulder's apt words:

The Board's attempt to place an Iron Curtain between the subcommittee and the very materials it has been specifically created to investigate would, if left unchallenged, utterly frustrate the study authorized by the House of Representatives.

III. "EXECUTIVE PRIVILEGE" NOT AVAILABLE TO CIVIL AERONAUTICS BOARD

It is not clear whether the Civil Aeronautics Board is asserting in itself a claim of the right to withhold information from the Congress on the ground of so-called "executive privilege." If such a basis is, however, asserted for the Board's action, it is wholly inappropriate, because of the Board's status as an independent agency outside the executive branch.

What is executive privilege and what, even according to its proponents, is its basis and scope? The Attorney General has maintained, in his memorandum in support of the President's letter of May 17, 1954, to the Secretary of Defense (printed *infra* appendix C), that the President and the heads of executive departments and agencies have the absolute privilege and discretion to withhold from the Congress any papers and information which, to their satisfaction, are required in the public interest to be kept secret. The claim is, of course, not a new one; it has been asserted, at various times, by executive officers throughout our history. It is based, as the Attorney General's memorandum points out, upon the doctrine of the separation of powers. That doctrine, it is said, makes the executive the absolute master of information originating with it; for the legislature or the courts to require the executive to divulge information would be for them to infringe upon the autonomy of a coordinate branch of government. It is essential, declares the Attorney General's memorandum—

that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall be limited to the exercise of the powers appropriate to its own department and no other.

What is the foundation for the executive privilege thus so broadly asserted by its advocates? There is little doubt that the claim of executive immunity in this respect is an anachronistic survival of monarchical privilege, derived from the maxim according to which the King can do no wrong. In the pretensions of those who espouse executive privilege, the infallibility recognized in the King in the days when he was personally sovereign in England has been attributed to the President in our own system. Thus, even today, and even in the American democracy, the basic principle of the proponents of executive privilege is that the King can do no wrong.

The anomaly in this vestigial survival of the privilege of the Crown in a present-day democracy is almost self-evident. That such an absolute privilege should be claimed in this country where there has been no King, where the chief of state has never been sovereign, where from the beginning sovereign power has resided in the people—this should appear a mystery to the Attorney General himself. It is, in fine, difficult to comprehend how, in a representative democracy, where the rights of the individual against the state are fundamental legal principles, people could seriously assert a doctrine of absolute privilege in the executive. The reasoning which supports the doctrine of absolute executive privilege is so fallacious and unsound that it should shock the intelligence, as well as the sense of justice, of those who truly believe in the essentials of representative democracy.

It is, however, one thing (unsound though even it may be) to assert a theory of privilege for the President and the heads of the executive

departments and altogether another to claim such a privilege for an independent agency like the Civil Aeronautics Board. Under a doctrine of absolute privilege in the President, it may be that we would in effect, come close to adopting the view of the President attributed to William H. Seward: "We elect a king for 4 years, and give him absolute power." But not even the most extreme advocate of executive privilege, one may assume, would advocate a rewording of the historical maxim to read: "The Civil Aeronautics Board can do no wrong."

As the Attorney General's memorandum already quoted makes plain, executive privilege is based upon the doctrine of the separation of powers. Under it, the Congress is the legislative department of the Government; the President is the executive department. (See *Mississippi v. Johnson*, 4 Wall. 475, 500 (U. S. 1866)).

It is difficult to see how this separation-of-powers reasoning can have any validity as far as an independent agency like the Civil Aeronautics Board is concerned. Such a body is clearly not a part of the executive branch, subject to the hierarchical control of the President. Under the soon-to-be-discussed Humphrey case, its members are not subject to the President's removal power. If the approach in the Attorney General's memorandum is applied to it, the Civil Aeronautics Board would be responsible neither to the Congress nor the President. Then, in truth, would we have established in our system what has been well termed "a headless 'fourth branch of the Government,' a haphazard deposit of irresponsible agencies and uncoordinated powers" (Report of the President's Committee on Administrative Management 39 (1937)).

That an agency like the Civil Aeronautics Board cannot be treated merely as an ordinary executive agency has been clear ever since the celebrated decision of the Supreme Court in *Humphrey's Executor v. United States* (295 U. S. 602 (1935)). That case arose out of the removal from office by President Roosevelt of a member of the Federal Trade Commission, who had been appointed by his predecessor in office in 1931 for a term of 7 years, on the ground "that the aims and purposes of this administration with respect to the work of the Commission can be carried out most effectively with personnel of my own selection." The applicable statute provided that members of the Commission were to hold office for terms of 7 years and that "any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office." It should be noted that a similar provision is contained in the Civil Aeronautics Act of 1938.

The Court in the Humphrey case held that the President did not possess the wide removal power over members of the Commission which he had over officers appointed by him in the ordinary executive departments. Pointing to the quasi-judicial functions of the Commission Mr. Justice Sutherland asserted that freedom from Presidential control was vital to their successful execution.

The authority of Congress—
reads his opinion—

In creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted; and that authority includes, as an appropriate incident, power to fix the period during which they shall continue in office, and to forbid their removal except for cause in the meantime. For it is quite evident that one who holds his

office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will.

To get a true picture of the status of an independent agency like the Civil Aeronautics Board by comparison with a purely executive agency, one must summarize the factors that have led the Congress to create such agencies outside the executive branch:

(1) As a practical matter, there is no doubt that a primary factor has been the example of the Interstate Commerce Commission. The success and prestige (particularly in its earlier years) of the first important regulatory agency have greatly influenced the Congress to set up other commissions and boards modeled upon it. This is clear from the legislative history of most of the independent agencies. The witnesses and committee reports constantly refer to the Interstate Commerce Commission as a model.

(2) Independence has been viewed as a means of securing impartiality in administration. Because of the vast powers vested in these agencies and the tremendous pressures to which they may be subject, it has been felt essential that they be insulated from partisan influence or control to the maximum extent feasible. Independence of the executive and security of tenure were intended to assure freedom from partisan control. Also intended to secure such freedom has been the requirement of bipartisanship in appointments, contained in the enabling statutes of these agencies.

(3) The quasi-judicial nature of these agencies' work also militates against placing them under direct executive control. Such judicial functions must, consistent with American traditions, be performed in an atmosphere of independence from the executive.

(4) The independent agency was designed to assure a body of experts competent to deal with highly complicated and technical problems. Independence from the executive has been deemed to enhance the professional qualities of the agency, enabling both the heads and the staff to secure the expertise needed for effective regulation.

(5) Closely connected with the need for expertness has been the need for stability and continuity of policy. For those regulated to plan effectively, the regulatory agency must achieve a basic stability in methods and policy. With an independent body whose members held for substantial and overlapping terms of office, continuity of policy and stability of administrative method could be built up.

(6) Because of the importance of their tasks, the Congress has sought to vest in these agencies the added prestige associated with independence from the executive. It would be easier, it was felt, to secure impartial and able men to serve on an independent body.

Because of these factors, the Congress has felt it to be undesirable for agencies like the Civil Aeronautics Board to be subject to the hierarchical power of the President. Does this mean then that they are to be subject to no direct supervision, responsible to no one but their own discretion in the administration of their enabling laws?

Congressional intent clearly points to a categorical negative in response to this question. In insulating the independent agencies from executive control, the Congress did not design them to be in an irresponsible position. On the contrary, agencies like the Civil Aeronautics Board are, unlike the executive departments, intended to be primarily agents of the Congress. Thus, Senator (later Mr.

Justice) Sutherland, speaking in the debate on the Federal Trade Commission Act of 1914, referred to the proposed agency as a "legislative commission." Speaking in 1938, former Senator Champ Clark similarly referred to the independent agencies "as agencies of the legislative branch of the Government and as extensions of the legislative power." These bodies, said he, "are legislative rather than executive or administrative in character."

The Supreme Court has also adopted this position. In the already-referred-to Humphrey case, a unanimous Court declared (in language fully applicable to the Civil Aeronautics Board):

The Federal Trade Commission is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed. * * * Such a body cannot in any proper sense be characterized as an arm or an eye of the Executive. Its duties are performed without Executive leave and, in the contemplation of the statute, must be free from Executive control.

The Civil Aeronautics Board itself has recognized that it is an independent agency, rather than a part of the executive branch. In a memorandum submitted last year to the House Government Information Subcommittee, the General Counsel of the Civil Aeronautics Board declared:

The Board does not think of itself as a part of the executive branch of the Government.

Furthermore, he stated with regard to a questionnaire relating to a statute governing the Executive:

I believe it inappropriate for me, as the General Counsel of an independent regulatory agency, to comment on those questions which are solely concerned with the legal powers of the executive branch (Hearings on Availability of Information from Federal Departments and Agencies (1957) (2736, 2730)).

It should not be forgotten that an independent agency like the Civil Aeronautics Board is wholly a creature of the Congress. As was well pointed out by James M. Landis (himself a former Chairman of the Civil Aeronautics Board):

Save for the few constitutionally organized departments of government, the administrative and executive agencies exist only by the will of Congress. * * * No constitutional duty demands their continuance. Congress may abolish them at its pleasure, redistribute them, consolidate or divide them (40 Harvard Law Review 153, 196 (1926)).

With regard to an agency like the Civil Aeronautics Board, the congressional role is essentially that of principal to agent. It is the primary duty of an agent continually to account to his principal, and a corollary responsibility of the principal to exercise continuing supervision over his agent. Has the agent really carried out the mandate delegated by his principal or has he, in effect, used his position to amend or repeal such mandate, in accordance with his (the agent's) conceptions of the job that ought to be done?

Can an agent really claim a privilege to withhold from his principal any information or records relating to his agency? If he could, would that not make a mockery of his duty to account to his principal? Would any reasonable principal dare entrust any substantial authority to an agent under such conditions?

Shall the elected representatives of the people be denied the prerogatives possessed by any private principal (no matter how piddling) vis-a-vis his agents? Shall the Congress insist that agencies created

by it, dependent on its will for their very existence, give to its committees the information necessary to enable it to act intelligently and wisely, or shall it permit its own creatures arbitrarily to determine what information the Congress shall or shall not have? Shall the agencies be permitted to conceal their errors and maladministration behind a cloak labeled "confidential" and thus defeat an investigation like that of the present subcommittee?

IV. "EXECUTIVE PRIVILEGE" ITSELF NOT LEGALLY SUPPORTED

It has just been shown that a claim of "executive privilege" cannot validly be made for an independent agency like the Civil Aeronautics Board. This is, however, far from conceding that the doctrine of "executive privilege" is itself legally justified.

As already indicated, the extreme doctrine of executive privilege is articulated in the Attorney General's memorandum in support of the President's letter of May 17, 1954, to the Secretary of Defense (printed, *infra*, appendix C). It should, in the first place, be noted, as a recent article points out, that most of this memorandum "was lifted almost word for word from a law review article which had appeared some years previously" (i. e., Wolkinson, 10 Federal Bar Journal 103, 223, 319). (See Bishop, 66 Yale Law Journal 477, 478 (1957).)

Though the Attorney General, parroting the Wolkinson article, starts with the categorical assertion that—

Courts have uniformly held that the President and the heads of departments have an uncontrolled discretion to withhold [from Congress] the information and papers in the public interest

neither his memorandum nor Wolkinson cite any cases in support. Indeed, according to one writer, this assertion is "remarkable and inexact" (Bishop, 66 Yale Law Journal 477, 478). For the Attorney General's real source of authority to be an obscure law review writer (himself a Department of Justice functionary), who cites no relevant judicial precedent, is most disturbing. Once upon a time, legislative power was sought to be drastically restricted by the authority of the Crown. But here we have a case where an essential function of the elected representatives of the people is sought to be emasculated, not by royal proclamation, but by the prerogative of one Herman Wolkinson.

In actuality, the Attorney General's claim in his memorandum is based, not upon valid legal authority, but upon his (or, should one say, Mr. Wolkinson's (?)) doctrinaire interpretation of the separation of powers. That the separation of powers does not really support the claim of absolute privilege will be shown in the next section of this memorandum. Here, it is necessary to analyze other supposed justifications for executive privilege:

A. *Executive practice*.—Those who assert that the law is settled in favor of an unlimited right in the Executive to withhold information from the Congress really do so out of an excess of executive zeal but without any real basis in fact—or in law, for that matter.

In actuality, there is no statute or judicial decision which justifies the extreme pretensions of privilege maintained by executive officials. It is true that there have been executive refusals to comply with congressional investigative demands and that these refusals have often been justified, upon supposed legal grounds, by opinions of the

Attorney General. A repeated executive practice and the opinions of the highest legal officers are, of course, entitled to respect and may well tilt the balance in unclear cases. But they can hardly be considered as conclusive or foreclose independent inquiry into the law, in the absence of an authoritative judicial decision on the subject.

Neither opinions of the Attorney General nor the practice of the Executive can justify unwarranted distortions of the Constitution. An opinion of the Attorney General is not, like the decision of a court, an authoritative formulation of the law. It is entitled only to the respect that its inherent merit wins for it; otherwise, its status (no matter what the governmental dignity of the officer rendering it) is only that of advice given by a lawyer to his client. As the late Justice Jackson, himself a former Attorney General, aptly characterized it, the view of the Attorney General is "partisan advocacy," which cannot bind later judicial judgment (*Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 649, note 17 (1952)).

Nor can more be said for the legal authority of executive practice in this field. That there have been refusals by the executive to supply information to the Congress does not, of itself, prove that such refusals were legally justified. It should not be forgotten that, in political, as in natural, science, nature abhors a vacuum. If the Congress is derelict in asserting any of its prerogatives, executive pretensions will rush in to fill up the power vacuum. But the fact that such pretensions may not always have been repulsed does not demonstrate that they were valid in the first place. Nor does a governmental practice conceived in error become elevated to the plane of legality merely because the error has been long persisted in.

In the celebrated case of *Erie Railroad Co. v. Tompkins* (304 U. S. 64), decided in 1938, the Supreme Court held that a century-old doctrine governing the law to be applied in Federal cases was invalid. The Court was not impressed by the fact that the uniform practice in the Federal courts had been in accordance with the overruled doctrine. The persistence of judicial practice (though it had been constantly confirmed by the highest Court) could not make legal a doctrine later seen to be grounded upon an erroneous basis. If this is true of an erroneous decision (followed as an authoritative precedent for so long of the Supreme Court itself, it must certainly be true of an executive practice which finds no basis in judicial decision. The practice of prior Presidents cannot, of itself, authorize executive acts which have no other legal basis.

B. *Judicial decisions*.—The Attorney General's memorandum, already noted, asserts that courts have uniformly upheld the doctrine of executive privilege vis-a-vis the Congress. This assertion is all the more remarkable in that it is utterly unsupported by any cited case. In actuality, there is no authority in decisions of the Supreme Court for the withholding of information from the Congress by the Executive. The cases usually cited as sustaining Executive claims in this connection are *Boske v. Comingore* (177 U. S. 459), decided in 1900, and *United States ex rel. Toughy v. Ragen* (340 U. S. 462), decided in 1951.

But those cases held only that the head of an executive department can lawfully centralize in himself the authority to determine whether documents of the department may be released for use of personnel outside the department. The decisions in both cases were confined

to this narrow issue. This is shown clearly by the Court's conclusion in the Boske opinion, where it says:

In our opinion the Secretary, under the regulations as to the custody, use, and preservation of the records, papers, and property appertaining to the business of his department, may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of the revenue, and reserve for his own determination all matters of that character (177 U. S. at 470).

As Mr. Justice Frankfurter emphasized, in concurring in the Touhy case:

There is not a hint in the Boske opinion that the Government can shut off an appropriate judicial demand for such papers (340 U. S. at 472).

In fact, as the learned Judge pointed out, the question of the immunity of the Attorney General from the duty to disclose information in his department's possession was not before the Court:

Specifically, the decision and opinion in this case cannot afford a basis for a future suggestion that the Attorney General can forbid every subordinate who is capable of being served by process from producing relevant documents and later contest a requirement upon him to produce on the ground that procedurally he cannot be reached. In joining the Court's opinion I assume the contrary—that the Attorney General can be reached by legal process (ibid.).

The Boske and Touhy cases are thus not relevant to the question of executive withholding of information, and certainly not to the congressional right to information. The Supreme Court held only that a department head can forbid his subordinates from disclosing information. But to assume from this that the department head himself is able conclusively to determine whether information should be withheld from Congress or the courts is to jump to a conclusion which the Supreme Court tells us expressly (340 U. S. at 469) it was not called upon to reach. As Justice Frankfurter pithily expresses it:

To hold now that the Attorney General is empowered to forbid his subordinates, though within a court's jurisdiction, to produce documents and to hold later that the Attorney General himself cannot in any event be procedurally reached would be to apply a fox-hunting theory of justice that ought to make Bentham's skeleton rattle.

Those who apply such a "fox-hunting theory of justice" cannot validly claim that they are backed by the authority of the Supreme Court.

The General Counsel of the Civil Aeronautics Board himself has recognized that the above interpretation of the Boske and Touhy cases is correct. Thus, in speaking of these cases, Mr. Stone has said:

It is recognized that these cases leave open the question of whether the agency itself is susceptible to process at the instance of a private litigant to compel disclosure of information in its possession.

And, speaking of regulations such as those involved in Boske and Touhy, he went on to state:

Thus these rules are for internal administration purposes, and are intended to centralize discretion in the Board itself with respect to public information practices (Hearings on Availability of Information from Federal Departments and Agencies (1957) 2733-2734).

What has been said of the Supreme Court decisions in Boske and Touhy is true also of the lower court cases usually cited by exponents of executive privilege, especially *Ex parte Sackett* (74 F. 2d 922). The most recent of these cases is *Appeal of Securities and Exchange Com-*

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mission and William H. Timbers (226 F. 2d 501 (6th Cir. 1955)). (See *Hearings*, op. cit., at p. 2733.) It is true that the court in *Timbers* went somewhat further than merely following the Boske and Touhy cases. There is some dicta in the court's opinion indicating that there may be some basis for claiming executive privilege for certain agency documents in private litigation in a court. Yet, it should be emphasized that the *Timbers* court clearly based its language upon the fact that this was a private case in court. As Mr. Timbers himself has put it, in a recent article, in *Timbers*:

the appellate court stated, the trial judge "overstepped appropriate judicial bounds"; for it was not his function to conduct an investigation of the Commissioner's performance of its official responsibilities (*Timbers and Cohen*, 18 *University of Pittsburgh Law Review* 687, 728 (1957)).

But it is emphatically the function of this subcommittee to conduct just such an investigation of the performance by agencies like the Civil Aeronautics Board of their official responsibilities. In making such an investigation, the subcommittee is not (as will clearly be shown, *infra*, pt. IX) restricted by the limitations that apply to judicial powers of inquiry.

As against the Boske and Touhy cases, which do not really support the broad claims of executive privilege usually based upon them, even in courtroom cases, there is a veritable mass of contrary judicial authority, which resoundingly repudiates the concept of privilege. It is literally amazing that the Attorney General and other proponents of executive privilege do not even bother to cite these cases. Either they are ignorant of the contrary precedents (certainly most disturbing, if true, of the Government's highest legal officer), or they must stand convicted of intellectual dishonesty, in citing only the cases in support of their claims.

In the first place, it should be noted that John Henry Wigmore, the dean of the American law on the subject, strenuously opposed the whole concept of executive privilege in the courts. Much of volume 8 of his monumental and authoritative *Treatise on Evidence* is devoted to a demolition of the claims of those who assert the doctrine of privilege. Because of its importance, a portion of the relevant section of Wigmore is printed *infra* in appendix D. Wigmore is particularly caustic with regard to the argument that, in such cases in the courts, the public interest against disclosure must be considered paramount to the individual interest of private litigants, declaring:

As if the public interest were not involved in the administration of justice. As if the denial of justice to a single suitor were not as much a public inquiry as is the disclosure of any official record! When justice is at stake, the appeal to the necessities of the public interest on the other side is of no superior weight. "Necessity," as Joshua Evans said, "is always a suspicious argument, and never wanting to the worst of causes" (8 *Wigmore on Evidence* (1940) 790).

It is interesting to note that a foreign commentator, referring to Dean Wigmore's strictures, says:

his remarks, we think, are * * * a reflection upon the absolutism of the American executive (58 *L. Q. Rev.* 31, 34).

Suggestively enough, Mr. Wolkinson, whose article has already been shown to be the basis of much of the language and supposed law in the Attorney General's memorandum in support of the President's letter of May 17, 1954, to the Secretary of Defense, cites in detail every text writer (no matter how obscure) who may possibly be

deemed to support executive privilege. But he relegates Wigmore to only two cryptic sentences (10 Federal B. J. at 334, 335). Here is an example of the intellectual dishonesty of the advocates of absolute privilege. This time, however, the Congress and the country will not be deceived. "Wolkinson on Evidence" will surely not carry any weight when his opinion contradicts that of the recognized master of the subject in American jurisprudence.

That Wigmore on the subject is clearly to be preferred to Wolkinson is shown by *Crosby v. Pacific S. S. Lines* (133 F. 2d 470 (9th Cir. 1943), cert. denied, 319 U. S. 752 (1943)). The court there expressly relied upon Wigmore in rejecting a claim of official privilege. The fact pattern was somewhat unusual. The case arose out of a civil bankruptcy proceeding. A witness, who was an official of the British Ministry of Supply (not a party to the case), declined, on cross-examination, to produce internal correspondence and memorandums of the Ministry, on the ground that they were "confidential" documents belonging to the British Government. The case is relevant for our purposes because the Federal court specifically stated that it would treat the British Ministry by the same standard as would "apply to a similar department of Government here." And the court concluded that there was no valid privilege in a case like this, saying:

It is enough to say that for one to claim a privilege, he must make a showing that he is entitled to one, and that no such showing, in our opinion, was made here.

In other words, according to the instant court, an executive department cannot refuse to disclose merely by raising a claim of official privilege—which is, of course, wholly contrary to the pretensions of the Attorney General and other exponents of absolute executive privilege.

Just as important is the fact that the Federal court in the case just discussed strongly emphasized that it is the function of the court, not the executive, to determine what evidence is privileged. An attempt was made to bring the case under a California statute applicable "when public interest would suffer by disclosure." But, asked the court, "Does this mean that [the executive official] is final authority on that point? All reason says that the question is one for the court to determine." Here again, the lie is manifestly given to those who assert that it is for the executive itself to determine what matters must remain concealed in its departmental pigeonholes.

Similarly, in *Reynolds v. United States* (192 F. 2d 987 (D. C. Cir. 1951)), the court rejected a broad claim of executive privilege, holding categorically that it was the court, not the executive, who had the last word on the question. The Supreme Court, in reversing (345 U. S. 1 (1953)), expressly declined to consider the broad proposition of privilege raised by the Government, but decided instead on other grounds. Yet, it is important to note that, even so, the highest Court was careful to state that the determination of privilege must be made by the Court, declaring expressly, "Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers" (345 U. S. at 9).

Nor are these the only cases rejecting the extreme claim of executive privilege in courtroom proceedings. In *United States v. Certain Parcels of Land* (15 F. R. D. 224), a condemnation action by the Government, the defendant sought certain internal Department of

Justice files. Of course, the Government was quick to claim privilege but its claim was not sustained by the court. The court's language is extremely thought provoking to those who have uncritically accepted the extreme arguments re privilege of the executive branch:

In short the Government's claim of immunity under the Attorney General's regulations does not rest upon any privilege "established in the law of evidence." * * * The sole ground for the claim is that the documents are "confidential reports in Department of Justice files"; the Government's theory being, as stated before, that "reports in the Department of Justice files" are privileged because made confidential by Order No. 3229 (Revised).

Clearly there is no such privilege known to the law of evidence. The mo- that can be said for the Government's position is that there is a general public policy against unnecessary disclosure of files of the executive branches of the Government. However, this policy may readily be outweighed by the public interest in disclosure when such files contain documents of evidentiary value in a court of justice (15 F. R. D. at 230).

Another case along this line is *Zimmerman v. Poindexter* (74 F. Supp. 933 (D. Hawaii 1947)), where, in a civil suit for wrongful imprisonment, the plaintiff by subpoena sought to get certain files from the Army including Federal Bureau of Investigation reports. The court there too rejected the claim that it was for the Executive itself to determine what documents to withhold. According to the court it itself had to make that determination. Said the court:

We conclude by holding that to sustain the assertion of privilege of concealment under the specific situation before the court would be tantamount to abdication of an inherent judicial function of determining the facts upon which the admissibility of evidence in a case depends. This we cannot do.

It cannot be overemphasized that these cases completely repudiate the notion that there is a valid doctrine of absolute executive privilege even in courtroom cases. How much more true is it, then, of cases involving congressional investigatory power, where there are no cases at all even remotely upholding executive claims and where, as will be conclusively shown, the limitations restricting judicial investigatory authority are not applicable.

Also of moment here is the line of criminal cases where executive privilege has been asserted. These cases have uniformly rejected the executive claims and have culminated in the decent decision of the Supreme Court in *Jencks v. United States* (353 U. S. 657 (1957)). In *Jencks*, the Court refused to allow executive privilege to permit even Federal Bureau of Investigation files to be withheld from defendant even without a showing on his part how the files sought were directly relevant to his defense. The need for justice, said the Court, is greater than any prejudice "attendant upon the possible disclosure of state secrets and other confidential information in the Government possession."

It is recognized that there are many who do not agree with the *Jencks* decision and that there has, indeed, been enacted a law which seeks to correct its too extreme effects. But can it seriously be contended that a Court which held that a private individual must be given access even to Federal Bureau of Investigation files would refuse to hold that the elected representatives of the people are entitled at least the same access? Certainly, a tribunal which decided *Jencks* the way it did would be most unlikely to give free rein to the advocates of absolute executive privilege vis-a-vis the Congress.

V. SEPARATION OF POWERS NOT JUSTIFICATION FOR "EXECUTIVE PRIVILEGE"

In the Attorney General's memorandum already referred to (printed *infra*, appendix C) the separation of powers is transformed into a doctrinaire concept made use of with extreme pedantic rigor. Unless we follow the extravagant view that the separation of powers divides the branches of Government into three watertight compartments, it would appear that the Attorney General's approach does not really help us in dealing with the problem of executive withholding of information. Each branch, declares the Attorney General, "shall be limited to the exercise of the powers appropriate to its own department and no other." But this begs the question, as far as the problem at issue is concerned, for it does not in any way tell us to what "powers appropriate to its own department" the authority of the Congress is limited. The implication is that congressional authority is limited to the enactment of laws; in no other way can it act. Such gratuitous interpretation by the Attorney General of the powers of the Congress is, however, wholly out of line with modern theory and practice on the proper role of a legislative assembly in a democratic state.

As that organ of the Federal Government which alone is vested with the power to enact laws, the primary province of the Congress is, of course, to legislate. It would, nevertheless, be erroneous to think of the functions of a modern legislative assembly solely in terms of lawmaking.

The political philosopher of these days of self-government—wrote Woodrow Wilson, in 1884 in criticizing the extent to which the work of the Congress was then devoted almost exclusively to legislation—

has * * * something more than a doubt with which to gainsay the usefulness of a sovereign representative body which confines itself to legislation to the exclusion of all other functions. * * * Quite as important as legislation is vigilant oversight of administration; and even more important than legislation is the instruction and guidance in political affairs which the people might receive from a body which kept all national concerns suffused in a broad daylight of discussion. There is no similar legislature in existence which is so shut up to the one business of lawmaking as is our Congress (Congressional Government in the United States, 295, 297).

It cannot be denied that there is a great deal of truth in this criticism of a representative assembly whose time is spent solely in passing laws. Important though the legislative function itself may be, a legislative body is hardly worthy of the title of Congress or Parliament if it merely grinds out legislation as a sausage maker grinds our sausages.

Under contemporary conditions, the National Legislature is the one great forum of expression which can be reached by the individual citizen. His Congressman is the one national official who is in contact with, and responsible to, a relatively small local area. It is through its representative in the National Assembly alone that the locality is normally able to make its views heard on the national level.

But the legislative body is more than a "committee of grievances" where those represented can ventilate their opinions and complaints. It is even more important as a mold than as a receptacle of public opinion. Its job in this respect is to enlighten and educate by ensuring adequate discussion of the important issues before the Nation.

The debate in the Legislature should clarify those issues and enable the Nation intelligently to support or oppose the position finally taken in the two Houses.

As consequential as its position as the forum of the Nation is the modern Legislature's role as overseer of the administration. It is almost a truism that the critical point of present-day governmental developments is the consistent growth of administrative authority. The type of regulatory activity which contemporary public opinion requires the state to engage in can, as a practical matter, be carried on only by the administrative process. For its officers to operate effectively in the administration of the vast regulatory and social service schemes undertaken by the state, they must be vested with large areas of discretionary authority. The delegation of powers to administrative agencies in a particular field does not, all the same, relieve the Legislature of responsibility over that field. The Congress does not really get rid of a subject by delegating powers. The consistent transfer of authority to the administration only increases the difficulty, from the point of view of the effective working of representative democracy.

Initially—

states Dr. Griffith, the Director of the Legislative Reference Service—the pressure may have been on Congress for legislation (or upon the President as party leader); ultimately, the highly intricate task of continuously intervening in the economic order has by virtue of legislative authorization and delegation of power become the task of a bureau or commission. Here is a transfer in the equilibrium of power and effectiveness, and the transfer is away from the operative significance of representative government and toward the bureaucratic ascendancy of the technically competent (Congress: Its Contemporary Role, 2).

If the trend toward bureaucratic predominance is successfully to be resisted, the Legislature must not surrender control as it has delegated power. Unless the exercise of the authority delegated to him is closely supervised by the elected representatives of the people, the administrator is, in effect, placed in a position of almost complete irresponsibility. It is this which makes oversight of administration so important a part of the job of a modern legislature.

It may thus be seen that the exercise of its authority to enact laws is but part of the work of a legislature like the Congress.

The primary tasks of modern legislative assemblies—

stated an acute student of government over a decade ago; in terms which sum up what has been said above—

may be arranged in four classes. First, but not necessarily foremost, is the function of lawmaking. At least equally important is the responsibility of supervising the executive; the legislature in this role may be compared to a board of directors of a business corporation which at least theoretically, endeavors to hold "administrative officers to a due accountability for the manner in which they perform their duties." A third legislative office, broad in its implications involves activities as an organ of public opinion; a lawmaking body may serve as a national forum for the expression, formulation, or molding of opinion. The remaining function, which may be termed membership, concerns internal matters especially the judging of the qualifications and conduct of the delegates to the legislative assembly (McGeary, The Development of Congressional Investigative Power, 23).

The proper exercise of the congressional functions just outlined presupposes the existence of an informed judgment on the part of

the Members of the two Houses. As President Truman aptly declared over 10 years ago:

An informed Congress is a wise Congress; an uninformed Congress surely will forfeit a large portion of the respect and confidence of the people (Hearings before the Joint Committee on the Organization of Congress (1946) 908).

Informed judgment on the part of the Members of Congress cannot normally exist, as a practical matter, if they do not possess sufficient information about the conditions which their acts are intended to affect. Nor is adequate information usually available within the Congress itself alone. The knowledge possessed by its Members must necessarily be supplemented by that obtained from outside sources.

As strong a statement as any upon the right of the Congress to obtain the information necessary for informed exercise of its functions is that made for a unanimous Supreme Court by Mr. Justice Van Devanter in the famous case of *McGrain v. Daugherty* (273 U. S. 135, 174-175 (1927)):

We are of the opinion—

reads the decision of the Court there—

that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. * * * A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. * * * Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two Houses are intended to include this attribute to the end that the function may be effectively exercised.

In Justice Van Devanter's view, the power to obtain information is included in the grant to the Congress in article I of the Constitution of legislative power. But, if this view is correct (and it is supported by the authority of the entire Supreme Court), it refutes the constitutional basis upon which the Attorney General's memorandum already referred to purports to rest. Even if the separation of powers doctrine requires, as the Attorney General asserts, that each branch shall be limited to the powers appropriate to its own department, that does not affect the congressional right to information. For *McGrain v. Daugherty* holds that the authority to obtain information is an essential attribute of the powers appropriate to the legislative department.

In truth, if the separation of powers has anything to tell us on the subject under discussion, it is that the Congress has the right to obtain information from any source—even from officials of departments and agencies in the executive branch. In the United States there is, unlike the situation which prevails in a parliamentary system such as that in Britain, a clear separation between the legislative and executive branches. It is this very separation that makes the congressional right to obtain information from the Executive so essential, if the functions of the Congress as the elected representatives of the people are adequately to be carried out. The absence of close rapports between the legislative and executive branches in this country, comparable to those which exist under a parliamentary system, and the nonexistence in the Congress of an institution such as the British question period, have perforce made reliance by the Congress upon

its right to obtain information from the Executive essential, if it is intelligently to perform its legislative tasks. Unless the Congress possesses the right to obtain executive information, its power of oversight of administration in a system such as ours becomes a power devoid of most of its practical content, since it depends for its effectiveness solely upon information parceled out ex gratia by the Executive.

VI. CONGRESSIONAL POWER TO AUTHORIZE PRESENT INVESTIGATION

As emphasized at the outset, the investigation authorized by House Resolutions 99 and 191 is a broad, general investigation of the administrative agencies coming within the jurisdiction of the House Committee on Interstate and Foreign Commerce. The present subcommittee is not limited to inquiry into specific instances where prima facie cases of improper agency action are made out. Instead, its function is to make a widespread probe of the administrative agencies concerned. Oversight by the subcommittee is not limited to investigation on a case-to-case basis, but involves, on the contrary, in the words of section 136 of the Legislative Reorganization Act, the exercise of continuous watchfulness of the execution by the agencies concerned of any laws, the subject matter of which is within the jurisdiction of the House Commerce Committee.

The subcommittee's power of investigation, in other words, is not akin to that vested in the judicial process. It is more analogous to that traditionally inherent in a grand jury, which does not depend upon a case or controversy to get evidence, but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not (compare *United States v. Morton Salt Co.*, 338 U. S. 632 (1950)).

It is self-evident that an investigation such as the subcommittee is authorized to engage in cannot become a practical reality without full access to the files and records of the agencies concerned. Without such access, the very right of the subcommittee to investigate becomes but as "sounding brass or a tinkling cymbal."

It is in recognition of this that House Resolution 99 expressly empowers the subcommittee—

to require, by subpoena or otherwise * * * the production of such books, records, correspondence, memoranda, papers, and documents, as it deems necessary.

It should be emphasized that the authority granted covers such records as the subcommittee deems necessary—and not those only which the agencies being investigated themselves deem necessary.

If an investigation such as that authorized by House Resolutions 99 and 191 is within the competence of the House of Representatives it follows that it is the subcommittee, rather than the agencies being investigated, that must determine what records are deemed necessary for the subcommittee's study. For the Civil Aeronautics Board to limit the files and records which it chooses to make available to the subcommittee is for it, in effect, to narrow the broad scope of the investigation expressly authorized by the House. It is the Civil Aeronautics Board's position that the subcommittee may not have unrestricted access to the matters specified in its Staff Notice No. 333. However, upon specific request, says the Board, specific files and records covered in the notice may be made available later, if the Board deems it desirable. But this is, in substance, for the Board

to presume to convert the broad, general study authorized by House Resolutions 99 and 191 into an investigation of specific cases where a prima facie case is shown.

The Board's gratuitous assumption of power thus to alter the basic nature of the investigation authorized by the House is completely unwarranted. Unless the investigation directed by House Resolutions 99 and 191 is itself beyond the competence of the House, the Board's attempt constitutes an illegitimate effort to narrow the investigatory authority of a duly empowered congressional committee.

An instant's reflection will demonstrate that an investigation such as that entrusted to this subcommittee is, without the slightest doubt, one which can be authorized by the House. Can anyone doubt that a principal can conduct a general investigation into the affairs of his agent, in all matters relating to his agency? An agency like the Civil Aeronautics Board is wholly a creature of the Congress. It has no inherent powers of its own; it owes its very life to the legislature. Can such a body claim that it is not wholly subject to the investigatory authority of its own creator?

The breadth of permissible congressional investigation is shown in the following oft-quoted statement by a Federal court:

A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress * * *. A judicial inquiry relates to a case, and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates all possible cases which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad (*Townsend v. United States*, 95 F. 2d 352, 361 (1938)).

It is important to bear in mind that the investigating power of the House of Representatives is one which has its antecedents in centuries of Anglo-American history. The roots of the House's power lie deep in the British Parliament. In this respect, the authority of the House of Representatives may be said to be derived from that of the British lower House. Under the leading modern British case:

the Commons are, in the words of Lord Coke, the general inquisitors of the realm * * * they may inquire into every thing which it concerns the public weal for them to know (*Howard v. Gosset*, 10 Q. B. 359, 379 (1845)).

It may be claimed that Lord Coke's famous assertion referred to in this quote is too extreme when applied to our House of Representatives. It has been argued that the British precedent is not apposite because the Parliament was, unlike the Congress, originally a judicial body. (See *Kilbourn v. Thompson*, 103 U. S. 168, 189 (1880).) More recent scholarship, however, vigorously denies that Parliament ever really was a court, in our modern sense of the term. (See Potts, 74 U. of Pa. L. Rev. 692-700 (1926).) Then, too, the English cases on legislative investigatory authority all arose long after Parliament clearly ceased to be a court. Thus, even if Parliament had once been a judicial body, that should hardly affect the value for us of precedents that took place long after it had ceased to be such.

Indeed, in *McGrain v. Daugherty* (273 U. S. 135, 161 (1927)), the Supreme Court clearly indicated that the congressional investigatory power was derived from that of the Parliament. Said the Court there:

In actual legislative practice power to secure needed information by such means has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament and in the Colonial legislatures before the American

Revolution; and a like view has prevailed and been carried into effect in both Houses of Congress and in most of the State legislatures.

It is relevant to note that a member of the very first Supreme Court spoke of the investigatory power of the House of Representatives in language strikingly similar to that of Lord Coke. Lecturing in Philadelphia in 1791, Mr. Justice Wilson affirmed:

The House of Representatives * * * form the grand inquest of the state. They will diligently inquire into grievances arising both from men and things (*Works of James Wilson* (1896) 29).

Interestingly enough, when the House called upon the Father of his Country himself to produce the records relating to the expedition of General St. Clair, President Washington's Cabinet unanimously determined:

First, that the House was an inquest and therefore might institute inquiries. Second, that they might call for papers generally. (See Taylor, *Grand Inquest* (1955) 23.)

Can it reasonably be claimed that the "grand inquest" of the Nation does not have the power to conduct the broadest possible investigation into the workings of agencies like the Civil Aeronautics Board? On the contrary, the House of Representatives may well say, as did the Massachusetts House of Representatives in 1722, that it is—

not only their Privilege but Duty to demand of any Officer in the pay and service of this Government an account of his Management while in the Public Employ (Cited in Potts, 74 U. of Pa. L. Rev. at 708).

It is just such an account that the House of Representatives is now demanding of the agencies subject to the jurisdiction of this subcommittee. To a claim that such a broad inquiry cannot be authorized, the House might well respond, as once did William Pitt, the elder:

We are called the Grand Inquest of the Nation, and as such it is our duty to inquire into every Step of publick management, either Abroad or at Home, in order to see that nothing has been done amiss (13 Commons Debates 172.)

VII. PAST INVESTIGATIONS OF EXECUTIVE AND ADMINISTRATIVE AGENCIES

"A page of history is worth a volume of logic," according to a celebrated statement of Mr. Justice Holmes (*New York Trust Company v. Eisner*, 256 U. S. 345, 349 (1921)). In the case of congressional investigatory authority, both the history and the logic combine to support the legislative right to be informed fully of the operation of agencies like those within the jurisdiction of this subcommittee. To an agency like the Civil Aeronautics Board, in truth, the volume of history is not worth as much as their page of logic, based upon their personal belief that they should be immune from the full scrutiny of this subcommittee.

Instances of congressional investigations into the workings of administration are legion. In fact, the very first congressional inquiry—that into the disaster that befell General St. Clair and his army—was of this very type. Following the St. Clair investigation both the House and Senate engaged in a great many inquiries into the workings of Government agencies. Thus, to take some illustrative examples from our early history, the House conducted general

investigations into the operations of the Treasury Department (1800 and 1824), the territorial government of Mississippi (1800), the War Department (1809 and 1832), the conduct of Gen. James Wilkinson (1810), Government "clerks" generally (1818), the post office (1820 and 1822), the Bank of the United States (1832 and 1834), the New York customhouse (1839), the conduct of Capt. J. D. Elliott commanding a naval squadron in the Mediterranean (1839), the Commissioner of Indian Affairs (1849), the Secretary of the Interior (1850), and the Smithsonian Institution (1855). During the same period the Senate was, among other things, investigating Gen. Andrew Jackson's conduct of the Seminole wars in Florida (1818), the Internal Revenue Bureau (1828), the post office (1830), and John Brown's raid at Harper's Ferry (1859). Soon after the outbreak of the Civil War, the Union disasters at Bull Run and Ball's Bluff led the House and Senate to establish a joint committee "to inquire into the conduct of the present war." (See Taylor, Grand Inquest, pp. 33-34.)

Of particular relevance to one concerned with the investigation of the present subcommittee is the resolution of the House of January 16, 1818, authorizing a searching inquiry into the conduct of clerks and officials in the executive departments. Under it, a committee was appointed "to inquire whether any and what clerks or other officers in either of the departments, or in any office at the seat of the general government, have conducted improperly in their official duties." Here we have a direct antecedent of House Resolutions 99 and 191. (See also House resolution of December 13, 1836 (13 Cong. Debates 1057), which authorized an even broader investigation of the Executive.)

Congressional inquiries into administration were, in actuality, so common in our early history that a historian of the period could conclude:

Committees instituted inquiries, ran the eye up and down accounts, pointed out little items, snuffed about dark corners, peeped behind curtains and under beds, and exploited every cupboard of the Executive household (3 Schouler, History of the United States, 258).

It is to be noted that the powers of the House to inquire into the operations of the Government were not opposed by the agencies concerned. On the contrary, in some cases, the investigations were actually invited by the officers whose conduct was involved. Thus, on November 24, 1800, the Speaker laid before the House a letter from Mr. Wolcott, the Secretary of the Treasury, stating that the President had accepted his resignation and, because of criticisms of his administration, freely submitting his entire conduct to "any investigation which the House of Representatives may be pleased to institute." The comment of one Congressman at this letter is especially pertinent:

If it be understood that, on the retirement of every Secretary of the Treasury from office, an inquiry is to be made into his official conduct, it will operate as a general stimulus to the faithful discharge of duty (10 Ann. Cong. 786, 788 (1800)).

The precedent set by Wolcott in 1800 was followed by John C. Calhoun in 1822. On December 29 of that year, the Speaker laid before the House a letter from Calhoun requesting an investigation of charges made against his prior administration of the War Department:

An imperious sense of duty—

Calhoun wrote—

and a sacred regard to the honor of the situation which I occupy compel me to approach your body, in its high character of the grand inquest of the Nation. * * * In claiming the investigation of the House I am sensible that under our free and happy institutions the conduct of public servants is a fair subject of the closest scrutiny and the freest remarks (3 Hinds' Precedents 97).

The House itself has in the past taken a strong view on the propriety of investigations by it into the workings of administration. Thus, the House very early overruled the objection that its inquiry into the conduct of clerks in the executive departments would be an infringement on the Executive power. The objection arose out of the resolution of January 16, 1818 (already referred to), authorizing a committee to inquire into the conduct of clerks or other officers of the departments:

Objection being made that the House would, by adopting this resolution, assume power over the departments that belonged to the Executive and would thus impair Executive responsibility, it was answered that the House was in the relation of a grand jury to the Nation, and that it was the duty of the House to examine into the conduct of public officers (3 Hinds' Precedents 85-86).

Similarly, in 1874, the House, in reply to a claim that an inquiry exceeded the power of the House, "asserted its authority as grand inquest of the Nation to investigate, with the attendant right of punishment for contempt" (id., at 37). And, in 1837, the House voted to commit for contempt a witness for refusing to obey the subpoena of a committee empowered—

to inquire into the condition of the various executive departments, the ability and integrity with which they have been conducted, into the manner in which the public business has been discharged in all of them, and into all causes of complaint from any quarter at the manner in which said departments, or their bureaus or offices, or any of their officers or agents of every description whatever, directly or indirectly connected with them in any manner, officially or unofficially, in duties pertaining to the public interest, have fulfilled or failed to accomplish the objects of their creation, or have violated their duties, or have injured and impaired the public service and interest (id., at 2-3).

An extremely suggestive precedent is to be found in the Senate in 1886. In January 1886, the Senate passed the following resolution:

Resolved, That the Attorney General of the United States be, and he hereby is directed to transmit to the Senate copies of all documents and papers that have been filed in the Department of Justice since the 1st day of January A. D. 1885, in relation to the management and conduct of the office of district attorney of the United States of the southern district of Alabama.

Upon the Attorney General's refusal to transmit the papers requested, the Senate Committee on the Judiciary submitted a report which strongly affirmed the right of the Congress to receive the information requested (in language equally applicable to the similar right of the present subcommittee):

It is believed that there is no instance of civilized governments having bodies representative of the people or of states in which the right and power of those representative bodies to obtain in one form or another complete information as to every paper and transaction in any of the executive departments thereof does not exist, even though such papers might relate to what is ordinarily an executive function, if that function impinged upon any duty or function of the representative bodies * * *.

The practical construction of the Constitution in these respects by all branches of the Government for so long a period would seem upon acknowledged principles to settle what are the rights and powers of the two Houses of Congress in the exercise of their respective duties covering every branch of the operations of the

Government, and it is submitted with confidence that such rights and powers are indispensable to the discharge of their duties and do not infringe any right of the Executive, and that it does not belong to either heads of departments or to the President himself to take into consideration any supposed motives or purposes that either House may have in calling for such papers, or whether their possession or knowledge of their contents could be applied by either House to useful purposes. * * *

Why should the facts as they may appear from the papers on file be suppressed? Is it because that, being brought to light, it would appear that malice and misrepresentation and perjury are somewhat abundant * * *? (7 Senate Misc. Docs. (1893), 237-243.)

Following this report, the Senate strongly censured the Attorney General.

In the debate in the Senate, Senator Edmunds, the then chairman of the Judiciary Committee, referred to the "universal power of knowledge and information of the two Houses of Congress in respect to every operation of the Government of the United States and every one of its officers, foreign and domestic." According to him, both Houses of the Congress had a "right to know everything that is in the executive departments of the Government" (17 Congressional Record 2215).

The learned Senator stated that this was the first instance in some 40 years in which either House had failed—

on its call to get information that it has asked for from the public departments of the Government

The committees of either House, said he—

have always obtained from the departments on their mere request everything that either House or its committees thought necessary for the proper discharge of their duties (ibid).

The willingness displayed by the executive branch in furnishing information to the various committees and to the respective Houses of Congress, in the period referred to by the Senator, is best observed by a perusal of some of the examples cited by Senator Edmunds in his argument on the opening day of this debate in the Senate on March 8, 1886. The wide range of subjects involved in the submissions of information through the years is also worthy of notice.

In executive session on March 3, 1806, the President was requested to report all documents and papers relative to the interference of the American Minister at Paris in the case of the ship *New Jersey*. The President furnished this information, although there was no question then pending in the Senate regarding either the ship *New Jersey* or the American Minister at Paris.

The President was requested by the Senate on June 2, 1813, to inform the Senate, and the Senate was so informed by the Chief Executive, whether any communications had been received from one Russell, an agent of the United States, admitting or denying the declaration of the Duke of Bassano, as to the repeal of the Berlin and Milan decrees. With respect to this, Senator Edmunds said:

It has been stated that an agent of the United States had got (sic) that information and had given it away in an improper manner; but the detail it is quite unnecessary now to go into; * * * in order, I repeat, to keep itself acquainted with the state of the Union and the executive affairs of this Government and the conduct of all its agents, [Congress] proceeded to call for this information, and got it as a matter of course. It was not exercising a jurisdiction to confirm or reject Russell for anything, or to ratify or reject a treaty. It was getting information in a general way for its general purposes in the exercise of its general duty.

The Senate Committee on the Judiciary was instructed on March 13, 1822, to procure from the Secretary of State a letter written by a Mr. Jennings of the State of Indiana, recommending one Dewey for appointment as United States attorney for Indiana. The Senator indicated that the resolution instructing the committee to obtain this paper implied that the power to secure the same extended to a private paper, so far as such a paper could be a private paper, and described the document in question as being a letter that the Senate had reason to believe was in the files of the Department of State. The paper was turned over to the committee without objection.

The Secretary of War was directed by the Senate on October 30, 1828, to furnish copies of the reports of the Inspector General of the Army of the United States, confidential as well as others, including the details of all statements and instructions. This order, the Senator informs us, was adopted in executive session and was complied with by the Secretary of War as a matter of course.

The Senator similarly cited numerous other occasions on which the Executive had without argument surrendered information to Congress. But of all the cases amassed by the learned Senator in this discussion, his last probably had the most telling effect. In March and April of 1879, the Senate Judiciary Committee had sought and received from the Attorney General the same type of information which Cleveland and his Attorney General, Mr. Garland, were refusing to submit to the Senate Judiciary Committee in 1886. The information requested in 1879 concerned nominations for certain vacancies and also dealt with the propriety of the removal of one Michael Schaeffer, chief justice of the Supreme Court of the Territory of Utah and the appointment of David Corbin to that office (taken from *Collins*, 39 *Georgetown L. J.*, 563, 571-72).

It is true that there have also been executive refusals to furnish papers to the Congress. These have, all the same, been relatively few by comparison with the whole mass of instances in which congressional demands for information have been complied with. In executive and legislative practice is to be considered in a legal analysis of the subject, the grants as well as the refusals of information should be considered, if a true picture of the prior practice is to be obtained. The readiness displayed by executive and administrative agencies in innumerable cases in furnishing information to committees of both Houses is at least as strong as a precedent as the comparatively rare instances of refusals.

VIII. COURT DECISIONS ON LEGISLATIVE POWER TO INVESTIGATE GOVERNMENT

Reference has already been made to the assertion of the Attorney General in his memorandum in support of the President's letter of May 17, 1954 (printed infra appendix C) that the courts have uniformly upheld the doctrine of absolute executive privilege vis-a-vis the Congress. He cites no court case so holding, and, in fact, cannot do so, for there is no judicial decision in accordance with his assertion. Indeed, as cases already discussed show, it may be doubted whether the courts recognize any absolute executive privilege, even as against a private citizen in private litigation.

As against the vacuum of relevant precedents in support of claims like that of the Attorney General's to an extreme executive privilege, there are, it should be noted, a number of court decisions expressly sustaining the legislative power to investigate Government agencies and to require the production of papers and documents in connection therewith. In this connection, it is apposite to point out that the leading case on Congressional investigatory power itself, (*McGrain v. Daugherty*, 273 U. S. 135 (1927)) arose out of an investigation of the executive departments implicated in the Teapot Dome scandals. While the Court did not emphasize the fact that the investigation at issue was one into the workings of Government agencies (but, instead, delivered an opinion sustaining congressional investigatory power generally), its decision is clearly authority for a broad investigation by the Congress into administrative operations.

Several State decisions make explicit the major premise implicit in *McGrain v. Daugherty*. One of the earliest cases on the subject is *Burnham v. Morrissey* (14 Gray 226 (Mass. 1859)). In that case, a special committee was appointed to investigate the State liquor agency. The commissioner in charge refused to produce certain books. He was committed for contempt and sought habeas corpus. The writ was discharged, the court expressly declaring that the House had full authority to compel witnesses to furnish such information "in order to the proper performance of legislative duties."

A similar case is *Ex parte Parker* (74 S. C. 466 (1906)). There, too, the State liquor agency was under investigation and the court, in refusing to discharge a contumacious witness, declared:

The power of the general assembly to obtain information on any subject upon which it has power to legislate, with a view to its enlightenment and guidance, is so obviously essential to the performance of legislative functions that it has always been exercised without question.

Perhaps the leading State case until recently is *People ex rel McDonald v. Keeler* (99 N. Y. 463 (1885)). It involved a legislative investigation into the operations of the department of public works. The court upheld the legislative power to undertake such an investigation, saying—

It is a well-established principle * * * that either House may institute any investigation having reference to * * * any matter affecting the public interest upon which it may be important that it should have exact information, and in respect to which it would be competent for it to legislate.

(It is interesting to note that the New York court here was anticipating the famous language of Justice Van Devanter in *McGrain v. Daugherty*.)

The cases just discussed clearly uphold the legislative power to investigate the workings of executive and administrative agencies. Even more pertinent, perhaps, is a 1951 Massachusetts decision, which arose directly out of an executive attempt to pull down in the legislature's face the curtain of official secrecy. In 1951, the Massachusetts Development and Industrial Commission (an agency within the executive department) ordered a study made of business conditions. When this study was completed and a report made, the State senate ordered the chairman of the commission to produce the report. He refused, asserting that "the legislature may not attempt to interfere with action taken by the executive department." He was backed up in his defiance by a formal vote of the commission directing that the

report be turned over to a private advisory group. Thus, there was presented to a court for the first and only time the direct question of whether the executive can refuse to turn over to the legislature an internal communication on the ground of executive privilege.

The claimed privilege was wholly rejected by the Massachusetts court, which upheld the power of the State senate to enforce its demand for the report, by contempt proceedings if need be. According to the court:

If the legislative department were to be shut off in the manner proposed from access to the papers and records of executive and administrative departments, boards, and commissions, it could not properly perform its legislative functions (Opinion of the Justices, 328 Mass. 655, 661 (1951)).

It needs little iteration to note the extreme relevancy of this Massachusetts decision to the present contumacy of the Civil Aeronautics Board. Here we have the only case in which the pretensions of the executive to a power to withhold documents from the legislature on the ground of official privilege were squarely presented to a court. And the court expressly repudiated the gratuitous assumption of such a power in the executive to frustrate a legislative inquiry.

At issue in the Massachusetts case was the claimed privilege of the executive with regard to communications within an executive agency. It should be noted that these are exactly the communications asserted to be wholly privileged in the President's letter of May 17, 1954, to the Secretary of Defense (printed infra, appendix C). Yet, in the one case where the claimed privilege has had to run the judicial gantlet, it was weighed in the balance and found wanting by the highest court of Massachusetts.

IX. CONGRESSIONAL INVESTIGATORY POWER ANALOGOUS TO THAT OF GRAND JURY, NOT OF COURT

The bulk of the cases cited by those who assert a claim of absolute executive privilege have to do with attempts by private litigants to compel the disclosure of executive documents in suits in the courts. Even those cases, as has already been shown, do not sustain the extreme claims of privilege made, for example, by the Attorney General in his memorandum in support of the President's letter of May 17, 1954, to the Secretary of Defense.

Even more important perhaps is the fact that such private-law cases are not directly relevant to the power of the Congress to compel disclosure of information. It is true that the administration of justice between private litigants is important and is not to be overridden except in the face of compelling necessity. In such cases, however, governmental necessities may outweigh the needs of the private parties. The same does not apply to a congressional investigation. Here it is not merely the rights of individual litigants that are at stake. The elected representatives of the people are asserting their need for information on behalf of the Nation itself, so that their legislative power may be guided in its exercise by knowledge of what needs to be known. In such a case, can the executive pull down in the legislature's face the curtain of official secrecy? (Compare Taylor, *Grand Inquest* 98.)

In the case of a congressional investigation, the cases bearing solely on the power of the courts to compel disclosure are not directly relevant. Whatever limits may be imposed on the courts in the conduct of

litigation can have little bearing on the scope of congressional investigatory authority.

This has been conceded by the Civil Aeronautics Board itself in the memorandum of its general counsel to the Government Information Subcommittee. (Hearings on Availability of Information from Federal Departments and Agencies (1957) 2730). More important is the fact that it has been expressly recognized by the Supreme Court. In *United States v. Morton Salt Co.* (338 U. S. 632 (1950)), the Court distinguished administrative investigatory power from that of a tribunal endowed only with judicial power.

Because judicial power—

said Justice Jackson there—

is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the grand jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.

Can it reasonably be contended that such broad powers of investigation are possessed by an agency which is only a delegate of the Congress and not by the Congress itself from whence the delegate derived its authority?

On the contrary, in *Oklahoma Press Publishing Co. v. Walling* (327 U. S. 186 (1946)), the High Bench expressly stated that the congressional investigatory power is at least as extensive as that of an administrative agency. It involved a subpoena of the Administrator of the Wage and Hour Division directing the production by a company of certain of its records, including records which would indicate whether or not the company had a sufficient relationship to interstate commerce to bring it within the jurisdiction and coverage of the Fair Labor Standards Act. The company, in opposing the subpoena, contended inter alia that at least "probable cause" for jurisdiction over it must be shown before it could be lawfully required by subpoena to produce its records. The Court rejected this contention of the appellant company, holding that "probable cause" for jurisdiction did not have to be shown in order to validate the subpoena—that the Administrator had jurisdiction to compel the production of documents in order that he might determine whether the facts showed that a case existed within the jurisdiction of the Fair Labor Standards Act.

The Court then proceeded to liken the powers of the Administrator, which were granted to him by the Congress, to the inquisitorial power of a grand jury or the discovery powers of a court of equity. In a footnote to its opinion, the Court stated that the investigating power of the Congress itself was of the same character. It seems reasonable to conclude that if the Congress can vest in the Administrator of the Wage and Hour Division such a power of investigation, limited only by the act, Congress itself may do at least the same in conducting its own investigations in aid of its own powers. (See *Collins*, 39 *Georgetown L. J.* at 597.)

Judicial power depends upon a "case" or "controversy" for authority to get evidence. And in the field of administrative law a reviewing court's function is severely limited. The judge looks only to see

if a challenged administrative act is reasonably supported in fact and law. He is limited to the decision under review and the record on which it was made; he clearly cannot probe behind that record to scrutinize the decisional processes of the administrator.

But these limitations cannot apply to frustrate a congressional probe into the workings of governmental agencies. The legislature in such a case is not limited to reviewing the legality of particular challenged administrative decisions with a view to reversing those found illegal. On the contrary, it is seeking to obtain information on the actual operation of the Government—information which may ultimately serve as a basis for direct legislative action. To determine how the agencies really function, it must be able to probe behind the ostensible formal record, in order to determine what factors actually entered into criticized agency acts. Unlike a court, it is not limited to reviewing the legality of specific decisions brought before it in particular "cases" or "controversies." It can investigate administrative operations merely on suspicion that the law is being violated or merely because it wants assurance that it is not. And the end result of the legislative inquiry is not the affirmation or reversal of the agency concerned, but recommendations for specific legislative action, where such are deemed necessary.

The attempt by an agency like the Civil Aeronautics Board to place congressional investigatory authority within the Procrustean limitations of judicial power is thus wholly unwarranted. The House of Representatives, it bears constant repeating, is (in the phrase first used by Mr. Justice Wilson in 1791), the "grand inquest" of the Nation. In 3 *Hinds' Precedents* 86, already referred to, the House itself expressly stated that it "was in the relation of a grand jury to the Nation." Its powers of inquiry are not limited to those possessed by a court in a specific "case" or "controversy." They are, as the Supreme Court has itself recognized (*Oklahoma Press Publishing Co. v. Walling, supra*), at least as broad as those of a grand jury. See also *United States v. Moran* (194 F. 2d 623 (2d Cir. 1952), cert. denied, 343 U. S. 965 (1952)), for a similar holding.

The investigatory powers of a grand jury are, of course, extremely broad. As the Supreme Court has said (in language at least as applicable to a legislative body):

It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. (*Blair v. United States*, 250 U. S. 273, 282 (1919). See, similarly, *United States v. Johnson*, 319 U. S. 503, 510 (1943); *Homan Manufacturing Company v. Russo*, 233 F. 2d 547 (7th Cir. 1956)).

A more recent statement of the scope of the grand jury's power of inquiry is contained in *United States v. Neff* (212 F. 2d 297 (3d Cir. 1954)). According to the court there, the grand jury's—

sweeping inquisitorial function dates back some 800 years. * * * The scope of a grand jury investigation is not limited by the probable result of its inquiry or by doubts whether any particular individual will be found properly subject to an accusation for crime. * * * An investigation by a Federal grand jury need not be preceded by any definition whatever of the crime to be investigated or the persons against whom an accusation is sought. The examination of witnesses before a grand jury need not be preceded by presentment, indictment, or other formal charge.

If the instant inquiry were one conducted by a grand jury into the operations of the Civil Aeronautics Board, would there be any doubt but that the grand jury would have unobstructed access to the Board's files and records? If the Board, in such an investigation, presumed to cut off the grand jury at the outset from key files, on spurious claims of privilege, would anyone doubt that the Board was seeking to obstruct legitimate inquiry into its affairs? In such a case, indeed, the normal reaction would be that the Board was seeking to shield those who had been guilty of improper conduct from the law's proper scrutiny. Why should the facts as they may appear from the Board's files be any more suppressed in an inquiry by this subcommittee, whose investigatory powers are at least as broad as those of a grand jury? Is the Congress and the country to be blamed if they draw the conclusion that it is because, being brought to light, it would appear that improper action is somewhat abundant?

X. CATEGORIES OF FILES CLAIMED "PRIVILEGED" BY CIVIL AERONAUTICS BOARD

Discussions of the availability to the Congress of "confidential files," "internal files," "personal files," "private papers," and the like frequently lose sight of the basic premise for any analysis of the problem. This is the long-settled and unchallenged rule of law that an investigatory body, armed with the power of subpoena, may compel from a witness the furnishing of any pertinent testimony or document—unless there be affirmatively asserted by the witness a valid claim of a privilege recognized in law.

All claims of exemption from the duty to disclose are, to paraphrase Wigmore, exceptional, and are therefore to be discountenanced. The trend of Government agencies is to expand their claims of privilege as if they were large and fundamental principles worthy of pursuit into the remotest analogies. This attitude is completely unwholesome. The investigation of truth—whether in a court, a grand jury, or a congressional inquiry—demands the restriction, not the expansion, of these privileges. They should be recognized only within the narrowest limits required by principle. Every step beyond these limits helps to provide, without any real necessity, an obstacle to effective investigation of the truth. (See 8 Wigmore on Evidence (1940), 67.)

Equally well settled is the principle that the witness may not be the ultimate arbiter of his own claim of privilege. This is true whether the privilege sought to be interposed be that against self-incrimination (see Marshall, Chief Justice, in Burr's Trial, Robertson's Rep. I, 243), that of an attorney and client (Wigmore on Evidence, sec. 2322), or that of "state secret" (*United States v. Reynolds*, 345 U. S. 1, 9 (1953)).

As has been previously demonstrated, a congressional committee, like a grand jury, exercises sweeping powers of investigation and inquiry. As the Supreme Court has said of the grand jury in the already cited Blair case:

It is a grand inquest, a body with powers of investigation and inquisition the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime (250 U. S. 273, 282).

This authority of the Congress to investigate includes the power to compel testimony and the production of documents. Ultimately this power is enforceable, if necessary, by punishment for contempt (*McGrain v. Daugherty*, 273 U. S. 135 (1927)). To be sure, the investigation of the congressional committee must be within the province of a proper purpose of the Congress itself (see *Kilbourn v. Thompson*, 103 U. S. 168 (1880)), and the particular testimony demanded of the witness must be pertinent to the committee's investigation. In the present instance, as has already been shown, there can, of course, be no question as to the propriety of the investigation itself—a study of the operations of a regulatory agency created by the Congress—or of the pertinency of the materials demanded—the files of that very agency. These facts the Civil Aeronautics Board apparently does not, nor could it very well, attempt to controvert.

The sole warrant, then, for any refusal by the Board to make available to the subcommittee any portion of any file of the Board must be the assertion of some legal privilege. Absent privilege, there can be no refusal.

In the present instance, the Civil Aeronautics Board, in refusing subcommittee representatives access to Board files, did not seek to apprise the subcommittee of the nature of the privilege or privileges supposedly relied upon to shield from disclosure. Rather, the Board has asserted the discretionary authority to withhold from the Congress any document or documents deemed by the Board to fall within the categories specified by it. Analysis of the categories of documents purportedly closed by the Board to inspection, however, as well as past statements of Board spokesmen, suggest certain theories of "privilege" upon which the Board is presumably relying. These will now be discussed in connection with each class of materials which the Board has refused to make available to the subcommittee.

A. "BOARD MEMBER" PRIVILEGE

Civil Aeronautics Board Staff Notice No. 333:

2. * * * (c) Communications and memoranda between Board members and their assistants relating to matters acted on by the Board, and the statements made by Board members in the course of their deliberations, shall not be permitted to be inspected nor shall their contents be divulged.

Implicit in the above refusal of the Civil Aeronautics Board is an attempt to assert against the Congress what may be termed a "Board member" privilege. This attempt is without basis in precedent or law.

The genesis for this sweeping claim of privilege, which, if unchallenged, would bar the subcommittee from examination of any and all communications or memorandums among Board members or between members and their assistants—whether, indeed, relevant to a quasi-judicial decision of the Board or not—is to be found in a significant incident involving the Civil Aeronautics Board that occurred in 1956. Information was in the possession of the Anti-trust Subcommittee of the House Committee on the Judiciary that a member of the Civil Aeronautics Board, Mr. Denny, had announced in a Board meeting that he was changing his swing vote in a crucial case as the result of a private conversation with an airlines industry spokesman, one Tipton. The subcommittee endeavored to confirm

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this information by questioning Board members as to the statements in fact made by Mr. Denny. The witnesses refused to respond, claiming "privilege." Although the claim was overruled by the subcommittee and the witnesses directed to answer, the matter was thereafter allowed to drop, the subcommittee having obtained the desired evidence from an alternate source.

The transition from this Denny-Tipton case, a narrow refusal to answer a specific question on a specific subject, to the unfettered and all-encompassing claim of privilege now advanced by the Board, is an instructive example of how an assertion of power by a subordinate agency, if not checked at the first, will inexorably expand and grow at the expense of the prerogatives and powers of the Congress.

Yet, as this claim by the Board in the Denny-Tipton case is apparently the cornerstone upon which the present assertion of privilege rests, it is instructive to inquire upon what legal authority this earlier refusal of testimony to the Congress was based. The simple answer, supplied by the Board itself, is: None.

Testifying subsequently before the Special Subcommittee on Government Information of the House Committee on Government Operations, Franklin M. Stone, General Counsel to the Civil Aeronautics Board, was pressed by Representative Moss on the fact that a memorandum prepared by Stone to support the Board's position in the Denny-Tipton case had not "cited any legal authority for withholding the information" from Congress. Replied the General Counsel:

That is correct, sir. That is my personal opinion, based on my own legal thinking. [Emphasis supplied.] (Hearings on Availability of Information from Federal Departments and Agencies (1957), p. 2843.)

It is this selfsame "personal opinion" that the Board, in an attempt to pull itself up by its own bootstraps, now presumes to interpose as a "privilege" against the power of testimonial compulsion available to a duly authorized committee of the Congress.

It is necessary to refer to this aforementioned memorandum of the Civil Aeronautics Board's General Counsel to determine the ostensible rationale upon which this "personal opinion" is based. The theory of the Board is there stated as follows:

It is generally recognized that administrative agencies are privileged against inquiry into their deliberations and that administrative officers in this respect occupy a status analogous to that of a judge or jury. [Citing cases.] * * * *The judicial decisions relied upon relate of course to demands for information made by private persons. However, there is no logical reason why the same privilege should not extend to inquiries by congressional committees. [Emphasis supplied.] (Hearings before the Antitrust Subcommittee, Monopoly Problems in Regulated Industries, Airlines, pt. 1, vol. 2, p. 1205.)*

Thus, without a semblance of legal authority, the Board glibly purports to derive a transformation of privileges from "private persons" to "congressional committees." This may not be done.

The distinction between the powers of a congressional committee and those of a private citizen is both fundamental and obvious. The Civil Aeronautics Board itself, in the past, through its General Counsel, has on other occasions conceded that the Congress in its quest for information does not stand on a par with private persons. See testimony of the Board's General Counsel before Special Subcommittee on Government Information (Hearings on Availability of Information (1957), pp. 2732, 2733, 2737, 2867, 2868).

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Reference to the judicial authority cited by the Board in the Denny-Tipton case in and of itself demonstrates the utter inapplicability of the doctrine set forth in these cases to the duly authorized inquiry of a congressional committee. The legal theory announced by the courts in these cases is strictly defined and narrowly conceived. It is that a private-party litigant may not procure the reversal of an adverse judgment in a particular case by attempting to probe the decisional processes of the judicial or administrative arbiter. To the Civil Aeronautics Board, there is "no logical reason" why this doctrine should not be extended to permit wholesale denial to the Congress of all evidence of Board member acts and statements. To state the argument of the Board is to refute it. Neither in logic nor law is there any basis for the "Board member" privilege now claimed.

In each of the cases cited by the Board, a defeated private litigant sought to set aside the contested decision by "probing the mental processes" of the administrative agency. And, in each of the cases, the courts ruled that such questioning by a private litigant was improper; the decision once reached could not be challenged by such means. (Cf. *Mattox v. United States*, 146 U. S. 140 (1892).)

The case of *Chicago, B. & Q. Ry. Co. v. Babcock* (204 U. S. 585 (1907)), relied upon by the Civil Aeronautics Board, is illustrative. There the Supreme Court held that it had been improper for the lower court to permit a private litigant to question administrative board members as to the operations of their minds in reaching a decision. Such questioning, the Supreme Court specified, was improper "to attack in another proceeding the judgment of a lay tribunal." [Emphasis supplied.]

This is the thrust of each of the cases relied upon by the Civil Aeronautics Board: that the judgment of court or Board be free from such collateral attack. Nothing in these cases supports a blanket claim of privilege as against the Congress.

Indeed, the distinction between the type of attack proscribed by the Supreme Court for private litigants, and the general inquiry of a congressional committee is self-evident. The congressional committee seeks not to set aside any judgment of the Board for the benefit of any particular litigant, but rather to review all actions and determinations of the Board for the purpose of ascertaining whether the very intent of the Congress in creating and maintaining the Board is being fulfilled. To such an inquiry, the cases cited by the Board are irrelevant. That Congress may exercise such a broad "oversight" power has been fully demonstrated above. It is in truth anomalous that the Civil Aeronautics Board should attempt to interpose a "judicial" cloak before a congressional inquiry, one of the very purposes of which is to ascertain whether the processes and behavior of the Board have, in fact, been "judicial."

The "Board member" privilege against the Congress, first suggested by the Civil Aeronautics Board in the Denny-Tipton case, and now attempted to be reiterated before the present subcommittee, is thus without any legal or logical basis or warrant.

Further, it is instructive to note that the "Board member" privilege asserted by the Civil Aeronautics Board would not, despite the contrary claim of the Board's General Counsel, operate to shield the Board from all inquiry even as against private persons. This may be demonstrated by reference to the very claim of "privilege" made by

the Board in the Denny-Tipton case, the one and only prior instance of a purported assertion of such privilege. As previously recounted, the Antitrust Subcommittee there sought to ascertain statements made at a Board meeting by CAB Member Denny as to his private and ex parte conversation with an industry representative. In declining to furnish such testimony, the Board analogized its position to that of a "judge or jury."

Yet, even if this analogy be accepted, the law is clear that such testimony would not have been privileged even if the events there involved had transpired, for example, in the "sanctity of the jury room." As will be shown, in its effort to avoid congressional scrutiny, the Civil Aeronautics Board chose before the Antitrust Subcommittee, as it is attempting to do now, to ignore all relevant legal decisions.

For, even adopting, arguendo, the Board's own analogy to a jury, settled legal doctrine nullifies the Board's claim of privilege. In the leading case of *Mattox v. United States* (146 U. S. 140 (1892)), the United States Supreme Court considered the status of the jury and ruled that, whereas "public policy forbids that a matter resting in the personal consciousness of one juror would be received to overthrow a verdict" at the instance of a private party, nevertheless, as to "an overt act, open to the knowledge of all the jury," proof was proper, even to a private litigant. The Supreme Court held admissible and nonprivileged testimony by jurors concerning a statement made to them by a bailiff, as well as the fact of reading of newspapers in the jury room. Holding that no privilege attached to such testimony, the Supreme Court set forth the rule that has been recognized ever since:

* * * a juror may testify to any facts bearing upon the question of the existence of any extraneous influence. [Emphasis supplied.]

In *Southern Pacific Co. v. Klinge* (65 F. 2d, 85 (10th Cir.), certiorari denied, 290 U. S. 657 (1933)), affidavits of jurors were offered to establish that one juror had advised the other during deliberations that "he had been told" that the defendant had previously offered to settle the case. Holding such evidence not privileged, the Court ruled:

On the other hand, if it is charged that a juror's conclusion was arrived at, not from the evidence, but as a result of bribery, or from consideration of evidence or matters not a part of the trial proceedings, but brought in from the outside, such a charge can be and must be explored, and the testimony of a juror is competent in determining the existence of the fact. [Emphasis supplied.]

Again in *Stiles v. Lawrie* (211 F. 2d 188 (6th Cir. 1954)), the court held not privileged testimony of jurors that one of their number had produced a highway manual in the jury room during deliberations. A juror's testimony, stated the court "may be received if it relates to extraneous influences brought to bear upon the jury."

Cases to like effect are legion, such testimony being adduced in the courts as a matter of course. (See, e. g., *Fort Worth & Denver Ry. Co. v. Thompson*, 216 F. 2d 790 (5th Cir. 1954); *Texas & New Orleans R. R. v. Underhill*, 234 F. 2d 630 (5th Cir. 1956); *Paramount Film Distributing Corp. v. Applebaum*, 217 F. 2d 101 (5th Cir. 1954); *City of Amarillo v. Emery*, 69 F. 2d 626, 627 (5th Cir.).)

Yet this was the precise situation existing in the Denny-Tipton case. In attempting to determine the statements made before the Antitrust Subcommittee by Board member Denny as to his connection with Tipton, the subcommittee was inquiring precisely as to "probable or

possible effect upon the [Board] of extraneous matters which by outside influences have been brought to their attention." (See *Fort Worth & Denver Ry. v. Thompson, supra.*) Yet while claiming for itself the same privilege as a "jury," the Civil Aeronautics Board neglected to point out to the Antitrust Subcommittee that a jury on such a case would have had no privilege whatsoever.

The legal conclusions are clear. There exists no "Board member" privilege valid as against the Congress. In the one previous instance where such privilege has been asserted, the claim was baseless, even assuming the validity of the Board's own analogy to a jury.

If the Civil Aeronautics Board then can gain little comfort for its position from the law, it is in no better position on resort to precedent. Whereas the Board attempts to equate its status with that of a judge or jury, it is settled that even a judge may be questioned by a congressional committee as to the very "mental processes" by which he arrived at his decision. Emphasis must again be given to the distinction previously made between the attempt of a private litigant by such means collaterally to attack a judicial or administrative decision, and the power of the Congress to review and study generally governmental operations. While the former may be barred, the latter is fully recognized and has been generally exercised.

Thus, by way of example, in 1935, the Special Senate Committee To Investigate Bankruptcy and Receivership Proceedings in United States Courts, called to the stand a United States district judge. The judge was sworn. A request on his part that his counsel be afforded participation in the proceedings was denied. The committee then conducted an extensive and detailed examination of the judge as to cases decided by him; the persons to whom he had spoken about the cases; and the factors which had motivated his decisions. Illustrative of the questions put that "probed the mental processes" of the judge are the following:

Q. Judge, when you appointed Mr. Van Dyke as receiver of the Gila Water Co.—I am speaking of the appointment that was reversed—when you actually made the order of appointment what discussions, if any, did you have with anyone about the appointment of Mr. Van Dyke and what particular or peculiar qualifications of his did you consider in making that appointment?

Q. What did you consider as to his qualifications in making the appointment?

Q. Did you take cognizance of the fact, when this bill was presented to you for appointment of receiver, that it was brought by the holding company, who owned 83 percent of the outstanding common or voting stock?

Q. Judge Jacobs, can you look at this complaint, which is all you had before you, except the statement of Mr. Crable, I believe you said, made to you at the time, and tell us just why that receiver was appointed for that company anyway?

Q. And at that time did you consider the \$3 million that were out, say in the hands of the public, and did you consider that maybe this receivership might be for the purpose, as said by Mr. Justice Cardozo, of obstructing these security holders in the collection of their debt? Did you consider that? (See Hearings, Investigation of Bankruptcy and Receivership Proceedings in United States Courts, pt. 8, pp. 2303, 2307-8, 2312, 2315.)

These questions and all others, put to the judge at the hearing, were answered as a matter of course. No suggestion was made that a broad congressional investigation into the proper functioning even of the Federal judiciary was improper or could be blocked by any assertion of "privilege." (See also incidents involving District Judge Goodman, cited in S. Doc. No. 99, 83d Cong., 2d sess. pp. 28-29.)

We, therefore, have the present spectacle of the Civil Aeronautics Board rushing in where even the judiciary has feared to tread.

Nor have inquiries, when necessary, as to the "internal" functioning of the judiciary been limited to the Congress. (See, e. g., *Root Refining Co. v. Universal Oil Products Co.*, 169 F. 2d 514 (3d Cir. 1948)), where the internal opinion conferences of judges of a Court of Appeals were opened by the evidence.

The "board member" privilege purportedly asserted by the Civil Aeronautics Board against the Congress is thus unknown to the law.

Nor can the desire of the Civil Aeronautics Board for impenetrable secrecy in its internal affairs prevail as a matter of policy. Here, as always, law and reason alike must recognize a balance of interests. If there is a "general public policy against unnecessary disclosure of files," this policy "may readily be outweighed by the public interest in disclosure when such files contain documents of evidentiary value." (See *United States v. Certain Parcels of Land*, 15 F. R. D. 224, 230 (S. D. Cal.)). The insular desire of the Civil Aeronautics Board ostrichlike to plunge its head into the sand and be "let alone" cannot stand against the force of "public interest" embodied in the proper inquiry of the Congress. An interest in privacy possibly sufficient as against a private citizen (compare *United States v. Morgan*) 313 U. S. 409 (1941)), is outweighed when the needs and power of the public representative, the Congress, is placed in the balance.

The view expressed by the Board that the Congress, having once launched an agency such as the Civil Aeronautics Board, by some mysterious power of transmutation was instantaneously barred from ever thereafter ascertaining the full measure of the acts and processes of its own agent, is untenable. The inevitable implication of this theory would be that the Congress, in voting the enabling statute for the Civil Aeronautics Board, ipso facto estopped itself from any future informed legislation—remedial or otherwise—in the premises.

Finally, more illusory than real is the specter raised by the Board that, absent "privilege," the availability of congressional oversight would place a fatal constriction upon the "freedom of expression" of Board members and their staff advisers. The Board's argument here, if accepted, would give greater weight to the agency's internal working than to the right of the Congress to probe fully into any improper actions within the Board. That is paying too high a price for the assurance to the Board of serenity of mind. (Compare *Clark v. United States*, 289 U. S. 1, 14 (1933).) It is to be noted that our local governments as well as the greatest and largest of our Nation's corporate enterprises have somehow, through the years, existed most successfully though their internal functions are cloaked by no such privilege. The Civil Aeronautics Board, as has done the Federal Trade Commission (see *infra*, p. 38), must repose trust in the Congress to maintain confidential those materials, if any, for which privacy would in fact best serve the public interest. The right to make that determination rests, however, not in the Board, but in the Congress.

If the Civil Aeronautics Board, indeed, feels that, without "privilege," "caution or worse would remove all candor" from the minds and tongues of its members and staff, and that its internal communications are such as cannot stand the light of day, the Board might well ponder the words of the United States Supreme Court, speaking through Mr. Justice Cardozo in *Clark v. United States*, *supra*. The Board has sought to be equated privilege-wise to a jury. For Justice Cardozo's word "juror," one need only read then, "Board member":

A juror of integrity and reasonable firmness will not fear to speak his mind if the confidences of debate are barred to the ears of mere impertinence or malice. He will not expect to be shielded against the disclosure of his conduct in the event that there is evidence reflecting upon his honor. The chance that now and then there may be found some timid soul who will take counsel of his fears and give way to their repressive power is too remote and shadowy to shape the course of justice.

B. CLASSIFIED AND CONFIDENTIAL MATERIALS

Civil Aeronautics Board Staff Notice No. 333:

2. * * * (b) Security classified materials and other materials held confidential under sections 1104, 902 (f), 18 U. S. C. 1905, or applicable executive orders shall be permitted to be inspected or their contents divulged only upon permission of the Security Officer or the Board as to security classified materials, and upon permission of the Board as to the other enumerated materials.

The Civil Aeronautics Board's approach to the problem of classified materials is much more restricted than that which has been followed in the case of other congressional committees. This has been expressly pointed out in a recent article by a former acting General Counsel of the Army.

Committees of Congressmen and their aids are, of course, constantly given access to military and diplomatic secrets. The Department of Defense applies to members of committee staffs the same criteria which it applies to its own employees and grants them appropriate clearances, the committee chairman being always formally reminded of the statutes and regulations applicable to any such information transmitted (Bishop, 66 Yale L. J. 477, 490 (1957)).

If this procedure is followed in the Department of Defense, where the security problem is far more pressing than in an agency like the Civil Aeronautics Board, it is difficult to see why the Civil Aeronautics Board has to take a more restrictive view.

None will deny that where military information and other "state secrets" are involved, there is a real interest in maintaining the confidential nature of such materials. But why cannot the Civil Aeronautics Board, in its relations with this subcommittee, follow the normal practice pursued in the work of other congressional committees, that is, of applying to the committee and its staff the same criteria applied to employees of the departments and agencies concerned? Is not the Civil Aeronautics Board, by asserting the procedure outlined in its staff notice, in effect saying that it is unwilling to give the members and staff of this subcommittee the same trust and confidence reposed in other committees by the departments and agencies with which they deal?

The Civil Aeronautics Board's assertion that it cannot allow the subcommittee access to "materials held confidential under sections 1104, 902 (f), 18 U. S. C. 1905, or applicable executive orders," without express permission of the Board in each case, is utterly unwarranted. As will be shown, it has been recognized by the Civil Aeronautics Board itself that the statutory provisions referred to by it do not operate as against the Congress itself. And, as far as executive orders are concerned, it is most difficult to see how they can have any relevancy. It has already been emphasized that the Civil Aeronautics Board is an independent, not an executive, agency. As the Supreme Court aptly stated in the already discussed case of *Humphrey's Executor v. United States* (295 U. S. 602, 625 (1935)), in the statute setting up an agency like the Civil Aeronautics Board, Congress intended to create "a body which shall be independent of

Executive authority except in its selection." It is well-nigh ludicrous to assert that an Executive order can operate to bar access to information by the Congress in an agency which is itself an arm of the Congress and intended, as such, to be independent of the executive branch.

(1) *Section 1104, Civil Aeronautics Act.*—This section provides that upon motion of any person objecting to public disclosure of information the Board—

shall order such information withheld from public disclosure when, in its judgment, a disclosure of such information would adversely affect the interests of such person and is not required in the interest of the public.

The same section further provides that the Board—

is authorized to withhold publication of records containing secret information affecting national defense.

The Civil Aeronautics Board itself has recognized that this statutory provision contains no authority for withholding information from the Congress. In a statement made only last year, the General Counsel of the Board declared, with regard to section 1104—

The Board has never utilized the authority granted by this statute to withhold information from Congress (Hearings on Availability of Information from Federal Departments and Agencies (1957) 2732).

It cannot be seen, in truth, how the Board can possibly take any different position. On its face, section 1104 applies only to disclosure of information to the public. How it can be relied on now as a basis for withholding information from the Congress must be a mystery, even to the Board itself, in view of its General Counsel's statement already quoted.

It should not be forgotten that it is a basic principle of our law that a restrictive statute is not binding upon the sovereign unless the statute expressly provides that it is to be so binding. See *United States v. United Mine Workers* (330 U. S. 258 (1947)), the leading case. In view of this fundamental rule, how can it be contended that a statutory provision like section 1104 restricts the Congress' right to information, when there is not a word, either in the statute or the legislative history, to indicate that Congress intended such restriction? It is wholly unjustified for the Civil Aeronautics Board, in the face of the clear wording and history of section 1104 (taken together with the basic principle exemplified by the *United Mine Workers* case), to distort the clear language of the statute and extrapolate entirely new meaning from surmises and speculation. To read section 1104 as the Board does in its staff notice is a process that is not interpretation, but creation, of a statutory provision.

(2) *Section 902 (f), Civil Aeronautics Act.*—This section makes it a criminal offense for any Board or staff member to divulge any information gathered during the examination of the records of any carrier, or which is withheld from public disclosure under section 1104, except as may be directed by the Board or "by a court of competent jurisdiction or a judge thereof."

What has just been said about section 1104 is equally applicable here. And again the Civil Aeronautics Board itself has expressly acknowledged that this provision has no relevancy to the right of the Congress to obtain information. In the words of the Board's General Counsel, in his statement of last year already referred to, "Again this

provision has never been utilized to withhold information from Congress" (loc. cit. supra).

(3) *Title 18, United States Code, section 1905.*—The third statute relied on by the Civil Aeronautics Board to justify its classification of material as "confidential," even as against this subcommittee, is also a part of the criminal law. Under it:

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent *not authorized by law* any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and shall be removed from office of employment. [Emphasis added.]

The emphasized portion of this statutory provision would appear to make its terms inapplicable to the subject under discussion. If a Government officer furnishes information to a congressional committee engaged in its constitutionally granted function of acquiring information to enable the Congress intelligently to exercise its legislative powers, it seems obvious that he is not acting in a manner "not authorized by law." On the contrary, when he acts in response to congressional demand, his disclosure becomes authorized by law and he is immunized from prosecution under the statute.

This has been recognized by the Attorney General himself. In an opinion of the Attorney General, No. 26, December 1, 1953, he recognized that the authority conferred by statute to liquidate the assets of the Reconstruction Finance Corporation included by implication the authority to disclose borrowers' financial statements; hence, according to the Attorney General, disclosure in such case would be "authorized by law" and not prohibited under the statute. If this is true, the powers of investigation and of oversight of administration conferred upon the Congress, both by the Constitution and by the Legislative Reorganization Act of 1946, would seem clearly to include the authority to require the disclosure of information needed to exercise these powers; hence, disclosure to a congressional committee would likewise be "authorized by law" and not prohibited by title 18, United States Code, section 1905. And this was, in fact, the view taken by the Attorney General in his opinion to the President of June 15, 1955, as to the authority of the Federal Communications Commission to make available certain information, otherwise coming within title 18, United States Code, section 1905, to the Senate Committee on Interstate and Foreign Commerce.

The Civil Aeronautics Board has itself recognized that title 18, United States Code, section 1905, does not apply to disclosures to a congressional committee.

This provision—

said the Board's General Counsel in his statement quoted from above—

it is believed, does not operate to restrict the flow of information to the Congress since such disclosure would be "authorized by law." (Loc. cit. supra.)

In view of this express admission by the Board's own legal adviser, one may well wonder why the Board is now using title 18, United States Code, section 1905, to restrict the flow of information to this subcommittee. In arrogating to itself the function of screening all information before it gives the subcommittee access to any materials deemed "confidential" under title 18, United States Code, section 1905, the Board is, in effect, saying that it cannot trust the subcommittee and its staff with such materials. This is contrary to both law and practice. What the practice in other agencies is is well shown by the remarks of the General Counsel of the Federal Trade Commission (an agency which clearly has in its files a great deal of materials subject to 18 U. S. C. 1905):

we decided Congress was entitled to all the information it required. We relied upon the discretion of the congressional committees not to harm our prosecution functions by premature disclosure of information, and past experience has proved the congressional committees have been most cooperative in that respect (Hearings on Availability of Information from Federal Departments and Agencies, 2779 (1957)).

In accordance with the view thus expressed by its General Counsel, the Federal Trade Commission has clearly indicated its intention to make available to the subcommittee all its files and records. This is true even though the Commission has in its files materials which are normally kept confidential. In accordance with the statement just quoted, the Commission relies upon the discretion of this subcommittee to keep confidential matters which should not be disclosed. Unlike the Civil Aeronautics Board, it does not use the need to keep certain things from public disclosure as a club to bar the subcommittee itself from unrestricted access to the matters in question. The attitude of the Federal Trade Commission toward this subcommittee's inquiry is articulated in a letter of its General Counsel and a staff memorandum. These are printed *infra* (appendix B) as an example of how an agency comparable to the Civil Aeronautics Board is willing fully to cooperate with this subcommittee.

If an agency like the Federal Trade Commission can make all its files and records available, in accordance with its legal duty, without unduly impairing its administrative functions, can the Civil Aeronautics Board validly claim that it should be invested with immunity from full disclosure?

C. INTERGOVERNMENTAL COMMUNICATIONS

Civil Aeronautics Board Staff Notice No. 333:

2. * * * (d) Communications not heretofore made public between the Board or its members or staff, on the one hand, and the President, his immediate staff, the State Department and other executive departments and Government agencies, on the other, and relating to section 801 and 802 matters shall not be permitted to be inspected nor shall their contents be divulged except on permission from the White House or the Department or agency involved.

(e) Other nonpublic communications between the Board, its members, and its staff, on the one hand, and other Departments and agencies of the Government, on the other, will be permitted to be inspected or their contents divulged only upon permission from such Department or agency, or, in the event permission is refused, upon order of the Board.

Briefly stated, by the above, the Civil Aeronautics Board has directed withheld from the request of the subcommittee:

(1) Any communications between the Civil Aeronautics Board and the President, his immediate staff, the State Department as

well as "other executive departments and Government agencies" relating to "foreign" cases;

(2) Any other communications between the Civil Aeronautics Board and "other departments and agencies."

By the first of these directives, the Board presumably purports to advance a claim of "executive privilege." (See Hearings on the Availability of Information from Federal Departments and Agencies (1957) 2736.) As to the second, the precise theory of the Civil Aeronautics Board is unknown. One would search in vain through prior statements of Board spokesmen for any parallel assertion of power. (See, e. g., Statement and testimony of Civil Aeronautics Board General Counsel, *id.* at 2730 et seq., in which the General Counsel purported to exhaust the field of all "privileges" ostensibly accruing to the Civil Aeronautics Board.) Indeed, the Civil Aeronautics Board Chairman himself has acknowledged that the Board's status in claiming this second privilege is not altogether clear. In either case, the answer to the Board's position is simple. The claims advanced, whether of "executive privilege" or "interagency" privilege, are equally devoid of legal warrant.

It may be noted in passing that the materials presently the subject of consideration are communications the nonclassified status of which attests that disclosure—even be it outside of the Congress—would not "jeopardize the international relations of the United States" or "be prejudicial to the defense interests of the Nation." (See Executive Order 10501.) Thus, we are not dealing here with documents which by virtue of vital defense or security considerations must remain closed to public view (*Cf. United States v. Reynolds*, 345 U. S. 1. (1953)). The question of the availability to the Congress of materials that do bear formal classified status is discussed elsewhere in this memorandum.

Nonetheless, the power is asserted by the Civil Aeronautics Board to withhold from the Congress the broad categories of intergovernmental documents specified above.

Earlier in this memorandum, full analysis has been had of the genesis, illegitimate development, and present legal status of the supposed "privileges"—"Presidential," "Executive," "Official," and other—on occasion put forward in an attempt to justify nonproduction of documents held by the various departments and agencies of the Government. To place the present claim of the Civil Aeronautics Board in proper perspective, it is necessary briefly to point up the pertinent factors previously discussed.

First, far from this area of law being, as is frequently asserted by proponents of such "privileges," a judicial no man's land, there in fact exists a strong body of judicial precedents considering such "privileges": precedents which, with almost unbroken unanimity, deny these "privileges" any legal recognition whatsoever. It cannot be too frequently emphasized that this is true *even where the demanding party is merely a single private litigant*. *A fortiori* then, as has been demonstrated, are these "privileges" nonexistent as against the Congress.

That the executive departments under law have no privilege to withhold even from a private litigant materials the nondisclosure of which, in the executive's opinion, would be contrary to the public interest, was the specific holding of the Court of Appeals for the

District of Columbia in *Reynolds v. United States* (192 F. 2d 987, 994-995 (D. C. Cir. 1951), rev'd on other grounds, 345 U. S. 1 (1953)). Pointing to the manifest dangers that would inhere in the recognition of any such privilege, the court quoted the words of Edward Livingston, Works, I, 15:

No nation every yet found any inconvenience from too close an inspection into the conduct of its officers, but many have been brought to ruin, and reduced to slavery, by suffering gradual imposition and abuses, which were imperceptible, only because the means of publicity had not been secured.

The Reynolds case does not stand alone. In *Crosby v. Pacific S. S. Lines* (133 F. 2d 470 (9th Cir. 1943)), more fully discussed above, a case in which the Supreme Court denied certiorari (319 U. S. 752 (1943)), the court of appeals likewise refused to acknowledge such general executive privilege. Perhaps the most succinct statement of judicial authority, however, is to be found in the holding of the Court in *United States v. Certain Parcels of Land* (15 F. R. D. 224 (S. D. Cal.)). (See supra, p. 12.) Declining to accede to a Government claim that internal Department of Justice files were confidential as against the request of a litigant in a civil suit, the Court ruled:

Clearly there is no such privilege known to the law of evidence.

To like effect, see *Royal Exchange Assurance v. McGrath* (13 F. R. D. 105, 152-153 (S. D. N. Y. 1952)).

A similar view was expressed by the highest court of the State of New York in *City of Buffalo v. Hanna Furnace Corp.* (305 N. Y. 369 (1953)):

It must be recognized at the outset that there appears to be no principle of testimonial privilege or basic consideration of policy exempting any officer or agent of the state from the duty to give such testimony as may be required in a duly held judicial investigation.

(See, in addition, cases cited infra, pp. 48-49.)

The reason that the courts have consistently refused to recognize any such privilege is plain. For, as stated by Wigmore on Evidence, section 2378a:

In any community under a system of representative government and removable officials, there can be no facts which require to be kept secret with that solidity which defies even the inquiries of a court of justice.

If "executive privilege" then has no validity as against a private litigant in a court of law, its theoretical and legal bankruptcy is, as has been shown, even more striking when placed in the scales against the sweeping investigative powers of a duly authorized committee of the Congress. And here again, in the single judicial precedent to consider the claim of executive privilege vis-a-vis a legislature, such privilege was found by the court not to exist. In Opinion of the Justices (328 Mass. 655 (1951)), the court concluded:

If the legislative department were to be shut off in the manner proposed from access to the papers and records of executive and administrative departments, boards and commissions, it could not properly perform its legislative functions.

The much touted doctrine of "executive privilege," then, like the Emperor's new clothes in Anderson's children's tale, is quite non-existent.

But, if all of the "departments and agencies" of the Government are themselves devoid of any such privilege, do they ipso facto confer upon themselves a new immunity by the mere expedient of forwarding their memorandums and communications to the Civil Aeronautics

Board? Patently not. Conversely, by virtue of what authority does the Civil Aeronautics Board, likewise without privilege as against the Congress for any of its own affairs, assert the existence of "privilege" as to its external contacts with other governmental departments?

For the Civil Aeronautics Board has no privilege—"executive" or otherwise—against the Congress. The Civil Aeronautics Board, a regulatory agency independent of the executive establishment, is answerable to the Congress alone.

As such, as already shown, even the usual claim of privilege attempted to be advanced on behalf of departments of the executive branch cannot accrue to the benefit of the Civil Aeronautics Board. For—in invalid though it is—the basic rationale of "executive privilege," as urged by its proponents, is that a demand upon any official of the executive branch is in contemplation of law a demand upon the President personally. (See Wolkinson, 10 Fed. B. J. 257-9 (1949).) The President, the argument then goes, has unlimited discretion to withhold any document. This consequence, that the President is deemed to be in constructive possession of all files of the executive departments, it is argued, flows from his complete control over such persons within the executive branch: control, the ultimate embodiment of which is the President's unlimited power to remove executive officials. (See *Myers v. United States*, 272 U. S. 52 (1926).) But this Presidential power of removal of subordinate executive officials—thus the very essential of the doctrine of "executive privilege"—does not extend to a nonexecutive regulatory agency such as the Civil Aeronautics Board. For as the Supreme Court held in the famous case of *Humphrey's Executor v. United States* (295 U. S. 602 (1935)), members of such an agency as the Civil Aeronautics Board, intended by the Congress to be beyond the purview of executive control, may not be removed by the President at will. The doctrine of "executive privilege" then, even accepting the very thesis of its most forward proponents, can have no applicability to the "independent" Civil Aeronautics Board.

This analysis is equally dispositive of the oft-repeated claim of the Civil Aeronautics Board that in acting as "adviser" to the President in foreign route cases, it performs an "executive" function and should thereby qualify for "executive privilege." (See hearings, op. cit. p. 2736.) For regardless of whether the menial role of "adviser" was that in fact envisioned for the Civil Aeronautics Board by the Congress in enacting the enabling statute, the function performed by the Board in such cases is irrelevant to the question of privilege. It is not the function that determines the existence of possible privilege, but the nature of the agency concerned. The indispensable requisite of "executive privilege"—the Presidential power of removal over a subordinate official—is lacking.

The attempt by the Civil Aeronautics Board to presume to claim "privilege" against the Congress on behalf of other departments and agencies of the Government is equally without basis whether applied to the general work of the Board or to the "foreign" cases.

Not only are these other departments and agencies, as has been shown, lacking in any privilege in their own right, but, it would seem that the Civil Aeronautics Board should, in any case, not be competent to put forward their claims. See *Zimmerman v. Poindexter* (74 F. Supp. 933 (D. Hawaii 1947)) (Army cannot claim Department of

Justice's "privilege" for Justice documents in Army's possession). Documents sent in the normal course of business to the Board by another agency in no sense "belong" to the sender. This is but the corollary of a basic principle running throughout the law of privilege. A witness in possession of a document may not attempt to avoid disclosure by claiming the privilege of another. (See, e. g., *Hale v. Henkel*, 201 U. S. 43 (1906) (fifth amendment privilege).)

But, theoretical considerations of law apart, the attempt by the Civil Aeronautics Board to withhold production of documents evidencing transactions between itself and other governmental agencies and departments solely on the grounds that these documents are interagency and interdepartmental communications cannot be accepted. A large portion of the relevant files of every agency of the Government emanates from without the agency. Indeed, one of the prime considerations of the House of Representatives in authorizing the present "oversight" inquiry was that the special subcommittee should make full exploration of the relationship existing between the various regulatory boards and commissions and the executive branch of the Government. Surely the subcommittee must fail in carrying out this mandate if it is to be hampered or restricted in any way in studying the "best evidence" of such interrelationships: that is, the very intergovernmental correspondence and communication files. Yet it is this category of materials per se that the Civil Aeronautics Board purports to direct withheld from the subcommittee. Again, in essence, the challenge of the Civil Aeronautics Board must be directed to the very power of the Congress to authorize the present inquiry.

Nor does the Civil Aeronautics Board stand in any better light in that it has attempted to soften its refusal by leaving itself a loophole of possible ultimate compliance as to certain of the materials in this intergovernmental category after "clearance" with other agencies. Again the Board has misconceived the power and procedures of a congressional investigation. It is not for the Board to institute "clearance" as to any documents desired by the Congress. It is not for the Board to delay or withhold the production of any document. The Congress in its quest for information is not at the mercy of "clearance" by the Board. It is not subject to a right of veto—complete or partial; absolute or conditional—on the part of any agency or department of the Government.

The attempt by the Civil Aeronautics Board to withhold from the Congress pertinent files containing interdepartmental and interagency communications in the possession of the Board thus has no color of legal right.

D. PENDING CASES

Civil Aeronautics Board Staff Notice No. 333:

4. That internal materials and files relating to *pending matters* shall not be made available, nor shall inspection thereof be permitted or their contents divulged except upon order of the Board.

In raising a wholesale bar to the subcommittee's access to files in all pending matters, the Civil Aeronautics Board is once again relying upon a privilege wholly unsupported in law. It is true that a congressional committee should normally not exercise its investigatory power to suggest how an administrative agency should decide particular cases or issues pending in those cases. And it is certainly not the

desire of this subcommittee to coerce administrators with regard to action still pending before them.

There is, however, a vast difference between the possession of power and the propriety of its exercise. The abnegation of a congressional committee in pending matters is an instance of self-limitation by the Congress upon its own sovereignty. In other words, the Congress has the authority to investigate all matters in a governmental agency, but will normally choose not to go into pending cases. But the decision in this respect is, and must be, that of the Congress, not that of the administrator. And an assumption by an agency like the Civil Aeronautics Board of the prerogative to lay down in advance a wholesale rule of *noli me tangere* in this field is wholly unwarranted. The power is that of the Congress, not of its creature, to determine what matters it will inquire into. To hold otherwise would be to give an agency being investigated too easy a device to shield particular matters from congressional scrutiny. To do so, it would need only to hold up final action in cases it wishes to cloak until after the particular congressional probe has passed. This is particularly true if one realizes that it is common, in cases of consequence, for losing parties to file petitions for rehearing or reconsideration. By simply holding off its decisions on such petitions, an agency could effectively stifle congressional inquiries from going into matters of legitimate legislative concern, if congressional committees may be entirely barred by agency fiat from investigating such "pending" cases. (See, similarly, *Newman*, 41 Calif. L. Rev. 565, 575-76 (1953).)

The proper approach to be followed in inquiries into pending matters is that taken by the Federal Trade Commission. It has formally indicated that this subcommittee and its staff can have full access to anything in its files and records. At the same time, it has pointed out to the subcommittee the need to keep confidential records such as those of current and incomplete investigations or other pending matters (see Federal Trade Commission letter to subcommittee chief counsel, *infra*, appendix B). Needless to say, the subcommittee and its staff will do its utmost to insure that the Federal Trade Commission's confidence in this regard will be respected. But it is the decision of the Congress, not that of its creature, that must be determinative here, just as it is the decision of the judge, not that of the witness, that must determine the validity of claims of privilege in the courts. (See cases cited *infra*, p. 47 et seq.)

What the Civil Aeronautics Board is really saying here is that it cannot repose the same confidence in this subcommittee that it does in the members of its own staff. Is the Board really willing to go on public record with this unwarranted slur against the elected representatives of the people?

E. PERSONAL FILES

Civil Aeronautics Board Staff Notice No. 333:

2 (a) The personal files of Board members shall not be available for inspection.

"If there is no meaning in it," said Alice's King, "that saves us a world of trouble, you know, as we needn't try to find any." One wonders if the method of Alice's King might not be the best way of regarding this portion of staff notice No. 333. It is, indeed, difficult to take seriously the Civil Aeronautics Board's assertion that the

personal files of Board members shall not be available for inspection by the subcommittee or its staff. The Board, in its assertion, is, in effect, cutting off from congressional scrutiny information that may be highly relevant to the work of this subcommittee. In view of the scope of congressional investigatory authority, already discussed in detail, it is surely not for an agency like the Board to presume to bar, at the very threshold of inquiry, access by the subcommittee to any files which may be pertinent to the jurisdiction of this subcommittee—unless those files are privileged under accepted legal theory. In the case of the personal files of Board members, the Civil Aeronautics Board has not, nor can it, invoke any privilege thus far recognized in our law.

It may well be that the Board, in arrogating to itself a power of prophylaxis vis-a-vis its members' private files, is relying upon a so-called "right of privacy" in its members even as against a congressional committee. It should, however, be emphasized that such "right of privacy" has never been recognized in our law as a defense to investigative demands—and that is true whether the demands are those of a court, a grand jury, or a duly authorized congressional committee. "When the course of justice requires the exaction of the truth," eloquently declares Wigmore, "no man has any knowledge that is rightly private" (8 Wigmore on Evidence (1940) 66). Accordingly, "a witness legally summoned to testify before a properly constituted body" may not "refuse to testify on the ground that the testimony relates to matters which he chooses to regard as private" *DuBois v. Gibbons* (2 Ill. 2d 392 (1954)). Said the court there, "there is no 'right of privacy' which permits a witness to refuse to answer a relevant question put by a legally constituted body." The case cited involved an investigation by a committee of a city council. Shall any say that the claim of privacy was unavailing against such a committee, but shall prevail against the elected representatives of all the people, in Congress assembled? See *United States v. Orman* (207 F. 2d 148 (3d Cir. 1953)), holding there is no right of privacy, as such, against a congressional committee.

The obligation to give information at the behest of a duly authorized investigatory body is a responsibility imposed upon all subject to the jurisdiction of the body concerned. It is not to be regarded as a gratuity, or a courtesy, or an ill-requited favor. It is a duty—not to be grudged or evaded. The inconvenience which the individual may suffer, in consequence of the disclosure of his private matters, is a contribution which he must make in payment of his dues to society. The duty runs on in all investigations, and does not legally abate; it is merely sometimes not insisted upon.

Even in the private law of torts (in litigation between individual citizens), it is recognized that a public figure waives whatever "right of privacy" he might otherwise have, to the extent that he has become a public figure. (See, e. g., *Koussevitsky v. Allen, Town and Heath*, 68 N. Y. S. 2d 799.) The same must apply even more clearly to an inquiry into the papers of public officers, who must be deemed *pro tanto* to have waived their "right of privacy."

What has just been said is true whether the inquiry be by a court, a grand jury, or the Congress. In a congressional investigation into the operation of administrative agencies, it is, in truth, difficult to see how any documents within the agency files can be considered

"private" and hence beyond the reach of congressional scrutiny. If, in the courtroom, there is no privilege for claimed "private" papers, how can there be such in an investigation by the Congress into the workings of Government agencies?

Nor can it be doubted that both court and congressional precedents clearly sustain the right of a congressional committee to have access to the private files of Government officials. Thus, in the case of Robert W. Stewart, a decision of the Supreme Court of the District of Columbia, discussed in 6 Cannon's Precedents 489 et seq., a contention that the Senate may not inquire into the private and personal affairs of a witness was overruled by the court on the ground that the Houses of Congress are authorized to call for all information essential for the exercise of their power of legislation. The account given in Cannon of the court's disposition of the claim of privilege for personal affairs is most relevant:

The contention of the petitioner that the Senate was not authorized to inquire into the personal affairs and private affairs is thus treated by the court:

Petitioner's second and third propositions are:
"Resolution 101 does not call for information essential for the exercise of the power of legislation, but is an attempt at exercising judicial function, beyond the powers of the Senate, and authorizes an inquiry into the private affairs of individuals.

"Petitioner answered every question put to him of public interest with respect to the disposition of the bonds held by the Continental Trading Co. The questions he refused to answer dealt with private and personal matters, the answers to which could in no way furnish information essential to the efficient performance of any legislative function of the Senate."

Resolution 101 authorizes an investigation supplementary to one theretofore authorized, and of which the committee had made no final report. The former investigation had resulted in legislation directing the prosecution of suits, one of which had resulted in the recovery of valuable property of the Government, and in other legislation, and it may be assumed that the Senate had in mind the possibility of the need of further legislation when the latest resolution was passed. The failure to specify such purpose is not fatal to the inquiry. Where the particular investigation has already formed the basis of legislation, the court will not assume that some particular phase of a later investigation supplementary to the former cannot be made for the purpose of legislation and that the Senate is transcending its functions under the Constitution.

The petitioner states that he appeared voluntarily before the committee to give his testimony. He took an oath to tell "the truth, the whole truth, and nothing but the truth." He raised no general objection to the scope of the inquiry, but after he had proceeded to answer numerous questions he finally refused to answer as to his knowledge of anyone who received the Liberty bonds mentioned in the resolution or whether he had discussed any of the bond transactions with Sinclair, and other questions of similar character. He voluntarily testified in part, but refused to tell the whole truth, and a partial truth may be misleading as a falsehood. These questions were clearly relevant to the inquiry and involved no question of privilege. They did not involve the private affairs of the witness, and the witness cannot make such a claim on behalf of others when he does not appear to be acting in a representative capacity. *But even such a ground would not be an excuse for failure to answer questions relevant to any matters which were the subject of proper inquiry.*

The opinion concludes:
In my opinion the grounds upon which the petitioner refused to testify were frivolous and without legal bases and his attachment was justified.

The writ of habeas corpus will be discharged and the petitioner remanded to the custody of the respondents. [Emphasis added.]

One familiar with the law on the subject may well ask whether the grounds on which the Civil Aeronautics Board relies in refusing to make available to this subcommittee the personal files of its members are not equally "frivolous and without legal bases."

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Precedents in the House of Representatives support the view taken by the Senate and the court in the Robert W. Stewart case. Thus, on—

April 6, 1860, Mr. John Covode, of Pennsylvania, from the select committee on the subject of the alleged interference of the executive with the legislation of Congress, submitted a report accompanied by the following resolution: "Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-Arms, commanding him (the said Sergeant-at-Arms) to take into custody the body of Augustus Schell, and the same forthwith to bring before the House, at the bar thereof, to answer as for a contempt of the authority of this House in refusing to produce a paper when thereunto required by committee of this House."

The select committee, of which Mr. Covode was chairman, was authorized by the resolution creating it to make an inquiry suggested by a letter of the President referring to "the employment of money to carry elections," and was directed by the resolution to, "inquire into and ascertain the amount so used in Pennsylvania, and any other State or States, in what districts it was expended, and by whom, and by whose authority it was done, and from what sources the money was derived, and report the names of the parties implicated. And for the purpose aforesaid said committee shall have power to send for persons and papers and to report at any time."

Mr. Schell, who was collector of the port of New York at the time of this examination, was required by the committee to give a list of certain contributors to a fund which had been raised in New York for use in New York and Pennsylvania in the election of 1856. Mr. Schell declined to furnish the list on the ground that it would involve a breach of confidence, and expressed the opinion that, "the power was not given the committee to ask for the production of a paper entirely private in its character."

The committee, in the report which they made to the House recommending the arrest of Mr. Schell for contempt, reported the questions propounded to him and his answers thereto, and expressed the opinion that the information required was "material to the proper investigation of the matters referred to them by the House." (3 Hinds' Precedents 24).

Here, we have a clear declaration by a House committee of the congressional authority to compel Government officials to produce papers declared by them to be private.

And, on March 3, 1837, the House select committee appointed to inquire into the condition of the executive departments, made the following statement in its report:

If it be contended that this distinction enables a public officer to exclude from the files of his department whatever he chooses to consider private and which ought to be placed there, the answer is that this cannot alter the powers of a committee of the House to send for papers nor change the nature of the call; and that, if any paper, shown to be of a public character, and such as ought to be placed on file or record, is excluded there is just ground of accusation against the officer for violation of duty (Id. at 101-02).

It should be emphasized that the "private files" of the Civil Aeronautics Board members to which the Board is refusing all access are not files which relate to the personal business of the members concerned. Indeed, under the authorities cited above, it may be doubted whether even such purely personal files are immune from the scrutiny of a duly authorized inquiry, whether it be that of a court, a grand jury, or a congressional committee. But the "personal files" to which the Board is barring access all relate to public business. They are the members' own files relating to the operations of the Civil Aeronautics Board. It may be that they contain much that is hearsay and even much whose disclosure might be embarrassing to the members concerned. Yet that clearly does not make them privileged from disclosure. The possible inconvenience to Board members is one of the obligations they must assume in undertaking

their public functions. The price which they must personally pay is a small one as compared with the overriding public interest in insuring that all improper administrative activities be exposed to the light of day.

The members of the Civil Aeronautics Board might well reflect on the following statement by one of the ablest of our Federal judges, Hon. Charles E. Wyzanski, Jr., who declares, in reply to others who have raised the claim of privacy as a bar to congressional investigatory power:

Some of these persons temperamentally have a strong sense of privacy or have a feeling that dignity and decorum are among the highest values. But to them the fundamental answer is that the democratic process is an open process in which we have deliberately chosen to sacrifice a large measure of the privacy, dignity, and decorum which characterizes other types of society in order to have in Pericles' words, "discussion and the knowledge that is gained from discussion" (Thuc. II, 40). 3 N. Y. Bar Association Record 93, 101-02 (1948).

F. BOARD'S SCREENING PROCEDURE

Civil Aeronautics Board Staff Notice No. 333:

5. That the representative not be permitted to inspect at will nonpublic or internal files in either pending or closed cases.

In refusing the subcommittee's request for access to Board files, the Civil Aeronautics Board has stated its intent to act as the sole judge of the availability for its files of any "privilege." Such decision of the Civil Aeronautics Board, the Board maintains, would be final, subject to review of neither court nor Congress. In fact, the Board asserts the right to, in effect, censor its files in advance of examination, and to withdraw documents therefrom without notice to the subcommittee of the very fact of removal.

In the preceding sections of this memorandum, it has been demonstrated that the supposed "privileges" claimed by the Civil Aeronautics Board to shield its files from disclosure to the Congress in actuality have no basis in law. Yet, the Board now proposes to place itself in a position covertly to remove from any file any document whatsoever which it deems should be immune from disclosure, without even specifying to this subcommittee which documents have been removed or the reasons therefor.

It is axiomatic in the law that a witness may never be the ultimate arbiter of his own claim of privilege. Thus, as early as 1807, Mr. Chief Justice John Marshall of the United States Supreme Court, sitting in the trial of Aaron Burr (Robertson's Rept. I, 243) considered and rejected a witness' claim—

that he [the witness] is and from the nature of things * * * the sole judge of the effect of his answer; that he is consequently at liberty to refuse to answer any question if he will say upon his oath that his answer to that question might criminate himself * * *.

Ruled Chief Justice Marshall:

When a question is propounded, it belongs to the Court to consider and decide whether any direct answer to it can implicate the witness; if this be decided in the negative, then he may answer it without violating the privilege which is secured to him by law.

In modern times, again referring to the fifth-amendment privilege, the doctrine was succinctly stated by the Court of Appeals for the

Second Circuit in *United States v. Costello* (222 F. 2d, 656, 661 (2d Cir.), cert. denied, 350 U. S. 847 (1955)):

It is for the court to determine whether silence is justified.

This rule, not limited to the privilege against self-incrimination, pervades the entire law of evidence. (See Wigmore on Evidence, secs. 2193, 2271, 2322, 2379, 2550.) Even as to the inmost security or defense secrets of the Government, the witness, though he be among the highest-placed officials of state, may not conclude a court or investigating body by his mere claim of privilege. This very argument—that the executive assertion of privilege would be final—was advanced to the Supreme Court by the Government in the leading case of *United States v. Reynolds* (345 U. S. 1 (1953)). In specifically rejecting such an argument, even as to military defense information where the privilege had been claimed by the Secretary of the Air Force, the Supreme Court stated:

Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers.

The ultimate decision on the availability to a witness of privilege must be made by the body armed with the subpoena power of testimonial compulsion—in the Reynolds case, the court.

Through the years, all endeavors on the part of witnesses to arrogate this power of decision to themselves have been consistently rejected. In the already discussed case of *Crosby v. Pacific S. S. Lines* (133 F. 2d 470, 475 (9th Cir.), cert. denied, 319 U. S. 752 (1943)), a witness' attempt to assert a conclusive claim of privilege as to "confidential" Government documents was met by the court as follows:

Does this mean that Walsh [the witness] is final authority on that point? All reason says that the question is one for the court to determine.

The court then proceeded to overrule the claim of privilege as insufficiently supported.

In *Zimmerman v. Poindexter* (74 F. Supp. 933 (D. Hawaii 1947)), dealt with in a prior portion of this memorandum, a claim of privilege as to Department of Justice files in the possession of the Army was considered by the court:

We conclude by holding that to sustain the assertion of privilege of concealment under the specific situation before the court would be tantamount to abdicating our inherent judicial function of determining the facts upon which the admissibility of evidence in a case depends. This we cannot do.

Again, in *Overby v. United States Fidelity & Guaranty Co.* (224 F. 2d 158, 163 (5th Cir. 1955)), the court, citing the Reynolds case, ruled: in the final analysis, the court and not the executive officer is to determine the validity of the claim of privilege.

To like effect, that the Government may not conclude the merits of its own claim of "privilege," see *United States v. Cotton Valley Operators Committee* (9 F. R. D., 719, 720 (W. D. La. 1949), affirmed by equally divided Court, 339 U. S. 940 (1950)); *Evans v. United States* (10 F. R. D. 225 (W. D. La. 1950)); *Tebin v. Gibe* (13 F. R. D. 16 D. Del. 1952); *United States v. Schneiderman* (106 F. Supp. 731 (S. D. Cal. 1952)); *United States v. Schine Chain Theaters, Inc.* (4 F. R. D. 108, 109 W. D. N. Y. 1944); *Walling v. Richmond Screw Anchor Co.* (4 F. R. D. 265 (E. D. N. Y. 1943)); *Allmont v. United*

States (116 F. Supp. 54 (E. D. Pa. 1953)); *Bentley v. United States* (16 F. R. D. 237 (M. D. Ga. 1954)); *Snyder v. United States* (20 F. R. D. 7, 9 (E. D. N. Y. 1956)); *United States v. Certain Parcels of Land* (15 F. R. D. 224 (S. D. Cal. 1953)); *O'Neill v. United States* (79 F. Supp. 827 (S. D. Pa. 1948)); *Bank Line v. United States* (76 F. Supp. 801 (S. D. N. Y. 1948)). The language of Judge Clark of the Court of Appeals for the Second Circuit, concurring in *Bank Line v. United States* (163 F. 2d 133 (2d Cir. 1947)), is particularly apposite:

I think no general principle of refusing discovery on a general statement of prejudice at its best interests can or should be applied to any branch of the Government, including the Armed Forces.

The rationale for this doctrine, that even Government officials cannot as witnesses be the final arbiters of their claims of privilege, is well set forth by Dean Wigmore in his Treatise on Evidence, section 2379:

The truth cannot be escaped that a Court which abdicates its inherent function of determining the facts upon which the admissibility of evidence depends will furnish bureaucratic officials too ample opportunities for abusing the privilege. *The lawful limits of the privilege are extensible beyond any control, if its applicability is left to the determination of the very official whose interest it may be to shield a wrongdoing under the privilege.* [Emphasis supplied.]

What is true of the judicial forum holds with even greater weight for a congressional inquiry. For, if a Government official cannot be allowed to conclude the validity of his own claim of privilege as against a single private litigant, a fortiori, such an arbitrary withholding of pertinent evidence cannot be tolerated as against the Congress—a coordinate branch of government. For as Wigmore states, section 2378a:

Whether it is the relations of the Treasury to the Stock Exchange, or the dealings of the Interior Department with public lands, the facts must constitutionally be demandable, sooner or later, on the floor of Congress.

Thus the claim of the Civil Aeronautics Board to be the final arbiter of its own invocation of "privilege" flies in the face of settled legal doctrine. But the Board does not even stop there. For the Board further contends that it does not even have to apprise the Congress of which "privilege" the Board is purporting to assert, or even as to which documents such "privilege" is being invoked. Rather the Board claims unrestricted power to remove from its files—without notice, justification, or even description being furnished this subcommittee—any document it so desire. To state the Board's position is to demonstrate its illegality. It is long-settled law that a claim of privilege must be affirmatively asserted as to each document sought to be protected. The document must be specifically designated. (See *Attorney General v. Kelly*, 28 D. L. R. 409; Wigmore on Evidence, sec. 2268.) In fact it has been held that a witness attempting to assert a privilege as to materials in his possession must physically bring the documents with him before the investigating body and then specifically claim privilege as to those disclosure of which is contended to be proscribed (*U. S. v. Collins*, 146 Fed. 553, 556 (D. Ore. 1906)).

It is not known by virtue of what theory the Civil Aeronautics Board refuses even to identify or describe for the subcommittee those documents as to which "privilege" is claimed. It is an interesting analogy to note that even in dealing with the highest classifications

of defense materials, Executive Order 10501, section 3 (a), applicable to the executive departments, provides:

References to classified materials which do not reveal classified defense information shall not be classified.

And even where vital military secrets are concerned, the Supreme Court has specified, in the Reynolds case, supra, a rigid procedure for any interposition of privilege. Before protection could even be sought from a court as to any document:

There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer.

The reluctance of the Civil Aeronautics Board to so much as identify the documents it would furtively extract from its files can only result from the Board's own recognition that such identification would spotlight the basic untenability of the claims of "privilege" being advanced.

Such "doctoring" of files as the Board proposes would not only leave the subcommittee completely in the dark as to whether it was in any case conducting its investigation and hearings upon the basis of an incomplete and distorted record; it would place the Board or some subordinate employee thereof in a position of unchecked license to remove from any file any document deemed embarrassing.

The procedure outlined by the Civil Aeronautics Board in its staff notice No. 333 and in conversations with members of the subcommittee's staff is wholly contrary to the established law of privilege. The basic approach in any legally authorized inquiry—whether by a court, a grand jury or a congressional committee—must be that the investigatory body must have access to every document, unless it is met by a valid, specific claim of privilege with regard to particular documents. In other words, the subcommittee is to have access to all the Board's files and records; but, if the Board chooses, it can raise (though not finally decide for itself) claims of privilege for specific documents.

What the Civil Aeronautics Board has done here, however, is to turn the normal procedure bottom-side-up. In effect, it is saying to the subcommittee: We assume, at the outset, the power to tell you the broad categories of documents you may not inspect. It is true, the Board goes on, that with regard to some of them at least, you may petition us, hat in hand, with regard to any specific documents you may wish to see; at that time, we may well waive our privileges with regard to those documents, or some of them.

The Civil Aeronautics Board's approach is an unwarranted restriction of the power of an investigatory body. The burden of claiming privilege in each particular instance is on those being investigated. The Board cannot shift this burden to the investigatory body to come forward and request the Board to waive its asserted right to withhold particular documents. This would be true of every investigatory body, but it is particularly true of this subcommittee, which, as has been emphasized, has been authorized by the House to conduct a general survey of the operations of the agencies subject to its jurisdiction. How can such a broad audit be made, if the subcommittee is limited (at least with regard to the categories specified in the Board's staff notice) to specific files for which particular demand must be made?

To be effective in determining whether the agencies have been administering their laws in accordance with congressional intent, the subcommittee must have the right to conduct a general investigation through all of the agencies' files and records.

Under the general law of privilege, it is the witness who must claim his privileges with regard to specific documents. The Civil Aeronautics Board would completely alter this by setting up wholesale categories of privilege (which, as has been shown, are not legally supported) and then requiring the body before which privilege is invoked itself to come forward and show cause why specific documents (about whose existence it normally will not even know if it cannot make a general search of the Board's records) should not be shown to it. Let us hope that the creature of the Congress which has thus arrogated to itself the power to require a congressional committee to petition it with regard to which files it will reveal will, at least, see fit to rule upon these petitions with a benevolent eye.

XI. THE CONGRESS AND THIS SUBCOMMITTEE MUST NOT YIELD TO CLAIMS OF AGENCY PRIVILEGE

The basic question posed by the Civil Aeronautics Board's unwarranted arrogation of the power peremptorily to direct a duly authorized congressional committee with regard to what papers and documents the committee may have access to is well illustrated by the following colloquy between Congressman Moss and Mr. Stone, the General Counsel of the Civil Aeronautics Board.

Mr. Moss. Are you a creature of Congress, or is Congress a creature of the Civil Aeronautics Board?

Mr. Stone. We are a creature of Congress. (Hearings on the Availability of Information from Federal Departments and Agencies (1957) 2786.)

The basic issue raised by Civil Aeronautics Board Staff Notice No. 333 (printed, infra, p. 64) is whether the independent agencies now being studied by this subcommittee are subject to the overriding investigatory authority of the Congress or are to be permitted to remain in a position of complete irresponsibility—isolated in their bureaucratic vacuums from even the legitimate scrutiny of the elected representatives of the people. To this issue, the present subcommittee and the Congress can give only one response. But it is essential that the response be made affirmatively and that the field not be lost to the partisans of administrative privilege through default of a vigorous congressional reaction to their claims.

If the prior portions of this memorandum have demonstrated anything, it is that the pretension of the Civil Aeronautics Board to restrict this subcommittee's access to its files has no legal justification. It is supported by neither statutes nor judicial precedents. It must rest, therefore, solely upon the inherent authority of an administrative agency. But the vague claim of agency prerogative (even assuming arguendo that it may be valid as a matter of internal administration where only private parties are concerned) must surely give way before the clear constitutional power of the Congress to seek information. Otherwise the admitted congressional powers of legislation and oversight would be at the mercy of a department or agency when the information necessary to intelligent exercise of those powers happened to be in the possession of such department or agency.

It is not enough, however, merely to establish congressional authority to require disclosure of information. As Mr. Justice Jackson stated so aptly in the celebrated Steel Seizure case—

If not good law, there was worldly wisdom in the maxim attributed to Napoleon that, "The tools belong to the man who can use them." We may say that power * * * belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers (*Youngstown Sheet and Tube Company v. Sawyer*, 343 U. S. 579, 655 (1952)).

In the absence of effective assertions of the congressional authority to require the disclosure of information, it is hardly surprising if departments and agencies persist in assertions of unfettered discretion in themselves in the matter. What is now needed is for the Congress to cease its abdication of the area of information to executive and administrative prerogative.

To be sure, departments and agencies have a natural desire to be wholly free of investigatory demands. But the possibilities of administrative inconvenience here are surely outweighed by the overriding public interest in having the affairs of the Government carried on free of the "paper curtain" of official secrecy.

The claim of the Civil Aeronautics Board that it cannot carry on its business if its internal workings are fully subject to congressional inquiry is not a new one. A similar pretension was raised in court in one of the great state trials of 18th-century England. There, counsel for the Governor and Council of the East India Company sought not to produce the council records, because, said he, it would lead to—many inconveniences and ill consequences to exhibit the proceedings of the Council in an open court of justice, especially as they may sometimes contain secrets of the utmost importance to the interest and even to the safety of the state.

The court rejected this claim of privilege, saying:

We are not surprised that the Governor General and Council should be desirous to prevent their books being examined, which might tend to the consequences they mention * * *. But at the same time it is a matter of justice that, if they contain evidence material to the parties in civil suits, they may have an opportunity of availing themselves of it.

To the dangers of abuse adverted to by counsel, the court declared that it itself would ensure that proper use was made of the records produced:

When it is necessary they should be produced, the Court will take care they are not made an improper use of (*Trial of Maharajah Nudocomar*, 20 How. St. Tr. 1057 (1775)).

When any individual, from the highest to the lowest, is required to heed the call of justice in the courts—no matter how piddling the particular case—can it be claimed that any public officer is not subject to the even more important demands of the "grand inquest of the nation"? In Bentham's famous words:

Were the Prince of Wales, the Archbishop of Canterbury, and the Lord High Chancellor, to be passing by in the same coach while a chimney sweeper and a barrowwoman were in dispute about a halfpennyworth of apples, and the chimney-sweeper or the barrowwoman were to think proper to call upon them for their evidence, could they refuse it? No; most certainly (4 Bentham's Works 320).

If this is true in a court, how much more true must it be in an inquiry by the elected representatives of the people themselves. "The public," declared Lord Hardwicke, L. C., "has a right to every man's evidence" (12 *Cobbett's Parliamentary History* 693). Shall

this be true of the most paltry private-law case, and not of the evidence sought in an investigation authorized by solemn resolution of the people's representatives, in Congress assembled? To assert that executive and administrative agencies are not subject to the fullest congressional scrutiny is to advance an argument as untenable today as it was when cast in the language of the Plantaganets, the Tudors, and the Stuarts. If that position were deemed valid, the fiat of the administrator, and not the will of the people, would be the supreme law of the land.

There is no such avenue of escape from the overriding investigatory power of the Congress. Administrative agencies being investigated must not themselves determine which of their files and records should be made available; nor must their mere ipse dixit be conclusive that their claims of privilege are justified. James I is reported to have once said that his royal prerogative was "no subject for the tongue of a lawyer." The Civil Aeronautics Board is now saying, in effect, that the files specified in its staff notice No. 333 is no subject for the scrutiny of the Congress. Its heresy, like that of the Stuart king three centuries earlier, is wholly inconsistent with the essence of our constitutional structure. Historians may, indeed, find hyperbole in the Board's exaggerated pretensions.

It is no overstatement to say that vigorous employment by the Congress of its investigatory power is essential to the preservation of our representative democracy. Particularly is this true of investigations of the working of Government agencies. As was well stated by the late Senator Norris (Congressional Record, May 6, 1924):

Whenever you take away from the legislative body of any country in the world the power of investigation, the power to look into the executive department and every other department of the government, you have taken a full step that will eventually lead into absolute monarchy and destroy any government such as ours.

That the learned Senator's statement was not mere exaggerated verbiage is shown by the situation in France, where the Parliament has not successfully asserted an investigatory power comparable to that associated with Anglo-American legislatures. Committees of the French Parliament have, as a practical matter, been barred from obtaining testimony and papers which were not given voluntarily. "We knew perfectly well," said the chairman of a French parliamentary investigating committee in 1878, "that we could not, that the law would not permit us to, compel citizens to appear before us." It can be imagined how ineffective such a truncated investigatory authority, shorn of the sanction of compulsory process, has been. As our Supreme Court has well put it:

Experience has taught that mere requests for * * * information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed (*McGrain v. Daugherty*, 273 U. S. 135, 175 (1927)).

Legislative committees in France, dependent solely on volunteered information, have been notoriously ineffective. In 1934, a high French Government official was reported to have said to a witness who was to appear before an inquiry committee, "Do you really still pay attention to parliamentary investigations? That's all vanished with yesteryear's snows."

One of the major weaknesses of French legislative committees has been their inability to assert an effective right to scrutinize administrative files and records. Very often, French committees have had to complain of that "admirable solidarity of the ministries that induces the nondelivery of documents which are almost always believed to be secret and confidential." (See Ehrmann, 11 U. of Chicago L. Rev. 117, 139 (1944).)

The result has been that the French Parliament has had no effective investigatory power, and this has, without a doubt, played its part in the general decline of republican institutions in France. Thus, to take an outstanding example, when the famous Stavisky affair arose in the early 1930's, there was no effective investigatory power to uncover a scandal which all but undermined the French constitutional system. In the words of one commentator:

when, a year later, the Stavisky affair came into the open, the president of the committee complained that if he had obtained "judicial" powers for his inquiry in 1933, it might have been possible to uncover in time a scandal which almost cost the life of republican institutions in France (id. at 25 (1943)).

The same writer makes the following observation about the ineffectiveness of legislative committees in France:

The unsatisfactory results in * * * France * * * can easily be explained by the insufficient powers obtained by the parliamentary committees. Investigations which were barred from the cognizance of pertinent facts by the reluctance of witnesses or of the executive were bound to lead nowhere. * * * Moreover, a procedure which was helpless against a witness who chose to insult the investigating committee hardly increased respect for parliamentary institutions, and therefore could not be relied upon to strengthen popular belief in effective democratic government (id. at 151-152).

The pertinency of the French experience is well pointed out by Judge Wyzanski:

Congressional investigations are only one, if an extreme example of our belief that exposure is the surest guard not only against official corruption and bureaucratic waste, inefficiency and rigidity but against private malpractices, divisive movements and antisocial tendencies in the body politic. That this confidence in legislative investigations as a prophylactic is not absurd is demonstrated to some extent by the difference in the strength and survival quality of democracy in English-speaking countries where such investigations are encouraged and continental countries where they have been held within close bounds. * * * Perhaps France would have been better off if the Stavisky scandal had been investigated rather than hushed up (Wyzanski, 3 N. Y. Bar Association Record 93, 101-102 (1948)).

The French experience provides a striking example of what may happen when legislative investigatory powers are frustrated. It provides a lesson which our Congress should well consider before allowing its own powers of inquiry to become atrophied.

It may be said that the rebuff of the Civil Aeronautics Board is, comparatively speaking, not at all similar to the constant checks that have resulted in the sterility of legislative investigatory authority in France. If left unchecked, however, the Civil Aeronautics Board's pretensions will form dangerous precedents, and such precedents have a tendency to expand far beyond their original bounds. This is shown by the spurious precedent of the Denny-Tipton incident, which has already been extended to the matters covered in Civil Aeronautics Board Staff Notice No. 333. Legal rules, unlike those in the physical sciences, do not have fixed areas of strains and stresses. There is a tendency on the part of those subject to such rules to stretch them to the breaking point permitted by expediency.

It should not be forgotten that the accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertions of administrative authority. (Compare *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 694 (1953).) Whenever the Congress fails to repel administrative rebuffs to its investigatory powers, it is itself contributing to the ultimate stultification of such powers.

To repeat the basic question posed by the Civil Aeronautics Board's present position: Is the Civil Aeronautics Board a creature of the Congress or is the Congress a creature of the Civil Aeronautics Board? If it is the former, how can the Civil Aeronautics Board presume to tell its own creator what materials it may have access to? If the Congress is effectively to vindicate its position as the "grand inquest" of the Nation, it, and not those agencies which it investigates, must lay down the ground rules for its investigations. It, and not the agencies concerned, must determine what matters must be kept confidential.

The Civil Aeronautics Board's pretensions amount to an assertion on its part that the members of this subcommittee and its staff are not to be trusted with the materials specified in the Board's staff notice No. 333. The fallacy in this assertion is obvious to anyone who understands the essentials of representative government. In the case of an agency like the Civil Aeronautics Board, a number of people have access to the documents to which the subcommittee's access is sought to be restricted. Is it to be suggested that the elected representatives of the people are less to be trusted with these documents than these Civil Aeronautics Board officials? Shall every subordinate in the agency have access to the files and not the investigating committee of the Congress?

The Board's view that it, and not the Congress, must determine when the public interest bars access to the files specified in staff notice No. 333 assumes that its answer to the question of when public interest must bar the disclosure of information will necessarily coincide with the true interest of the public in all cases. One wonders, however, whether it is realistic to expect an agency like the Board always to weigh wisely and impartially the total public interest as against its own convenience. One must consider the matter in the framework of administrative realities. The diffusion of power in Government agencies often lodges actual responsibility in the fourth or fifth tier of the administrative hierarchy. A subordinate immediately concerned with a case may not bring to it the complete objectivity of a Lord High Chancellor. To make the head of the agency the ultimate arbiter of disclosure is, under these circumstances, no real guaranty that the determination will be based upon sound principles of public interest. The agency head will inevitably take cognizance of the public interest as it is seen from his own departmental angle, including its administrative convenience. Under the normal administrative routine, the question will come to him with recommendations from cautious subordinates against disclosure and in the press of business the chief is likely to approve the recommendation without much independent consideration. To ensure that departmental convenience is not equated to public interest, there must be independent scrutiny of the claim of privilege by the congressional committee. It is the

Congress which must itself determine when the public interest requires materials in agency records to be kept confidential. But, to do this, it must have unrestricted access to all information available in the agency.

As already pointed out, it is not altogether clear whether the Civil Aeronautics Board is relying upon the extreme doctrine of executive privilege articulated in the President's letter of May 17, 1954, and the Attorney General's memorandum in support thereof (printed *infra*, appendix C). The Civil Aeronautics Board General Counsel has stated:

We have not in the past relied upon this letter to withhold any information, but do believe it states a policy which might have some application to the Board in the areas outlined above (Hearings on the Availability of Information from Federal Departments and Agencies (1957) 2736).

In addition, he has said, with regard to the President's letter—

it should be noted that the principles contained in the letter might have application to similar factual situations involving other Government departments or agencies (Id. at 2806).

It has, however, been shown in prior portions of this memorandum that the extreme doctrine of executive privilege asserted in the President's letter is without legal foundation—and that whether it be relied on in an executive department or, even more emphatically, in an independent agency like the Civil Aeronautics Board. According to the President's letter, all internal communications within a department or agency are privileged from disclosure to the Congress. It needs little reflection to realize that, if such a position becomes established in law and practice, the investigatory power of the Congress over the operations of Government agencies will become as ineffective and fainéant as is that of the French Parliament.

Nor, as has been emphasized, is the claim of absolute privilege made in the President's letter at all supported in law. Indeed, the only case directly in point, the already-discussed Massachusetts decision in *Opinion of the Justices* (328 Mass. 655 (1951)), held that the legislature could order the disclosure to it of an executive internal report, of the sort clearly covered by the President's letter. Thus, in the one case where the broad privilege asserted in the President's letter was put to the judicial test, it was rejected.

In fact, even a writer generally friendly to the claims of executive privilege, concedes with regard to the principle of immunity from disclosure claimed in the President's letter:

the general principle was, in my opinion, stated too broadly. A very large part of administrative work consists of advice and communication between and among Government officials. If President Eisenhower's directive were applied generally in line with its literal and sweeping language, congressional committees would frequently be shut off from access to documents to which they are clearly entitled by tradition, commonsense, and good governmental practice. It is unlikely, therefore, that this ruling will endure beyond the particular controversy that precipitated it (Taylor, *Grand Inquest* 133).

The claim of departments and agencies to any secrecy in their relations with the Congress must be vigorously resisted. In Wigmore's eloquent language:

Such a secrecy can seldom be legitimately desired. It is generally desired for the purposes of partisan politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption. Whether it is the relations of the

Treasury to the stock exchange, or the dealings of the Interior Department with public lands the facts must constitutionally be demandable, sooner or later, on the floor of Congress. To concede to them a sacrosanct secrecy * * * is to attribute to them a character which for other purposes is never maintained—a character which appears to have been advanced only when it happens to have served some undisclosed interest to obstruct investigation into facts which might reveal a liability (8 Wigmore on Evidence (1940) 790).

The investigation engaged in by the present subcommittee must be considered in the light of the tremendous expansion of administrative power that has occurred during recent decades. What this means in practice is apparent to every lawyer and student of political science today.

One needs only—

in the words of a former president of the American Bar Association—to look at the size of the Code of Federal Regulations and at the number of published opinions of the several agencies of the Federal Government which conduct formal administrative hearings to realize that today a greater volume of business affecting private rights is carried on by the several independent regulatory commissions, agencies, bureaus, and departments of the Federal Government than by all of the United States Federal courts combined (Hearings on H. Res. 462 before a special subcommittee of the House Committee on Rules (1956) 21).

Well can it be said today that the field of administrative law is as broad as the field of National Government.

According to the opinion of the Supreme Court in the Steel Seizure case:

In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. * * * The founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times (*Youngstown Sheet and Tube Co. v. Sawyer*, 343 U. S. 479, 587, 589 (1952)).

Despite this constitutional principle, it can hardly be gainsaid that the administrative agency is today a lawmaker. Administrative lawmaking powers have, in truth, become fully comparable (both quantitatively and qualitatively speaking) to those exercised directly by the legislative and judicial branches.

It is too late in the day, to paraphrase the late Justice Jackson (*The Supreme Court in the American System of Government* (1955) 46), to continue the argument as to whether administrative agencies vested with such powers can be fitted properly into our constitutional structure. They have now become an accepted part of the legal system. Doubtless, men may still debate as to their desirability. "In the opinion of this House," reads a famous House of Commons resolution of Stuart times, "the power of the Executive has increased, is increasing, and ought to be diminished." Presumably, there are many who would like to see a similar resolution moved in contemporary American legislatures. Yet it is not the growth of administrative power as such that constitutes a great danger to our polity. Administrative power properly controlled is an essential tool to enable the modern state to perform its multifold tasks. The great danger is the delegation to the executive of uncontrolled power—of power which (in Justice Cardozo's felicitous phrase) is not canalized within banks that keep it from overflowing (*Schechter Poultry Corp. v. United States*, 295 U. S. 495, 551 (1935)).

Thus, while we may concede the need for delegations of power to administrative agencies, we may still insist on the overriding need for

safeguards. To admit that the development of the administrative process is necessary does not require us to concede that it should be free of checks such as a proper balance between the general security and the individual life has led us to impose on both the legislative and judicial processes. Few will dispute the need for administrative power to cope with modern conditions; at the same time, since all power is, as Madison put it, of an encroaching nature, it must be controlled by law lest it become arbitrary. In the field of administrative law, historical responsibility can never make up for the want of legal responsibility.

In our system, based as it is upon common-law concepts and traditions, there are two basic checks upon abuses of administrative power from outside the executive branch itself. These are the controls exercised by the legislative and judicial branches. Lawyers have, not unnaturally, tended to focus their attention almost entirely on the aspect of judicial control. It needs to be emphasized, all the same, that judicial review by itself cannot perform the whole job of policing the administrative process.

As an appellate judge—

declares Judge David W. Peck—

I have no hesitation in stating * * * that the job of effectively controlling the administrative agencies cannot be performed by the courts alone (Hearings on H. Res. 462 at 27.)

The role of the courts is to grant relief against administrative action which is ultra vires. But the courts cannot insure that the enabling statute contains effective standards to canalize delegated authority. And, if there are no such standards, judicial review becomes all too often more a matter of form than substance, since broad, wholesale standards do, in effect, justify almost any administrative action. In addition, it must be emphasized that, in recent years, the Federal courts have tended consistently to self-limit the scope of their reviewing power. Whatever may be said about the merits of this trend, it seems clear that it has lessened the protection afforded private citizens who are adversely affected by administrative action.

For there to be truly effective checks upon administrative action, control by the courts must be supplemented by congressional oversight. The Congress is the one great organ of Government that is both responsible to the electorate and independent of the executive. As the source of delegations of administrative power, it must also exercise direct responsibility over the manner in which such power is employed. In an era of ever-expanding administrative authority the great need is for effective safeguards outside of the executive branch, by organs wholly independent of the administrative process. Such independent control can, in practice, be exercised only by the legislative and judicial branches. In this country, as already stated, we have devoted most of our attention to control by the courts as a safeguard. The technique of direct legislative supervision has largely been neglected. The development of proper techniques of congressional control can enable the Congress to assume its rightful place, proper to the elected representatives of the people, as overseer of the powers which it has delegated.

For three-quarters of a century—

asserted Justice Jackson just before his death in 1954—

Congress has continued to launch these agencies without facing and resolving the administrative law problems which their functions precipitated (loc. cit. supra).

The work of this subcommittee can help the Congress itself to face and resolve the problems referred to by the learned judge.

It is important to remember that the problems posed by the present-day administrative process are not entirely without precedent in our law. It is basically those problems with which the common-law world had to deal in Tudor and Stuart times. At that time also the powers of the executive were being increased to a hitherto unprecedented degree and the jurisdiction of the ordinary courts was being superseded by a host of executive tribunals, of which the most important were the Star Chamber and Chancery.

Then, too, it was the legislature that had to assume a primary responsibility for preserving the rule of law. The parallel of Stuart times is most suggestive. We, too, are confronted with the constant aggrandizement of administrative authority and the need to impose safeguards, if the rule of law is to be maintained as the dominant characteristic of our polity. The answer which our predecessors gave to the question of how to curb administrative power is one which we can scarcely afford to ignore. The legislators of Stuart times met and mastered their problems of administrative law by restraining executive pretensions and insuring that all departments and agencies were wholly subject to legislative control. Can the Congress today do less than to seek to follow their example?

How can this be done, however, if the Congress and its committees are not to have unrestricted access to all information within government agencies?

To deny Congress power to acquaint itself with facts is equivalent to requiring it to prescribe remedies in darkness (Landis, 40 Harvard L. Rev. 153, 221 (1926)).

The Civil Aeronautics Board's arrogation of the power to deny this subcommittee unrestricted access to its files and records is but another example of the recent tendency of Government departments and agencies to restrict their flow of information, both to the public and even to the Congress itself.

Indeed it requires no great flight of imagination to realize that if the Government's contentions in these cases were affirmed the privilege against disclosure might gradually be enlarged by executive determinations until, as is the case in some nations today, it embraced the whole range of governmental activities (Reynolds v. United States, 192 F. 2d 987, 995 (D. C. Cir. 1951)).

The tendency toward governmental secrecy has posed for the Congress one of the most significant problems confronting it at the present time. In the moving words of a Federal court:

We need to recall in this connection the words of Edward Livingston: "No Nation ever yet found any inconvenience from too close an inspection into the conduct of its officers, but many have been brought to ruin, and reduced to slavery, by suffering gradual imposition and abuse, which were imperceptible, only because the means of publicity had not been secured." And it was Patrick Henry who said that "to cover with the veil of secrecy the common routine of business is an abomination in the eyes of every intelligent man and every friend to his country" (ibid.).

The overriding peril of the present century is the specter of the superstate with its omnipotent administration, unrestrained by any checks on its all-pervasive regulatory activities, so vividly pictured by George Orwell in his novel 1984. The great danger of today is 1984

and it is the Congress which must insure that it does not become a reality. If the elected representatives of the people assert their right to lay bare all that goes on within departments and agencies, that danger can be avoided. Administration whose abuses and inadequacies are exposed to the public eye can hardly become a menace to constitutional government. Publicity, as Justice Brandeis once said is justly commended as a remedy for diseases in the body politic. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman (The Words of Justice Brandeis 151).

XII. CONCLUSIONS OF LAW

The prior portions of this memorandum have demonstrated conclusively the validity of the following conclusions of law:

(1) House Resolutions 99 and 191 authorize the Special Subcommittee on Legislative Oversight to engage in a broad, general investigation of the operations of the administrative agencies subject to its jurisdiction. Such an investigation, the Supreme Court itself has acknowledged, is not at all affected by the limitations on congressional investigatory authority laid down by the Court in its recent decision in *Watkins v. United States* (354 U. S. 178, 1957).

(2) The arrogation by the Civil Aeronautics Board to itself of the power to fix at the outset broad categories of files and records to which the subcommittee may not have access is without basis in precedent or law.

(3) "Executive privilege" is not available to an independent agency like the Civil Aeronautics Board as a possible basis for the withholding of information from the Congress. The Civil Aeronautics Board, as the Supreme Court has recognized, is an independent agency whose members are not subject to the removal power of the President. Such a body cannot in any proper sense be characterized as an arm or an eye of the Executive. It is instead an arm of the Congress, wholly responsible to that body.

(4) The doctrine of absolute "executive privilege" itself is not supported in law. The cases cited by its proponents are not truly relevant on the power of the executive to withhold information from the Congress. On the other hand, there are many decisions squarely rejecting the doctrine—even in courtroom cases. In addition, Dean Wigmore (the leading authority on the subject in this country) flatly repudiates the doctrine.

(5) The doctrine of the separation of powers does not support the claim of absolute "executive privilege."

(6) The House of Representatives may authorize an investigation as broad, as searching, and as exhaustive as is necessary to make effective its constitutional powers. The House is the "grand inquest of the Nation" and can authorize the broadest possible investigation into the workings of agencies like the Civil Aeronautics Board.

(7) Countless prior precedents in the House and Senate support the authority of the Congress to authorize an investigation such as that engaged in by this subcommittee and the power of the subcommittee to have complete access to the files and records of agencies being investigated.

(8) Court decisions clearly uphold the authority of the Congress to investigate the operations of executive and administrative agencies. A recent case rejects the claim of the Executive to be able to withhold internal documents from such an investigation, the Court there saying:

If the legislative department were to be shut off in the manner proposed from access to the papers and records of executive and administrative departments, boards, and commissions, it could not properly perform its legislative functions (Opinion of the Justices, 328 Mass. 655, 661 (1951)).

(9) Congressional investigatory authority is not subject to the limitations imposed on the powers of inquiry of courts. Such power of the Congress, the Supreme Court and the Congress itself have recognized, is analogous to the investigatory power of a grand jury.

(10) The determination of what files and records of an agency like the Civil Aeronautics Board are open to this subcommittee must be made by the subcommittee itself. It is basic that the agency being investigated may not be the ultimate arbiter of its own claim of privilege.

(11) The Civil Aeronautics Board's claim of privilege for communications between Board members and their assistants and statements made by Board members in the course of their deliberations is utterly unsupported in law. In the one case in which the Board refused to allow a congressional committee to question members on statements made by a Board member (the Denny-Tipton incident before the Anti-trust Subcommittee of the House Committee on the Judiciary in 1956), the position of the Board was contrary to a mass of relevant precedents.

(12) The Civil Aeronautics Board's claim that it has the authority to determine what classified materials will be made available to this subcommittee is contrary to the practice followed in the work of other congressional committees.

(13) The statutes authorizing the Civil Aeronautics Board to hold certain materials confidential, as the Board's General Counsel himself has recognized, have no application to the Congress itself.

(14) The Civil Aeronautics Board cannot claim privilege with regard to communications between the Board, on the one hand, and the President or other departments and agencies, on the other. Such an assertion of privilege cannot defeat the right of this subcommittee to investigate the relationships between the independent regulatory agencies and the executive branch.

(15) The Civil Aeronautics Board does not have the legal right to bar this subcommittee from access to files relating to all pending matters.

(16) There is no privilege recognized in law or congressional precedents for the personal files of agency members.

(17) The Civil Aeronautics Board is impinging upon the functions of this subcommittee in asserting in itself a power to "screen" its files and withdraw documents which the Board feels should not be disclosed. It is basic in law and congressional precedent that it is the subcommittee itself, not the agency being investigated, which must judge the merits of claims of privilege for particular documents.

(18) The Congress has the clear legal right to examine any and all files and records of an independent agency like the Civil Aeronautics Board. It is for the congressional committee concerned to determine what documents will be looked into and which among them will be made public. It is a usurpation of power for an agent of the Congress to presume to lay down the ground rules under which investigations by its principal must proceed. The basic question remains: Is the Civil Aeronautics Board a creature of the Congress or is the Congress a creature of the Civil Aeronautics Board?

APPENDIXES

APPENDIX A

[For release Friday, October 4, 1957]

Representative Morgan M. Moulder, chairman of the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce, today charged the Civil Aeronautics Board with attempting to block the subcommittee's investigation. Mr. Moulder read the following statement for release to the press:

"In accordance with the express authorization of the House of Representatives, the Special Subcommittee on Legislative Oversight has started its study of the operations of certain Federal regulatory agencies. In furtherance of this investigation, attorneys and investigators of the subcommittee staff have been examining these agencies' files and records.

"In one agency, however—the Civil Aeronautics Board—the subcommittee has been met at the outset with a refusal to allow access to pertinent files and records. The Board has thereby presumed to arrogate to itself the power to limit the areas in which the investigation of a duly authorized congressional committee can be conducted. This attempt is wholly without basis in precedent or law. The Board, indeed, has not even attempted to furnish any valid authority in support of its arbitrary refusal.

"The Board's action can have only one meaning for the public. Either the Board feels that it has something to hide, or it is manifesting an arrogant disregard of the authority and duties of the Congress. This is all the more shocking in that, upon the basis of information in my possession, this action of the Board may be the first step in a concerted plan on the part of some of these Government agencies to block this special congressional investigation.

"I am making public the correspondence between the Board and the subcommittee on this matter.

"As chairman of the subcommittee, I feel most strongly that such an obstruction of the functioning of the Congress cannot be tolerated—no matter what the source. Accordingly, I am scheduling a public hearing of the subcommittee for Thursday, October 17, at 2 p. m. At that time, the Civil Aeronautics Board will be called upon to show cause why representatives of the subcommittee should not be afforded full and unhampered access to all Board files and records."

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C., October 3, 1957.

HON. JAMES R. DURFEE,
Civil Aeronautics Board,
Washington, D. C.

DEAR CHAIRMAN DURFEE: Your letter of September 30, 1957, to subcommittee counsel, Dr. Schwartz, enclosing copies of Civil Aeronautics Board Staff Notice No. 333 of like date, has been brought to my attention. This staff notice is stated to represent the Board's answer to the request by Dr. Schwartz, made by letter of September 19, 1957, that, in carrying out the special investigation of the Federal regulatory agencies now in progress, the staff of the subcommittee be afforded access to the files of the Civil Aeronautics Board.

I find the Board's response to this request to be most surprising and disturbing. The refusal of the Board to make its records available to representatives of a duly authorized subcommittee of the Congress is without basis in precedent or law. And study of your staff notice makes clear that the Board's position does in fact constitute such a refusal.

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I may put to one side for the moment the question of cases presently pending before the Board, as well as statements made by Board members in the course of their deliberations. These are matters which the subcommittee does not choose to inquire into at the present time. Likewise, it is not necessary for the moment to deal with documents classified or otherwise maintained confidential under specific statutory authority, as to which appropriate mechanics for examination will be worked out as, and if, necessary in the future.

For the rest, the Board, without any legal warrant whatsoever, purports to direct withheld from the request of the subcommittee—

- (1) any communications or memorandums among Board members or between members and their assistants;
- (2) any communications between the Civil Aeronautics Board and the President, his immediate staff, the State Department as well as "other executive departments and Government agencies" relating to "foreign" cases under sections 801 and 802. [This, it is to be noted, as to materials the non-classified status of which attests that disclosure would not "jeopardize the international relations of the United States" or "be prejudicial to the defense interests of the Nation"—see Executive Order 10501];
- (3) any other communications between the Civil Aeronautics Board and "other departments and agencies";
- (4) the "personal" files of Board members.

These supposed restrictions would, if permitted to become operative, in effect relegate the subcommittee to examination of various routine and presumably innocuous lower echelon correspondence and memoranda files—and, of course, the Board's official dockets, publicly maintained and available. The Board's attempt to place an Iron Curtain between the subcommittee and the very materials it has been specifically created to investigate would, if left unchallenged, utterly frustrate the study authorized by the House of Representatives.

Further, the procedure proposed by the Civil Aeronautics Board, as reflected in your staff notice and outlined to subcommittee representatives, whereby Board files would be censored in advance of examination, documents being withdrawn therefrom without notice to the subcommittee of the very fact of removal is quite unacceptable. Such "doctoring" of files would not only leave the subcommittee completely in the dark as to whether it was in any case conducting its investigation and hearings upon the basis of an incomplete and distorted record; it would place the Board or some subordinate staff employee in a position of unchecked license to remove from any file any document deemed embarrassing without reference to any standard at all.

Recent decades have witnessed massive growth in the numbers and powers of Federal regulatory agencies. The American people, through their elected representatives, the Congress, are entitled to know whether such an agency, the Civil Aeronautics Board, a creature of the Congress, brought into being, sustained and financed by vote of the Congress, is carrying out its functions in accord with the mandate of the Congress. A doctrine which would place such an agency beyond the purview of effective supervision or check is antithetical to our democratic system of government.

I hereby request that the Civil Aeronautics Board withdraw the instructions to its personnel included in staff notice 333 so as to permit proper representatives of this subcommittee full and unhampered access to all Board files.

I trust that I can count on your cooperation in effectuating the goals of the subcommittee.

Very sincerely yours,

MORGAN M. MOULDER, *Chairman.*

CIVIL AERONAUTICS BOARD,
Washington, September 30, 1957.

DR. BERNARD SCHWARTZ,
Chief Counsel-Staff Director, Special Subcommittee on Legislative Oversight
of the Committee on Interstate and Foreign Commerce, House of Representatives,
Washington, D. C.

DEAR DR. SCHWARTZ: This has further reference to our letter dated September 24, 1957, in which we acknowledged receipt of your earlier letter of September 19, 1957.

The Board has given most careful consideration to your request. As the result of its detailed study, the Board has adopted the position reflected in a general

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notice to its staff, copies of which are enclosed for your information. I believe you will find the staff notice to be self-explanatory.

The Board desires and intends to cooperate with the subcommittee to the fullest extent possible.

Sincerely yours,

JAMES R. DURFEE, *Chairman.*

STAFF NOTICE No. 333

CIVIL AERONAUTICS BOARD,
Washington, September 30, 1957.

To: All employees.

From: Acting Secretary.

Subject: Request for information by the Special Subcommittee on Legislative Oversight of the Interstate and Foreign Commerce Committee of the House of Representatives.

1. The special subcommittee is conducting an investigation, and in connection therewith, has requested access to internal files of the Board and other information. There are set forth below for your information and guidance the Board's instructions to the staff concerning the above subject, issued by the Board on September 26, 1957:

"1. That the 'oversight' representative be given full access to all files open to the general public, subject to the requirement that no documents be removed therefrom by him.

"2. That, upon request, the representative be permitted to inspect at their location (or at the representative's office at the option of the custodian of the files) internal files relating to closed proceedings and matters, with the understanding that such materials shall be treated as confidential and disclosed outside the subcommittee only by direction of the subcommittee, and subject to the following additional limitations:

"(a) The personal files of the Board members shall not be available for inspection;

"(b) Security classified materials and other materials held confidential under sections 1104, 902 (f), title 18, United States Code, section 1905, or applicable Executive orders shall be permitted to be inspected or their contents divulged only upon permission of the security officer or the Board as to security classified materials, and upon permission of the Board as to the other enumerated materials;

"(c) Communications and memorandums between Board members, and between Board members and their assistants relating to matters acted on by the Board, and the statements made by Board members in the course of their deliberations, shall not be permitted to be inspected nor shall their contents be divulged;

"(d) Communications not heretofore made public between the Board or its members or staff on the one hand, and the President, his immediate staff, the State Department and other executive departments and Government agencies on the other, and relating to section 801 and 802 matters, shall not be permitted to be inspected nor shall their contents be divulged except on permission from the White House or the department or agency involved;

"(e) Other nonpublic communications between the Board, its members, and its staff on the one hand and other departments and agencies of the Government on the other will be permitted to be inspected or their contents divulged only upon permission from such Department or agency, or, in the event permission is refused, upon order of the Board;

"(f) In any instance where the bureau or office head concerned believes that specific Board approval should be obtained before permitting inspection of particular files, he may take the matter up with the Board through the channels hereinafter established in paragraph 7 of these instructions before complying with the request, and shall thereafter be governed by the instructions of the Board with respect thereto.

"(g) Copies of documents shall not be removed from the files by the 'oversight' representative.

"3. That, subject to appropriation limitations, copies of documents permitted to be inspected shall be provided at the request of the 'oversight' representative by the office or bureau concerned.

"4. That internal materials and files relating to pending matters shall not be made available, nor shall inspection thereof be permitted or their contents divulged except upon order of the Board.

"5. That the representative not be permitted to inspect at will nonpublic or internal files in either pending or closed cases.

"6. That each bureau and office head is charged with responsibility for the carrying out and observance of these instructions with respect to the files in the custody of his organization.

"7. That the Chief, Office of Congressional Liaison and Public Information, or such member of his staff as he may designate, shall serve as coordinating officer with respect to inspection requests, and shall have responsibility for initiating clearances for inspection both within the Board and from other agencies and departments of the Government. In cases of doubt under these instructions and with respect to matters requiring Board approval, the concurrence of the Office of the General Counsel shall be obtained prior to release of materials and also in relation to recommendations made to the Board for release."

2. This investigation is of great importance to both the Congress and the Board, as an independent regulatory agency created by the Congress. All employees are directed to extend their full cooperation.

JOHN B. RUSSELL.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C., September 19, 1957.

HON. JAMES R. DURFEE,
*Chairman, Civil Aeronautics Board,
Washington.*

DEAR MR. CHAIRMAN: Pursuant to the authority vested by House Resolutions 99 and 152, 85th Congress, I am requesting that members of the staff of the Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce be allowed to receive and examine any records, documents or information, directly or indirectly, pertaining to your agency, function or business within the jurisdiction of this subcommittee.

I know you will cooperate in this request, and your courtesy and assistance will be appreciated.

Very sincerely yours,

BERNARD SCHWARTZ,
Chief Counsel-Staff Director.

ACCESS BY LEGISLATIVE OVERSIGHT SUBCOMMITTEE TO FILES OF CIVIL
AERONAUTICS BOARD—CHRONOLOGY OF EVENTS

Thursday, September 5: Meeting between CAB Chairman Durfee and Subcommittee Chief Counsel Dr. Schwartz. Chairman Durfee promises subcommittee "full cooperation."

Friday, September 13: Subcommittee staff representative at CAB requests access to two Board files. [(1) North Atlantic Route case, January 1, 1950 to December 31, 1950; (2) Great Circle case, January 1, 1954, to present.]

Tuesday, September 17: CAB representative advises subcommittee representative that Board absent on trip to Mexico; in absence of Board, no files would be made available.

Thursday, September 19: Subcommittee representative advised that Board had returned and considered request, but had not reached any determination. Further consideration would not be had until Tuesday or Wednesday, September 24 or 25.

Thursday, September 19: Letter addressed by Subcommittee Chief Counsel Dr. Schwartz to Chairman of the CAB requesting subcommittee staff access to CAB files.

Monday, September 23: On request of Dr. Schwartz, personal conference had with Chairman Durfee re subcommittee access to CAB files.

Tuesday, September 24: CAB letter acknowledges receipt of Dr. Schwartz' letter of September 19.

Thursday, September 26: CAB again considers subcommittee's request; reaches decision.

Friday, September 27: Broad outline of Board decision furnished orally to subcommittee representative by Board representative.

Monday, September 30: Board responds to subcommittee's request by letter enclosing staff notice.

Thursday, October 3: On request of Subcommittee Chairman Moulder, personal conference had with CAB Member Hector. Remainder of Board absent on trip to Europe.

Thursday, October 3: Letter addressed by Chairman Moulder to Chairman CAB responding to Board's letter of September 30.

APPENDIX B

FEDERAL TRADE COMMISSION,
OFFICE OF THE GENERAL COUNSEL,
Washington, September 16, 1957.

BERNARD SCHWARTZ, Esq.,
Chief Counsel-Staff Director,
Special Subcommittee on Legislative Oversight,
Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR PROFESSOR SCHWARTZ: Chairman Gwynne has referred to me for reply to your letter of September 10, 1957. On September 12, the Commission considered your request and directed staff compliance therewith. The attached memorandum has been sent to all of our staff supervisors.

The Committee is anxious to cooperate fully with your subcommittee and will undertake to provide suitable arrangements for examination of its records and for the interviews desired. The Commission wishes, however, to emphasize the desirability of preserving the confidential character of certain types of information in the files which your representatives may examine.

Identity of complaining parties and persons furnishing information concerning possible law violations.—Courts have long recognized that sound public policy requires preservation of the anonymity of persons who provide law enforcement agencies with information concerning violations of law. This anonymity is particularly important in trade regulation cases in order to avoid retaliation by large firms against small ones.

Intra-agency memoranda.—The Commission has always considered this material confidential for the reason that the public interest requires that Commission officials and employees indulge in complete candor in advising with one another concerning the Commission's work. The making public of such material might tend to discourage and curtail frank exchange of views in the future. The absence of a candid expression of differing views deprives the Commission of the benefit which such exchanges afford it in the performance of its duties.

Records of current and incomplete investigations where decision as to whether to proceed has not yet been made.—You will, I am sure, recognize that premature public discussion of such matters can operate to the prejudice of possible future action.

As you know, the Federal Trade Commission Act provides means for preserving the confidentiality of information which it obtains insofar as its own officers and employees are concerned. Section 10 of this act makes it a misdemeanor punishable by fine or imprisonment or both for any officer or employee of the Commission to make public information unless authorized so to do by the Commission or directed by a court. It is earnestly hoped that you and your subcommittee will agree with us that information of the type described above should be kept confidential if the Commission is effectively to perform its statutory duties.

Very truly yours,

EARL W. KINTNER, *General Counsel.*

MEMORANDUM TO ALL SUPERVISORS

Prof. Bernard Schwartz, chief counsel-staff director, Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce, has submitted to Chairman Gwynne the following request:

"Pursuant to the authority vested by House Resolutions 99 and 152, 85th Congress, I am requesting that members of the staff of the Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce be allowed to receive and examine any records, documents, or information, directly or indirectly, pertaining to your agency, function, or business within the jurisdiction of this subcommittee.

"I know you will cooperate in this request, and your courtesy and assistance will be appreciated."

In accordance with its past practice in respect to similar requests, the Commission by minute of September 12, 1957, has directed full compliance with the special subcommittee's request. The nature and scope of the inquiry is indicated by a questionnaire recently submitted by Professor Schwartz, copies of which have been distributed to staff officials. Messrs. John T. Loughlin and John Heim are coordinating preparation of replies to this questionnaire.

EARL W. KINTNER, *General Counsel.*

SEPTEMBER 13, 1957.

APPENDIX C

THE WHITE HOUSE,
May 17, 1954.

The honorable the SECRETARY OF DEFENSE,
Washington, D. C.

DEAR MR. SECRETARY: It has long been recognized that to assist the Congress in achieving its legislative purposes every Executive Department or Agency must, upon the request of a Congressional Committee, expeditiously furnish information relating to any matter within the jurisdiction of the Committee, with certain historical exceptions—some of which are pointed out in the attached memorandum from the Attorney General. This Administration has been and will continue to be diligent in following this principle. However, it is essential to the successful working of our system that the persons entrusted with power in any one of the three great branches of Government shall not encroach upon the authority confided to the others. The ultimate responsibility for the conduct of the Executive branch rests with the President.

Within this Constitutional framework each branch should cooperate fully with each other for the common good. However, throughout our history the President has withheld information whenever he found that what was sought was confidential or its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation.

Because it is essential to efficient and effective administration that employees of the Executive Branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the Subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions. This principle must be maintained regardless of who would be benefited by such disclosures.

I direct this action so as to maintain the proper separation of powers between the Executive and Legislative Branches of the Government in accordance with my responsibilities and duties under the Constitution. This separation is vital to preclude the exercise of arbitrary power by any branch of the Government.

By this action I am not in any way restricting the testimony of such witnesses as to what occurred regarding any matters where the communication was directly between any of the principals in the controversy within the Executive Branch on the one hand and a member of the Subcommittee or its staff on the other.

Sincerely,

DWIGHT D. EISENHOWER.

MEMORANDUM

For: The President.
From: The Attorney General.

One of the chief merits of the American system of written constitutional law is that all the powers entrusted to the government are divided into three great departments, the Executive, the Legislative, and the Judicial. It is essential to the successful working of this system that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall be limited to the exercise of the powers appropriate to its own department and no other. The doctrine of separation of powers was adopted to preclude the exercise of arbitrary power and to save the people from autocracy.

This fundamental principle was fully recognized by our first President, George Washington, as early as 1796 when he said: " * * * it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved * * * ." In his Farewell Address, President Washington again cautioned strongly against the danger of encroachment by one department into the domain of another as leading to despotism. This principle has received steadfast adherence throughout the many years of our history and growth. More than ever, it is our duty today to heed these words if our country is to retain its place as a leader among the free nations of the world.

For over 150 years—almost from the time that the American form of government was created by the adoption of the Constitution—our Presidents have established, by precedent, that they and members of their Cabinet and other heads of executive departments have an undoubted privilege and discretion to keep confidential, in the public interest, papers and information which require secrecy. American history abounds in countless illustrations of the refusal, on occasion, by the President and heads of departments to furnish papers to Congress, or its committees, for reasons of public policy. The messages of our past Presidents reveal that almost every one of them found it necessary to inform Congress of his constitutional duty to execute the office of President, and, in furtherance of that duty, to withhold information and papers for the public good.

Nor are the instances lacking where the aid of a court was sought in vain to obtain information or papers from a President and the heads of departments. Courts have uniformly held that the President and the heads of departments have an uncontrolled discretion to withhold the information and papers in the public interest, they will not interfere with the exercise of that discretion, and that Congress has not the power, as one of the three great branches of the Government, to subject the Executive Branch to its will any more than the Executive Branch may impose its unrestrained will upon the Congress.

PRESIDENT WASHINGTON'S ADMINISTRATION

In March 1792, the House of Representatives passed the following resolution: "Resolved, That a committee be appointed to inquire into the causes of the failure of the late expedition under Major General St. Clair, and that the said committee be empowered to call for such persons, papers, and records, as may be necessary to assist their inquiries" (3 Annals of Congress, p. 493).

This was the first time that a committee of Congress was appointed to look into a matter which involved the Executive Branch of the Government. The expedition of General St. Clair was under the direction of the Secretary of War. The expenditures connected therewith came under the Secretary of the Treasury. The House based its right to investigate on its control of the expenditures of public moneys. It appears that the Secretaries of War and the Treasury appeared before the committee. However, when the committee was bold enough to ask the President for the papers pertaining to the General St. Clair campaign, President Washington called a meeting of his Cabinet (Binkley, President and Congress, pp. 40-41).

Thomas Jefferson, as Secretary of State, reports what took place at that meeting. Besides Jefferson, Alexander Hamilton, Henry Knox, Secretary of War, and Edmond Randolph, the Attorney General, were present. The Committee had first written to Knox for the original letters, instructions, etc., to General St. Clair. President Washington stated that he had called his Cabinet members together, because it was the first example of a demand on the Executive for papers, and he wished that so far as it should become a precedent, it should be rightly conducted. The President readily admitted that he did not doubt the propriety of what the House was doing, but he could conceive that there might be papers of so secret a nature that they ought not to be given up. Washington and his Cabinet came to the unanimous conclusion:

"First, that the House was an inquest, and therefore might institute inquiries. Second, that it might call for papers generally. Third, that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public; consequently were to exercise a discretion. Fourth, that neither the committee nor House had a right to call on the Head of a Department, who and whose papers were under the President alone; but that the committee should instruct their chairman to move the House to address the President."

The precedent thus set by our first President and his Cabinet was followed in 1796, when President Washington was presented with a resolution of the House

of Representatives which requested him to lay before the House a copy of the instructions to the Minister of the United States who negotiated the treaty with the King of Great Britain, together with the correspondence and documents relative to that treaty. Apparently it was necessary to implement the treaty with an appropriation which the House was called upon to vote. The House insisted on its right to the papers requested, as a condition to appropriating the required funds (President and Congress, Wilfred E. Binkley (1947), p. 44.)

President Washington's classic reply was, in part, as follows:

"I trust that no part of my conduct has ever indicated a disposition to withhold any information which the Constitution has enjoined upon the President as a duty to give, or which could be required of him by either House of Congress as a right; and with truth I affirm that it has been, as it will continue to be while I have the honor to reside in the Government, my constant endeavor to harmonize with the other branches thereof so far as the trust delegated to me by the people of the United States and my sense of the obligation it imposes to 'preserve, protect, and defend the Constitution' will permit" (Richardson's Messages and Papers of the Presidents, vol. 1, p. 194).

Washington then went on to discuss the secrecy required in negotiations with foreign governments, and cited that as a reason for vesting the power of making treaties in the President, with the advice and consent of the Senate. He felt that to admit the House of Representatives into the treaty-making power, by reason of its constitutional duty to appropriate monies to carry out a treaty, would be to establish a dangerous precedent. He closed his message to the House as follows:

"As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; * * * and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request" (Richardson's Messages and Papers of the Presidents, vol. 1, p. 196).

PRESIDENT JEFFERSON'S ADMINISTRATION

In January 1807, Representative Randolph introduced a resolution, as follows: "Resolved, That the President of the United States be, and he hereby is, requested to lay before this House any information in possession of the Executive, except such as he may deem the public welfare to require not to be disclosed, touching any illegal combination of private individuals against the peace and safety of the Union, or any military expedition planned by such individuals against the territories of any Power in amity with the United States; together with the measures which the Executive has pursued and proposes to take for suppressing or defeating the same" (16 Annals of Congress (1806-1807), p. 336).

The resolution was overwhelmingly passed. The Burr conspiracy was then stirring the country. Jefferson had made it the object of a special message to Congress wherein he referred to a military expedition headed by Burr. Jefferson's reply to the resolution was a Message to the Senate and House of Representatives. Jefferson brought the Congress up to date on the news which he had been receiving concerning the illegal combination of private individuals against the peace and safety of the Union. He pointed out that he had recently received a mass of data, most of which had been obtained without the sanction of an oath peace and safety of the Union. He pointed out that he had recently received a so as to constitute formal and legal evidence. "It is chiefly in the form of letters, often containing such a mixture of rumors, conjectures, and suspicions as renders it difficult to sift out the real facts and unadvisable to hazard more than general outlines, strengthened by concurrent information or the particular credibility of the relator. In this state of the evidence, delivered sometimes, too, under the restriction of private confidence, neither safety nor justice will permit the exposing names, except that of the principal actor, whose guilt is placed beyond question" (Richardson's "Messages and Papers of the Presidents," vol. 1, p. 412, dated January 22, 1807).

SIMILAR ACTIONS BY PRESIDENTS JACKSON, TYLER, BUCHANAN, AND GRANT

On February 10, 1835, President Jackson sent a message to the Senate wherein he declined to comply with the Senate's resolution requesting him to communicate copies of charges which had been made to the President against the official conduct of Gideon Fitz, late Surveyor-General, which caused his removal from office.

The resolution stated that the information requested was necessary both in the action which it proposed to take on the nomination of a successor to Fitz, and in connection with the investigation which was then in progress by the Senate respecting the frauds in the sales of public lands.

The President declined to furnish the information. He stated that in his judgment the information related to subjects exclusively belonging to the executive department. The request therefore encroached on the constitutional powers of the executive.

The President's message referred to many previous similar requests, which he deemed unconstitutional demands by the Senate:

"Their continued repetition imposes on me, as the representative and trustee of the American people, the painful but imperious duty of resisting to the utmost any further encroachment on the rights of the Executive" (ibid., p. 133).

The President next took up the fact that the Senate resolution had been passed in executive session, from which he was bound to presume that if the information requested by the resolution were communicated, it would be applied in secret session to the investigation of frauds in the sales of public lands. The President said that, if he were to furnish the information, the citizen whose conduct the Senate sought to impeach would lose one of his basic rights, namely—that of a public investigation in the presence of his accusers and of the witnesses against him. In addition, compliance with the resolution would subject the motives of the President, in the case of Mr. Fitz, to the review of the Senate when not sitting as judges on an impeachment; and even if such a consequence did not follow in the present case, the President feared that compliance by the Executive might thereafter be quoted as a precedent for similar and repeated applications.

"Such a result, if acquiesced in, would ultimately subject the independent constitutional action of the Executive in a matter of great national concernment to the domination and control of the Senate; * * *"

"I therefore decline a compliance with so much of the resolution of the Senate as requests 'copies of the charges, if any,' in relation to Mr. Fitz, and in doing so must be distinctly understood as neither affirming nor denying that any such charges were made; * * *" (ibid., p. 134).

One of the best reasoned precedents of a President's refusal to permit the head of a department to disclose confidential information to the House of Representatives is President Tyler's refusal to communicate to the House of Representatives the reports relative to the affairs of the Cherokee Indians and to the frauds which were alleged to have been practiced upon them. A resolution of the House of Representatives had called upon the Secretary of War to communicate to the House the reports made by the Department of War by Lieutenant Colonel Hitchcock relative to the affairs of the Cherokee Indians together with all information communicated by him concerning the frauds he was charged to investigate; also all facts in the possession of the Executive relating to the subject. The Secretary of War consulted with the President and under the latter's direction informed the House that negotiations were then pending with the Indians for settlement of their claims; in the opinion of the President and the Department, therefore, publication of the report at that time would be inconsistent with the public interest. The Secretary of War further stated in his answer to the resolution that the report sought by the House, dealing with alleged frauds which Lieutenant Colonel Hitchcock was charged to investigate, contained information which was obtained by Colonel Hitchcock by ex parte inquiries of persons whose statements were without the sanction of an oath, and which the persons implicated had had no opportunity to contradict or explain. The Secretary of War expressed the opinion that to promulgate those statements at that time would be grossly unjust to those persons, and would defeat the object of the inquiry. He also remarked that the Department had not been given at that time sufficient opportunity to pursue the investigation, to call the parties affected for explanations, or to determine on the measures proper to be taken.

The answer of the Secretary of War was not satisfactory to the Committee on Indian Affairs of the House, which claimed the right to demand from the Executive and heads of departments such information as may be in their possession relating to subjects of the deliberations of the House.

President Tyler in a message dated January 31, 1843, vigorously asserted that the House of Representatives could not exercise a right to call upon the Executive for information, even though it related to a subject of the deliberations of the House, if, by so doing, it attempted to interfere with the discretion of the Executive.

The same course of action was taken by President James Buchanan in 1860 in resisting a resolution of the House to investigate whether the President or any

other officer of the Government had, by money, patronage, or other improper means sought to influence the action of Congress for or against the passage of any law relating to the rights of any state or territory. (See Richardson, Messages and Papers of the Presidents, vol. 5, pp. 618-619).

In the administration of President Ulysses S. Grant the House requested the President to inform it whether any executive offices, acts, or duties, and if any, what, have been performed at a distance from the seat of government established by law. It appears that the purpose of this inquiry was to embarrass the President by reason of his having spent some of the hot months at Long Branch. President Grant replied that he failed to find in the Constitution the authority given to the House of Representatives, and that the inquiry had nothing to do with legislation (Richardson, Messages and Papers of the Presidents, vol. VII, pp. 362-363).

PRESIDENT CLEVELAND'S ADMINISTRATION

In 1886, during President Cleveland's administration, there was an extended discussion in the Senate with reference to its relations to the Executive caused by the refusal of the Attorney General to transmit to the Senate certain documents concerning the administration of the Office of the District Attorney for the Southern District of South Alabama, and suspension of George W. Durkin, the late incumbent. The majority of the Senate Committee on the Judiciary concluded that it was entitled to know all that officially exists or takes place in any of the departments of Government and that neither the President nor the head of a department could withhold official facts and information as distinguished from private and unofficial papers.

In his reply President Cleveland disclaimed any intention to withhold official papers, but he denied that papers and documents inherently private or confidential, addressed to the President or a head of a department, having reference to an act entirely executive such as the suspension of an official, were changed in their nature and became official when placed for convenience in the custody of a public department. (Richardson, "Messages and Papers of the Presidents," vol. 8, pp. 378-379, 381.)

Challenging the attitude that because the executive departments were created by Congress the latter had any supervisory power over them, President Cleveland declared (Eberling, Congressional Investigation, p. 258):

"I do not suppose that the public offices of the United States are regulated or controlled in their relations to either House of Congress by the fact that they were created by laws enacted by themselves. It must be that these instrumentalities were created for the benefit of the people and to answer the general purposes of government under the Constitution and the laws, and that they are unencumbered by any lien in favor of either branch of Congress growing out of their construction, and unembarrassed by any obligation to the Senate as the price of their creation."

PRESIDENT THEODORE ROOSEVELT'S ADMINISTRATION

In 1909, during the administration of President Theodore Roosevelt, the question of the right of the President to exercise complete direction and control over heads of executive departments was raised again. At that time the Senate passed a resolution directing the Attorney General to inform the Senate whether certain legal proceedings had been instituted against the United States Steel Corporation, and if not, the reasons for its nonaction. Request was also made for any opinion of the Attorney General, if one was written. President Theodore Roosevelt replied refusing to honor this request upon the ground that "Heads of the Executive Departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever" (Congressional Record, vol. 43, pt. 1, 60th Cong., 2d sess., pp. 527-528).

When the Senate was unable to get the documents from the Attorney General, it summoned Herbert K. Smith, the Head of the Bureau of Corporations, and requested the papers and documents on penalty of imprisonment for contempt. Mr. Smith reported the request to the President, who directed him to turn over to the President all the papers in the case "so that I could assist the Senate in the prosecution of its investigation." President Roosevelt then informed Senator Clark of the Judiciary Committee what had been done, that he had the papers and the only way the Senate could get them was through his impeachment. President Roosevelt also explained that some of the facts were given to the Government under the seal of secrecy and cannot be divulged, "and

I will see to it that the word of this Government to the individual is kept sacred" (Corwin, "The President—Office and Powers," pp. 281, 428; Abbott, "The Letters of Archie Butt, Personal Aid to President Roosevelt," pp. 305-306).

PRESIDENT COOLIDGE'S ADMINISTRATION

In 1924, during the administration of President Coolidge, the latter objected to the action of a special investigating committee appointed by the Senate to investigate the Bureau of Internal Revenue. Request was made by the committee for a list of the companies in which The Secretary of the Treasury was alleged to be interested for the purpose of investigating their tax returns. Calling this exercise of power an unwarranted intrusion, President Coolidge said:

"Whatever may be necessary for the information of the Senate or any of its committees in order to better enable them to perform their legislative or other constitutional functions ought always to be furnished willingly and expeditiously by any department. But it is recognized both by law and custom that there is certain confidential information which it would be detrimental to the public service to reveal" (68th Cong., 1st sess., Record, April 11, 1924, p. 6087).

PRESIDENT HOOVER'S ADMINISTRATION

A similar question arose in 1930 during the administration of President Hoover—Secretary of State Stimson refused to disclose to the Chairman of the Senate Foreign Relations Committee certain confidential telegrams and letters leading up to the London Conference and the London Treaty. The Committee asserted its right to have full and free access to all records touching the negotiations of the treaty, basing its right on the constitutional prerogative of the Senate in the treaty-making process. In his message to the Senate, President Hoover pointed out that there were a great many informal statements and reports which were given to the Government in confidence. The Executive was under a duty, in order to maintain amicable relations with other nations, not to publicize all the negotiations and statements which went into the making of the treaty. He further declared that the Executive must not be guilty of a breach of trust, nor violate the invariable practice of nations. "In view of this, I believe that to further comply with the above resolution would be incompatible with the public interest" (S. Doc. No. 216, 71st Cong., special sess., p. 2).

PRESIDENT FRANKLIN D. ROOSEVELT'S ADMINISTRATION

The position was followed during the administration of President Franklin D. Roosevelt. There were many instances in which the President and his Executive heads refused to make available certain information to Congress the disclosure of which was deemed to be confidential or contrary to the public interest. Merely a few need be cited.

1. Federal Bureau of Investigation records and reports were refused to congressional committees, in the public interest (40 Op. A. G. No. 8, April 30, 1941).

2. The Director of the Federal Bureau of Investigation refused to give testimony or to exhibit a copy of the President's directive requiring him, in the interests of national security, to refrain from testifying or from disclosing the contents of the Bureau's reports and activities. (Hearings, vol. 2, House, 78th Cong. Select Committee To Investigate the Federal Communications Commission (1944), p. 2337.)

3. Communications between the President and the heads of departments were held to be confidential and privileged and not subject to inquiry by a committee of one of the Houses of Congress. (Letter dated January 22, 1944, signed Francis Biddle, Attorney General to Select Committee, etc.)

4. The Director of the Bureau of the Budget refused to testify and to produce the Bureau's files, pursuant to subpoena which had been served upon him, because the President had instructed him not to make public the records of the Bureau due to their confidential nature. Public interest was again invoked to prevent disclosure. (Reliance placed on Attorney General's Opinion in 40 Op. A. G. No. 8, April 30, 1941.)

5. The Secretaries of War and Navy were directed not to deliver documents which the committee had requested, on grounds of public interest. The Secretaries, in their own judgment, refused permission to Army and Navy officers to appear and testify because they felt that it would be contrary to the public interests. (Hearings, Select Committee To Investigate the Federal Communications Commission, vol. 1, pp. 46, 48-68.)

During the Truman Administration also the President adhered to the traditional Executive view that the President's discretion must govern the surrender of Executive files. Some of the major incidents during the administration of President Truman in which information, records, and files were denied to Congressional Committees were as follows:

Date	Type of Document Refused
Mar. 4, 1948----	FBI letter-report on Dr. Condon, Director of National Bureau of Standards, refused by Secretary of Commerce.
Mar. 15, 1948---	President issued directive forbidding all Executive departments and agencies to furnish information or reports concerning loyalty of their employees to any court or committee of Congress, unless President approves.
March 1948-----	Dr. John R. Steelman, Confidential Adviser to the President, refused to appear before Committee on Education and Labor of the House, following the service of two subpoenas upon him. President directed him not to appear.
Aug. 5, 1948----	Attorney General wrote Senator Ferguson, Chairman of Senate Investigations Subcommittee, that he would not furnish letters, memoranda, and other notices which the Justice Department had furnished to other government agencies concerning W. W. Remington.
Feb. 22, 1950---	Senate Res. 231 directing Senate Subcommittee to procure State Department loyalty files was met with President Truman's refusal, following vigorous opposition of J. Edgar Hoover.
Mar. 27, 1950---	Attorney General and Director of FBI appeared before Senate Subcommittee. Mr. Hoover's historic statement of reasons for refusing to furnish raw files approved by Attorney General.
May 16, 1951---	General Bradley refused to divulge conversations between President and his advisers to combined Senate Foreign Relations and Armed Services Committees.
Jan. 31, 1952----	President Truman directed Secretary of State to refuse to Senate Internal Security Subcommittee the reports and views of foreign service officers.
Apr. 22, 1952---	Acting Attorney General Perlman laid down procedure for complying with requests for inspection of Department of Justice files by Committee on Judiciary: Requests on open cases would not be honored. Status report will be furnished. As to closed cases, files would be made available. All FBI reports and confidential information would not be made available. As to personnel files, they are never disclosed.
Apr. 3, 1952----	President Truman instructed Secretary of State to withhold from Senate Appropriations Subcommittee files on loyalty and security investigations of employees—policy to apply to all Executive agencies. The names of individuals determined to be security risks would not be divulged. The voting record of members of an agency loyalty board would not be divulged.

Thus, you can see that the Presidents of the United States have withheld information of Executive departments or agencies whenever it was found that the information sought was confidential or that its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation. The courts too have held that the question whether the production of the papers was contrary to the public interest was a matter for the Executive to determine.

By keeping the lines which separate and divide the three great branches of our Government clearly defined, no one branch has been able to encroach upon the powers of the other.

Upon this firm principle our country's strength, liberty, and democratic form of government will continue to endure.

§ 2378a. Same: Policy of the Privilege. It may be said, then, that the extent to which this privilege has gone beyond "secrets of State" in the military or international sense is by no means clearly defined; and, furthermore, that it has not become a matter of precedent or even of debate in more than a few jurisdictions. Its scope and bearing are therefore open to careful examination in the light of logic and policy.

What are the reasons which have been advanced for this privilege, and how do they bear testing? They are sufficiently represented in the following passages:

"1640, *Earl of Strafford's Trial*, 3 How. St. Tr. 1427, 1441; Parliament was now striking at Charles I by prosecuting his chief political adviser; Sir Henry Vane having testified, as a member of the King's Council, that the defendant Strafford 'did say at the Council Board' that he would help his Majesty Charles I with force to reduce the kingdom, if Parliament remained obstinate, Lord Clarendon remarks: 'The ruin that this last act [of producing this testimony] brought to the King was irreparable; for * * * it was matter of horror to the counsellors to find that they might be arraigned for every rash, every inconsiderate, every imperious expression or word they had used there; and so made them more engaged to servile applications. It banished forever all future freedom from that board and those persons from whom his Majesty was to expect advice in his greatest straits; all men satisfying themselves 'that they were no more obliged to deliver their opinions there freely, when they might be impeached in another place for so doing'; and the evincing this so useful doctrine was without doubt more the design of those grand managers [of the prosecution] than any hope they had of receiving further information thereby."

"1820, DALLAS, C. J., *Home v. Bentinck*, 2 B. & B. 130, 162: 'What is the ground upon which these cases [of informers] stand, except it be the ground of danger to the public good, which would result from disclosing the sources of such informations? For no person would become an informer if his name might be disclosed in a court of justice and if he might be subjected to the resentment of the party against whom he had informed. Does not this reasoning apply closely to the case now before us—[a report by a court of inquiry to a commander-in-chief]—on the broad rule of public policy and convenience, that these matters, secret in their natures and involving delicate inquiry and the names of persons, stand protected? Now what is this proceeding but consulting with those who are bound to give the advice which is required as to the exercise of a public duty? And whether the case be that of the attorney-general of a province advising a governor, or an officer present at a court of inquiry directed to be held by the commander-in-chief, it is equally a case of advice and information given for the regulation of a public officer.'

"1860, POLLOCK, C. B., in *Beatson v. Skene*, 5 H. & N. 838, 853: 'We are of opinion that it cannot be laid down that all public documents, including treaties with foreign powers and all the correspondence that may precede or accompany them, and all communications to the heads of departments, are to be produced and made public whenever a suitor in a court of justice thinks that his case requires such production. It is manifest, we think, that there must be a limit to the duty or the power of compelling the production of papers which are connected with acts of State. As an instance, we would put the case of a British minister at a foreign Court writing in that capacity a letter to the Secretary of State for Foreign Affairs in this country, containing matter injurious to the reputation of a foreigner or a British subject; can it be contended that the person referred to would have a right to compel the production of the letter in order to take the opinion of a jury whether the injurious matter was written maliciously or not? We are of opinion that, if the production of a State paper would be injurious to the public service, the general public interest must be considered paramount to the individual interest of a suitor in a court of justice.'

"1888, FIELD, J., in *Hennessy v. Wright*, L. R. 21 Q. B. D. 509, 512: 'There are two aspects of this question. First, the publication of a State document may involve danger to the nation. If the confidential communications made by servants of the Crown to each other, by superiors to inferiors or by inferiors to superiors, in the discharge of their duty to the Crown, were liable to be made public in a court of justice at the instance of any suitor who thought proper to say "fiat justitia ruat coelum," an order for discovery might involve the country in a war. Secondly, the publication of a State paper may be injurious to servants

of the Crown as individuals; there would be an end of all freedom in their official communications if they knew that any suitor, that as in this case any one of their own body whom circumstances had made a suitor, could legally insist that any official communication, of no matter how secret a character, should be produced openly in a court of justice.'

Of these reasonings three things are to be said:

(A) The brunt of the argument is that *an official should be secured from liability* based on his official communications made in the course of duty. Nobody can dispute this general principle. But it signifies nothing for the law of Evidence. It signifies an exoneration from tortious or criminal liability. Whether and how far such exoneration should be conceded is a question of substantive law, and is now solved by that law liberally in favor of officials. But wherever that law has declined to concede an exoneration, and has predicated liability, all this reason for protection ceases, by hypothesis. It is a mockery to reserve, against righteous claims, a privilege of testimonial secrecy. This much seems plain. All the argument based upon hardship to officials may therefore at once be conceded; but for the purpose of testimonial privilege all such cases are irrelevant, being duly safeguarded by other means.

(B) The remainder of the argument consists in invoking secrecy for *acts of pending international negotiations or military precautions against foreign enemies*. This, too, may be conceded. There ought to be a protection for "secrets of State," in this narrow sense. But, this done, what remains? In only a few of the precedents has there been even a pretense that the matters actually preserved from disclosure concerned international facts of negotiation or defense. If they do not, then this reason is insufficient; for it is vain to claim secrecy on the ground that something else might have been asked for, which is in fact not asked for.

(C) The question is then reduced to this, Whether there are any matters of fact, in the possession of officials, concerning *solely the internal affairs of public business*, civil or military, which ought to be privileged from disclosure when material to be ascertained upon an issue in a court of justice?

1. Ordinarily, there are not. In any community under a system of representative government and removable officials, there can be no facts which require to be kept secret with that solidity which defies even the inquiries of a court of justice. "To cover with the veil of secrecy," said Patrick Henry,¹ "the common routine of business, is an abomination in the eyes of every intelligent man and every friend to his country." Such a secrecy can seldom be legitimately desired. It is generally desired for the purposes of partisan politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption. Whether it is the relations of the Treasury to the Stock Exchange, or the dealings of the Interior Department with public lands, the facts must constitutionally be demandable, sooner or later, on the floor of Congress. To concede to them a sacrosanct secrecy in a court of justice is to attribute to them a character which for other purposes is never maintained—a character which appears to have been advanced only when it happens to have served some undisclosed interest to obstruct investigation into facts which might reveal a liability.²

2. It is urged, to be sure (as in *Beatson v. Skene*), that the "public interest must be considered paramount to the individual interest of a suitor in a court of justice." As if the public interest were not involved in the administration of justice. As if the denial of justice to a single suitor were not as much a public injury as is the disclosure of any official record. When justice is at stake, the appeal to the necessities of the public interest on the other side is of no superior weight. "Necessity," as Joshua Evans said,³ "is always a suspicious argument, and never wanting to the worst of causes."

What is the *necessity* for secrecy in such matters? To justify a privilege, it must be, on settled principles (*ante*, §§ 2192, 2285), a secrecy indispensable to induce freedom of official communication or efficacy in the transaction of official business, and it must further be a secrecy which has remained and would have remained inviolable but for this compulsory disclosure. In how many transactions of official business is there ordinarily such a secrecy? After guaranteeing to official communications and acts an immunity from liability to civil or criminal consequences, and after further eliminating those acts and communications which

¹ Elliot's Debates, III, 170.

² The Federal Government's deliberate obstruction, by this means at one time, of the enforcement of the State liquor laws was reprehensible. In *Stegall v. Thurman*, Fed., cited *supra*, n. 8, Newman, J., has some sensible remarks on the seaminess of the Federal government's removing obstructions of this sort from the ordinary course of justice in the State courts.

³ Arguing in *Home v. Bentinck*.

are in no sense secret from their inception, what remains of real and intrinsic secrecy of transaction? If there arises at any time a genuine instance of such otherwise inviolate secrecy, let the necessity of maintaining it be determined upon its merits. But the solemn invocation, in the precedents above chronicled, of a supposed inherent secrecy in all official acts and records, has commonly been only a canting appeal to a fiction. It seems to lend itself naturally to mere sham and evasion.

The leading case of *Beatson v. Skene* is a notable example. The plaintiff, Skene, was a general of cavalry; at the close of the Crimean war he was superseded in command, and resigned; an investigation into the state of the corps was made by General Shirley, whose secretary and commissioner the defendant Beatson was; the defendant reported to his superior that the plaintiff had stirred up mutiny in the corps, and afterwards so testified as a witness before a military court of inquiry held to investigate General Shirley's alleged libel on the plaintiff; for this testimony the plaintiff's suit for libel was brought, and he sought production, in his proof, of the court's minutes of the defendant's testimony, and of the plaintiff's own letters to the Secretary of War. Now a plea of privilege in the substantive law might immediately have disposed of the matter. Since it did not, the case placed the defendant in the position of having uttered an unjustifiable libel on the plaintiff. To refuse the production of the desired documents was therefore virtually to deprive the plaintiff of his means of proving a just claim. And yet to protect the defendant, as the Court did, by placing this refusal on the ground of the secrecy of State affairs, was to lay hold of the merest fiction—first, because the topic involved was only one of the plaintiff's personal conduct in his own cavalry corps; next, because the whole subject and its details had long and notoriously been the theme of military and public gossip, and was in its inception known to scores of persons; and, again, because the very Court which appealed to this inviolable secrecy for withholding the notes of the testimony permitted a person who had been present at the military court to prove publicly the same oral testimony of the defendant which was recorded in the suppressed minutes.

3. With such pharisaic shams and resounding incongruities is the rule replete in almost every instance.⁴ Rested upon such fictions, and applied in such a spirit, it tends to become merely a technical advantage on the side of that party who happens to be interested as an official and to be in possession of important proof. Let John Doe sue a neighbor for encroaching on his boundary line, and he may compel the neighbor to produce the documents which vindicate Doe's just claim. But let him sue a colonial officer for exploiting his land or imprisoning his person—let him sue a postmaster for destroying his business by refusing the use of the mails, or a revenue collector for the illegal impounding of goods—let him be the complainant against any government official for any oppressive conduct, and the same discovery of the facts is refusible by law, provided only that the wrongdoer is sufficiently strong in interest with his superiors to induce them to invoke the privilege of official secrecy. The time has not yet come, with us, when such deliberate combination for the oppression of citizens by officials is rife. But the vast extension, in modern times, of administrative laws regulating the affairs of the individual citizen, is presenting a large scope for this claim of privilege. The possibilities of such abuse are plainly latent in this supposed privilege. There is needed only the willingness to exercise them. The liquor-tax cases of a former generation show how simple the expedient would be, *mutatis mutandis*, in a thousand cases, and how effective as an obstruction to justice and a refuge for cowardly oppressors. Rules of law much more innocent in appearance have been made to serve evil purposes upon a large scale. "No nation" (in the words of a great American jurist⁵), "ever yet found any inconvenience from too close an inspection into the conduct of its officers. But many have been brought to ruin, and reduced to slavery, by suffering gradual imposition and abuses which were imperceptible only because the means of publicity had not been secured."

4. The practical operation and abuse of the supposed privilege often comes about in the following way:

A general regulation of a Department or Bureau or Board, or (sometimes) a general provision in a statute creating the governmental agency, forbids disclosure of any official records without authority of the Departmental head. In general

⁴ *E. g.*, *Gugy v. Maguire*, *Hartranft's Appeal* and other cases *ante*, especially those of the Federal liquor-tax receipts.

⁵ Edward Livingston, *Works*, I, 15.

terms, it is usually aimed simply at imposing upon the staff a proper silence in everyday intercourse outside of the office and at defending the records from the intrusive scrutiny of the public having no interest therein. Here is a sample of such a general regulation:⁶

"Federal Social Security Board, Regulation No. 1, par. 1: 'No member, officer, or employee of the Board, except as authorized by this regulation or otherwise expressly authorized by the Board, shall produce or disclose to any person or before any tribunal, directly or indirectly, whether in response to a subpoena or otherwise, any record (including any file, letter, application, claim, return, report, or other paper or document) or any information acquired therefrom or otherwise officially acquired, pertaining to any person'; par. 2: 'Any request or demand for any such record or information, disclosure of which is forbidden by this regulation, shall be declined upon the authority of this regulation. [1] If any member, officer, or employee of the Board is sought to be required, by subpoena or other compulsory process, to produce such record or give such information, he shall respectfully decline to present such record or divulge such information, basing his refusal upon this regulation.'"

This general order becomes a routine dogma in the minds of all subordinates. An application now arrives for a copy of a record material in litigation, either in a suit between private parties or in a suit by or against the government. The application is distributed, from the receiving clerk, along the line to the appropriate bureau, section, or division. The subordinate at that lowest point, obsessed by the general dogma against disclosure, prepares a reply denying the application; he will usually not have the initiative or the courage to propose an exceptional use of discretion in favor of granting the application. This draft reply is sent up, "through channels" (as the phrase goes), past two or more intervening superiors (each one treating it in routine fashion), till it reaches the Departmental head or other chief officer whose signature is necessary. Arriving in a ponderous pile of daily draft correspondence, it receives that necessary signature without further consideration. So the record cannot be had in the litigation; the case goes on without it; the investigation of the facts is obstructed; and maybe injustice is done.

Thus, the chief officer himself is rarely given an opportunity to pass intelligently upon the precise need for that document in the litigation or upon the actual extent to which any important State interest might demand its withholding from use in the litigation; and in his refusal he gives to the Court no explanation of the circumstances deemed to justify it.

That a privilege so exercised is unwholesome and indefensible, must be apparent.

Following are two modern examples of the manner in which injustice can be done by the recognition of a general privilege exercised under such conditions:

"1937, *Christine Maynard v. Stinson Aircraft Co.* (Circuit Court of Wayne Co., Michigan, date not stated; Commerce Clearing House, Aviation Law Service, Report No. 31, Dec. 2, 1937, p. 1253). The plaintiff's airplane, made by the defendant, took fire when in transit from Chicago to Springfield, and the plaintiff suffered injury from the fire; the details are not mentioned in the report. The plaintiff's claim was based on negligence of the manufacturer-defendant in using a defective design for the airplane. The alleged defect consisted in two principal items, first that the exhaust stacks, in projecting only one inch from the skin of the fuselage, were too short to carry flame or vapor far enough away into the air, and secondly, that the carburetor drain was also too short, as well as too close to the exhaust stacks; so that, as a result of these two features, gasoline escaped from the carburetor drain pipe and adhered to the underbody of the plane, and that there it was ignited by hot gasses from the exhaust stacks. There was expert evidence on these main items, as well as the consequent details. The Court

⁶ Many other instances will be found cited *ante*, § 2377.

The only correct formula, yet found in legislation, for establishing a desired privilege for information required by a regulatory statute from the citizen is the following: St. 1935, Aug. 9, Motor Carriers, being Part II of the Interstate Commerce Act, § 222: "(d) (Disclosure of information by special agent or examiner; penalty). Any special agent or examiner who divulges any fact or information which may come to his knowledge during the course of the examination of the accounts, records, and memoranda of motor carriers or brokers as provided in section 320 (b), except as he may be directed by the Commission or by a court of competent jurisdiction or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$5,000 or imprisonment for a term not exceeding two years, or both. * * *

"(f) (Giving information in response to legal process, or to government officers or to other carriers for adjustment of rates permitted.) Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States or of any State, Territory, or District thereof, in the exercise of his power, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes or to another carrier or broker, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers or brokers").

left the question of fact to the jury, who found for the plaintiff in the sum of \$27,500.

"On the issue of faulty design, the defendant offered the approved 'type certificate' of the Federal Bureau of Air Commerce, duly stamped by the Bureau. The Court refused to accept the certificate by itself, without testimony or deposition of the person making it. This part of the ruling was defensible, on the ground that at common law, such certificates are inadmissible as hearsay statements and that the State of Michigan has no statute authorizing it, nor is there a Federal statute. However, the Court was ready to accept the certificate when deposed to by the official making it, on interrogation as to 'what examination was made of these precise plans that have been offered in evidence here.' The language of the Court was as follows: 'It is further claimed—it was the claim at the outset in the opening statement to the jury by Mr. Miller that the defendant company would prove that these plans had been submitted to the engineers of the Department of Commerce and had been by them approved as being in accordance with standard and accepted practice. There is no doubt that the plans that have been offered in evidence bear the stamp of the Department of Commerce, the Division of Aeronautics of the Department of Commerce of the United States. There is testimony here that an inspector of the Department of Commerce inspected this plane before it was licensed for sale. The fact of that inspection is established. What inspection was made is not established. The testimony is offered here, and is given here, of employees or officers of the Stinson Aircraft Company that a United States inspector did appear and did examine the plane, but they cannot testify as to what examination he made. Only the man who made the investigation can testify what kind of an examination he makes, and that man has not been produced as a witness here in this case. * * * That certificate has been offered, but it has not been accepted in evidence. And the reason why it has not been accepted in evidence was that the defendant company went to Washington for the express purpose of taking the testimony of employees of the Department of Commerce, the Division of Aeronautics, for the purpose of taking their testimony as to what examination was made of these precise plans that have been offered in evidence here. The witnesses were instructed (as appears by depositions that have been offered in evidence here but not read to the jury because it was not necessary to do so) it appears that under the instructions of the attorney for the Secretary of Commerce the witnesses were not permitted to answer the question whether they ever examined these plans or whether anyone for the Department of Commerce ever made any examination of the plans, or, if they did make an examination, who made it and what kind of an examination was made. Therefore, it affirmatively appearing that the testimony was denied to the defendants in this case by the act of the officer of the United States Government, it becomes impossible for this Court to receive that certificate in evidence and turn it over to the jury for their consideration. The plans might have been carefully checked by the experts of the United States Government. Then again they might not. The parties were denied the opportunity by Federal officials to find out. * * *'

"So, what happened when the defendant sought to take the depositions in Washington of the officials who collaborated in making the certificate? 'Under instructions from the attorney of the Secretary of Commerce,' says the opinion, 'the witnesses were not permitted to answer the questions whether they had examined these plans, or whether any one for the Department of Commerce ever made any examination of the plans, or, if they did make an examination who made it and what kind of an examination was made.'

"What is that 'approved type certificate'? It is one of the two certificates that testify to the airworthiness of aircraft. Without them, no aircraft can be lawfully navigated. The type certificate (Civil Air Regulations 1938, § 01.15) certifies that 'the type of aircraft or component [i. e. detail of structure] as represented by authenticated data in the form of specifications, descriptions, and drawings on file * * * has been found to be suitable as a basis for the manufacture of airworthy aircraft or component constructed in accordance with such data.' Before a craft can be built, this 'type' must be certified as a safe one. Then when the craft is built, it is inspected, and if built in all details according to type, that particular craft receives the 'airworthiness certificate'—the second necessary document. The former document represents an examination of technical details so complex and so minute that the mere enumeration of them in the Regulations occupies one hundred pages.

"It was this type certificate which was offered by the defendant in the present case; and a perusal of it would (as alleged) show that the specific detail of con-

struction alleged by the plaintiff to constitute a defect was a detail approved for airworthiness by the technical engineers of the Department of Commerce charged with the duty of approving types of aircraft construction. This certificate, moreover, represented the judgment of competent disinterested engineers whose testimony would be far more satisfactory than that of a partisan witness. Moreover there is nothing secret about it, so far as the government is concerned; employees of the Civil Aeronautical Authority must of course keep the data confidential (Regulations 01.48, 01.58), but that rule is only for the preservation of the manufacturer's trade secrets, if any, from disclosure to competitors; and when the manufacturer himself desires to publish the details (as here, to defend himself against a charge of negligence) all reason of confidentiality disappears; indeed, the detail here involved was always open to inspection by any observer.

This type certificate then was the very document that could protect the manufacturer from a charge of defective construction of this aircraft. The details involved no fact of confidential interest to the government. The certificate was required only for the protection of the public against non-airworthy types of craft. The holder of such a certificate had every right to the testimony of the government inspector; for the only testimony called for was the statement that the inspector had done precisely that which the Regulations required him to do.

This refusal of the Department to allow such testimony to be given was a gross breach of public duty and a grievous wrong to the manufacturer. It was, however, merely a sample of the dangerous arrogation of lawless interference with justice that is sanctioned by other administrative authorities.

"1935, *Ex parte Sackett* (9th C. C. A., 74 Fed. 2d 922): In a 'private action' brought by the L. S. S. Co. against the F. & K. Co. to recover damages and penalty for injury caused by violation of the Anti-Trust law, it appeared that correspondence and records of the F. & K. Co. had been destroyed, but that copies had been made by the Department of Justice in preparing for a suit under the Anti-Trust Act to enjoin violations of the law by that party; the L. S. S. Co. applied to the Department of Justice for use of the copies and was refused, the custodian pleading privilege, on the ground that the Attorney General by special order had forbidden their production, because 'it is against public policy for the Department to produce any part of the documents obtained confidentially when the purpose for which documents are sought is for the furtherance of private litigation'; the trial Court held the custodian in contempt for refusing to obey the subpoena; on habeas corpus, he was discharged and the privilege recognized; following *Boske v. Comingore, supra*, § 2378. The main support of the opinion is the U. S. Code, tit. 5, § 22, authorizing the head of each department 'to prescribe regulations, not inconsistent with law, for * * * the custody, use, and preservation of the records,' etc.; under which statute Rule 65 for the division of investigation provides that 'employees are hereby prohibited from presenting such records or information in a State court, whether in answer to a subpoena duces tecum or otherwise; * * * in a Federal court, consideration must be given to each individual case as it arises; * * * the question of disclosing privileged information is a matter entirely in the discretion of the head of the department.'

"As to all this, (a) the statute was erroneously construed; it merely places the custody of the records in the head of department, and his authority to regulate their use must be 'not inconsistent with law,' and the law has always been that a Court is the authority to determine what evidence is privileged or not; the general language of the statute cannot be construed to imply the creation of a new privilege. (b) The words of the regulation No. 65, that the disclosure of information is 'entirely in the discretion of the head of the department,' arrogate to the department head a judiciary power which would be unprecedented and intolerable. (c) The ruling in *Boske v. Comingore* is now merely a dead echo of a long-past era of antagonism between Federal and State policies, when a few States penalized intoxicating liquor but the Federal government obtained a substantial revenue from a tax on whisky, etc.; so that in a prohibition State the Federal government felt bound to shield from State prosecution the liquor-dealers in that State from whom it obtained a revenue; so the general attitude in Rule 65, par. 2, that the Federal department should have any different attitude toward a State court is wrong, unworthy of the agents of justice. (d) The ruling in this *Sackett* case was limited to justifying the refusal of the employee of the Department, and held that he was bound to obey his Department regulation. But the regulation itself directs the employee in such case to refer the issue to the head of the Department, who will then transmit the information to the Court calling for it, unless 'circumstances make it necessary to decline.' Now in this case the employee had in fact

referred the matter to the Attorney General and had received the above-named special order declaring the matter to be nondisclosable. Virtually, then, the Court's ruling yielded to the Attorney General's claim. The opinion closes by saying that 'whether the Attorney General could be compelled to produce * * * is a matter which is not involved.' Yet it was virtually involved, and the Court of Appeals should have faced the question and should not have abdicated its constitutional power."

Here then was a party to a civil suit deprived of his proof by the opponent's destruction of the materials and by the government's refusal to produce the only available copies of those materials,—a refusal based on nothing but an abstract generality of "public policy."

What should have been done by the Court was to order the Attorney General to appear and state the specific manner in which public policy was claimed to be involved, and then the Court to determine whether that claim was valid.

The menace which this supposed privilege implies to individual liberty and private right will justify us in repudiating it before it is too solidly entrenched in precedent. More than once have plain warnings been given us of its potency for abuse:

"1807, Mr. *Botts*, arguing, in *Aaron Burr's Trial*, Robertson's Rep. II, 517: 'I can never express, in terms sufficiently strong, the detestation and abhorrence which every American should feel towards a system of State secrecy. It never can conduce to public utility, though it may furnish pretexts to men in power to shelter themselves and their friends and agents from the just animadversion of the law,—to direct their malignant plots to the destruction of other men while they are themselves secure from punishment. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of the United States have a right to know every public act, every thing that is done in a public way by their public functionaries. They ought to know the particulars of public transactions in all their bearings and relations, so as to be able to distinguish whether and how far they are conducted with fidelity and ability; and with the exception of what relates to negotiations with foreign nations, or what is called the diplomatic department, there ought to be nothing suppressed or concealed. * * * I will again predict that, if a secret inquisitorial tribunal be established by your decision now, * * * if you determine that we be deprived of the benefit of important written or oral evidence by the introduction of this State secrecy, you lay, without intending it, the foundation for a system of oppression. If these things be established, to go down to posterity as precedents, the inevitable consequences will be that, whenever any man in the United States becomes an object of the vengeance or jealousy of those in power, he may easily be ruined. A wicked executive power will have nothing to do to effect his destruction but to foment divisions in this country, to encourage and excite accusations by its officers, to deny the use of all public documents that may tend to the justification of the accused, or to render the attainment of exculpatory evidence dependent on the arbitrary whim of its prosecuting officers, and he will be condemned to sink without the smallest effectual resistance.'

"1863, MONDELET, J., in *Gugy v. Maguire*, 13 Low. Can. 33, 38 (upon a Provincial Secretary's refusal to produce the report of a superintendent of police); 'It has been pretended, as in the case of *Home v. Bentinck*, that it is necessary for the interest of the public that secrecy should be had in such and similar matters. * * * I cannot, I ought not, for a moment, as a judge living and administering justice under constitutional institutions, admit such a monstrous doctrine,—a doctrine which prostrates to the ground that liberty, that protection to life, honour, property, and to civil and religious liberty, which this country has so much right to boast of, too valuable to be thus thrown away and scattered to the four winds of Heaven! A doctrine which reduces the judge on the Bench to an automaton, who, like the statue of Don Juan, will bend at the bidding of any reckless politician, whatever shade of politics or party spirit it may be his misfortune to be tainted with, or of any unprincipled member of society, whoever he is or may be, who is desirous of, or has interested in being screened, or of screening others, from the responsibility his misdeeds have subjected them to. If that doctrine be law, or rather, were law, it would be appalling. It would be such that no one would feel himself secure. I cannot, I must not assent to it. It is not law. It is unconstitutional. It is tyrannical. It is monstrous. And it must more glaringly appear so, when we come to reflect that an attempt is made to give it currency, and to fasten it on the judges of the land, under constitutional responsible government. Such a pretension reminds me of

what was so often done in France, under the old régime, by means of the maxim then looked upon as sacred by the government. The following will, much better than I could myself, illustrate this branch of the subject: "Vainement les Parlements et les autres Cours souveraines élevaient une voix courageuse contre cet intolérable abus; la Cour ne répondait qu'en lançant de nouvelles lettres de cachet, ou par cette maxime, 'qu'il ne faut pas soumettre à l'inspection des tribunaux le secret de l'administration et l'exécution des ordres du roi'; d'où l'on concluait qu'il n'existait aucun recours contre les ordres donnés par ses ministres" * * * I never can, and I trust never shall acknowledge as a true one, the paradoxical proposition, that under the protection of the freest and best constitution in the world, and the most solemn imperial statute guaranteeing our rights, an action may be instituted against any one who has caused damage to his fellow subject, but that it will be in the power of a secretary, or of any member of the government, to deprive the injured of the evidence which he may adduce to entitle him legally to a verdict or a judgment * * * [It is] a dangerous, monstrous pretension'

"1877, AGNEW, C. J., in *Hartranf's Appeal*, 85 Pa. 433, 458: 'There were fearful crimes committed on the 21st and 22d of July. These are the undoubted subjects of judicial inquiry in the mode prescribed by law—to wit, through a grand jury. In that unknown and vast multitude of citizens and soldiers, who were guilty? Who were innocent? By the 22d section of the Declaration of Rights, it is declared that the "military shall in all cases, and at all times, be in strict subordination to the civil power." The military took many lives—the multitude some. Did the military act under the authority of the civil power? This is one of the first points of inquiry by a grand jury, for it involves the question, whether their acts were murder, manslaughter, excusable or justifiable homicide. Thus the evidence of civil authority becomes essential to the inquiry. Did the Governor, as commander-in-chief, command their presence, and aid in quelling the violence of the mob? Or was his authority assumed by unauthorized persons? These are questions which the Governor alone, as a witness, might be able to answer satisfactorily, by competent testimony in a common-law proceeding. They are not State secrets, but acts of authority in their very nature public, and cannot be concealed from the inquiry of the law. The rights of life and public safety are too sacred to be subordinated to any right to conceal the authority by which they are destroyed or jeopardized. If the executive authority was duly given, he neither can nor ought to without the knowledge which acquits of crime the military acting under his own orders. Indeed, from the character of our excellent Governor, he would not for a moment refuse to come to their rescue, if he believed his duty demanded it. On the other hand, if his authority was unlawfully assumed, or was simulated, or was exercised at the bidding of persons without right—an inference which his absence in California very naturally raises—and the military have been involved in an unlawful act, his duty and the rights of the people demand his testimony, that the parties who have thus misled them may be reached. This is no State secret as to them, but its concealment is a crime against society, which no one who knows the Governor would attribute to him, if aware of his duty. * * * In every respect of personal and official duty, the State has a right to the disclosure. A contrary doctrine strikes at the essential and fundamental principles of a free government as set forth in the Declaration of Rights.'

"1931, LORD BLANESBURGH, in *Robinson v. State of South Australia* [1931] App. Cas. 704 (action by a bailor, who had placed wheat under control of the State, for wheat damaged by negligence; privilege was claimed for communications between certain departmental officers, on the ground that disclosure would be 'contrary to the interests of the State'): 'That State documents are frequently absolutely privileged from production was, of course, not disputed by the appellant, nor was the supreme duty of the Court to protect the privilege where it exists in any way canvassed. The effort of learned counsel for the appellant was to define the limits of the protection. * * * First of all, it is, their Lordships think, now recognized that the privilege is a narrow one, most sparingly to be exercised. * * * Its foundation is that the information cannot be disclosed without injury to the public interests, and not that the documents are confidential or official, which alone is no reason for their nonproduction. In view of the increasing extension of State activities into the spheres of trading business and commerce, and of the claim of privilege in relation to liabilities arising therefrom now apparently freely put forward, the observations [* * * of a former judge] stand on record to remind the Courts, that while they must duly safeguard genuine public interests, they must see to it that the scope of the admitted privilege is not in such litigation extended. Particularly must it be remembered in this connection that the fact that production of the documents might in the particular

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litigation prejudice the Crown's own case or assist that of the other side is no such "plain overruling principle of public interest" as to justify any claim of privilege. The zealous champion of Crown rights may frequently be tempted to take the opposite view, particularly in cases where the claim against the Crown seems to him to be harsh or unfair. But such an opposite view is without justification. In truth, the fact that the documents, if produced, might have any such effect upon the fortunes of the litigation is of itself a compelling reason for their production—one only to be overborne by the gravest considerations of State policy or security."

Assuming the privilege to be kept within proper limits, how then shall it be given effect?

To that question we now come.

§ 2379. Same: Who determines the Necessity for Secrecy. So far as the privilege has legitimate scope, it raises the question how the existence of the facts which make it applicable is to be determined. If it extends only (as its just limits prescribe) to matters involving international negotiations or military precautions against a foreign enemy, the presence of such matters in the documents or communications sought to be disclosed must by some authority be predetermined, before the privilege can be deemed applicable. If it extends to the larger scope indicated by the English rulings, still the existence of a necessity for secrecy must be in each instance declared. Who shall make this determination?

Obviously, and by analogy with other privileges, the Court (*ante*, §§ 2193, 2271, 2322; *post*, § 2550). But the judge (urges the learned incumbent of that office, in *Beatson v. Skene*¹) "would be unable to determine it without ascertaining what the document was,"—surely an unavoidable process; "which inquiry," however, it is added, "cannot take place in private,"—a singular assumption. It would rather seem that the simple and natural process of determination was precisely such a private perusal by the judge. Is it to be said that even this much of disclosure cannot be trusted? Shall every subordinate in the department have access to the secret, and not the presiding officer of justice? Cannot the constitutionally coordinate body of government share the confidence? It is ludicrous to observe a chief magistrate, as in *Beatson v. Skene*, solemnly protesting his incompetence to share the knowledge of a fact which had never been secret at all and had for months been spread abroad by the hundred tongues of scandal.

The truth cannot be escaped that a Court which abdicates its inherent function of determining the facts upon which the admissibility of evidence depends will furnish to bureaucratic officials too ample opportunities for abusing the privilege. The lawful limits of the privilege are extensible beyond any control, if its applicability is left to the determination of the very official whose interest it may be to shield a wrongdoing under the privilege. Both principle and policy demand that the determination of the privilege shall be for the Court; and this has been insisted upon by the highest judicial personages both in England and the United States: * * *

¹ 5 H. & N. 838.

Staff of the special subcommittee were asked to submit a brief memorandum on the nature of D. H. Overmyer's stock interest in the 5 permittee corporations after the FCC's approval of their transfer to U.S. Communications Corp., a subsidiary of AVC Corp. (AVC) on December 8, 1967.

According to the Stock Pledge and Escrow Agreement dated March 28, 1967, one of the CP sale documents Overmyer executed with AVC, Overmyer owned capital stock in the 5 permittees as follows:

Permittee	Authorized shares	Shares issued and outstanding	Shares in name of Overmyer
D. H. Overmyer Broadcasting Co., Inc., a Texas corporation.....	10,000	100	100
D. H. Overmyer Communications Co., Inc., a Georgia corporation.....	500	10	10
D. H. Overmyer Broadcasting Co., Inc., an Ohio corporation.....	500	5	5
D. H. Overmyer Communications Co., Inc., a Pennsylvania corporation...	500	10	10
D. H. Overmyer Communications Co., Inc., a California corporation.....	5,000	5,000	14,000

¹ 1,000 shares are registered in the name of Sherill C. Corwin. Overmyer has an option to purchase all of such shares from him.

Under the terms of section I of a Stock Purchase Agreement, dated March 28, 1967, Overmyer sold AVC "80% of the outstanding capital stock of each of the five TV companies" . . . (page 2). Thus, his 20% stock ownership, retained in these permittees upon their sale to AVC, was as follows:

Permittee:	Shares presently held by Overmyer
D. H. Overmyer Broadcasting Co., Inc., a Texas corporation.....	20
D. H. Overmyer Communications Co., Inc., a Georgia corporation....	2
D. H. Overmyer Broadcasting Co., Inc., an Ohio corporation.....	1
D. H. Overmyer Communications Co., Inc., a Pennsylvania corporation..	2
D. H. Overmyer Communications Co., Inc., a California corporation...	(¹)

¹ An option to purchase 1,000 shares now held by Sherill C. Corwin.

According to FCC records, the names of the five permittees have recently been changed as follows:

PRIOR NAME	NEW NAME
D. H. Overmyer Broadcasting Co., Inc., U.S. Communications of Texas, Inc. a Texas corporation.	U.S. Communications of Texas, Inc.
D. H. Overmyer Communications Co., U.S. Communications of Georgia, Inc. Inc., a Georgia corporation.	U.S. Communications of Georgia, Inc.
D. H. Overmyer Broadcasting Co., Inc., U.S. Communications of Ohio, Inc. an Ohio corporation.	U.S. Communications of Ohio, Inc.
D. H. Overmyer Communications Co., U.S. Communications of Pittsburgh, Inc. Inc., a Pennsylvania corporation.	U.S. Communications of Pittsburgh, Inc.
D. H. Overmyer Communications Co., U.S. Communications of California, Inc. Inc., a California corporation.	U.S. Communications of California, Inc.

U.S. Communications Corp., a subsidiary of AVC, was assigned all of the latter's right, title and interest in the stock purchase and other related agreements with Overmyer regarding these five permittees. The five permittees are subsidiaries of U.S. Communications Corp.

ITEM 32

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., November 1, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Transmitted herewith is material needed to supplement the testimony of the Commission during the hearings of July 17, 19, and 31 and August 1, 1968, on the Overmyer transaction.

At pages 390-392 of the transcript, questions were asked about the sanctions available to and used by the Commission if misrepresentations by applicants or licensees were indicated. Attachment A relates the Commission's concern with misrepresentations and the actions taken by it upon indication that licensees or applicants have misrepresented facts.

At page 410 the staff was requested to furnish a list of precedents governing the situation where a licensee makes misrepresentations in one application and the Commission has moved against related authorizations held by the licensee. Attachment B contains this information.

At pages 453-454 a request was made for specific citations of precedents which were relied upon in the Overmyer transaction. Attachment C lists the precedents with explanations of the Commission's actions.

At pages 459-462 the subject of collateralization of the loans to Overmyer was the subject of questions. Attachment D relates the basis on which the determination was made that the loans were collateralized. No single document listing the properties was relied upon at the time the staff memorandum was prepared.

At pages 460-61 a request was made for the documentary basis for the statement in paragraph 17 of the Memorandum to the Commission (Mimeo 6738) that Overmyer had suffered losses in his efforts to establish a fourth network. Attachment E provides this information.

Sincerely yours,

ROBERT T. BARTLEY,
Acting Chairman.

ATTACHMENT A

COMMISSION CONCERN WITH MISREPRESENTATIONS

I. REFERRALS TO DEPARTMENT OF JUSTICE UNDER 18 U.S.C. 1001 FOR CRIMINAL PROSECUTION

In recent years the Commission has formally referred at least 18 misrepresentations or fraud cases to the Department of Justice for possible prosecution under Title 18 U.S.C. § 1001. In addition, on numerous other occasions over the past four years, the Commission on an informal basis has advised the Department of Justice of other possible violations of § 1001. Our records indicate that only four of the formally referred cases have been prosecuted by the Department of Justice. Justice has refused to prosecute seven of the referred cases. An equal number are pending action by Justice.

II. COMMISSION PROCEEDINGS ON QUESTIONS OF MISREPRESENTATION

From the beginning of 1965 to October 2, 1968, sixty-one applications or licenses became the subject of hearings to determine whether representations made to the public or Commission were true and/or complete. In addition to these 61 hearings, the Commission on reconsideration of grant of an application for extension of time to construct a broadcast facility considered a subsequently alleged question of misrepresentation and having determined that there was none, affirmed the grant (4 FCC2d 462 (1966)). The Commission is now studying an application seeking authority to transfer control of one FM and three AM stations. The Commission had previously granted the licensee permission to transfer the stations (BTC-5402), but on the basis of subsequently received allegations of misrepresentations by the transferors, the Commission has vacated the grant and set aside the application pending further order (12 FCC2d 650 (1968)).

Of the 61 matters on which there were hearings, 9 were hearings on orders to show cause why a license to operate a broadcast facility should not be revoked, 29 were designated hearings on applications to renew a broadcast license, and the remaining 23 were designated hearings on applications to become licensees. When related parties or factual circumstances were involved, the hearings were consolidated with the result that there were 33 separate hearing proceedings.

The attached material identifies the 61 matters set for hearing and indicates the disposition or current status of each proceeding. The list does not include comparative hearings between mutually exclusive applications where lack of candor or failure to report significant facts were placed in issue as a comparative factor.

APPLICANTS OR LICENSEES DESIGNATED FOR HEARING ON MISREPRESENTATION ISSUES THROUGH OCT. 17, 1968

Docket No.	Location	Licensee	Designated	Status
17945 BR-2540	Clifton Forge, Va.	Image Radio, Inc (WCFV)	Jan. 24, 1968	Hearing will commence during November and December 11 FCC 2d 223.
17946 BR-3487	Roanoke, Va.	Impact Radio, Inc. (WPKI)	do	Proposed findings have been filed; awaits ID.
17977 BR-2697	Washington Court House, Ohio	The Court House Broadcasting Co.	Jan. 24, 1968	do
17978 BR-3305	Chillicothe, Ohio	do	do	do
17979 BR-2714	Wellston, Ohio	The Family Broadcasting Co., Inc.	do	do
18038	Sacramento, Calif.	Dale W. Flewelling	Feb. 21, 1968	Licensee was ordered to forfeit \$5,000 and sell his station to unrelated party.
18079	Corvallis, Oreg.	Radio Broadcasters, Inc.	Mar. 13, 1968	Hearing was held in Corvallis in September and rebuttal hearing will be held during November.
18080	Central Point, Oreg.	James L. Hutchens	do	do
18081 BLH-3380	Corvallis, Oreg.	Radio Broadcasters, Inc (KFLY-FM)	do	do
18082 BLH-3854	do	do	do	do
18083 BP-16848	do	do	do	do
18084 BPH-5979	Gold Beach, Oreg.	James L. Hutchens	do	do
18086 BR-4519	Central Point, Oreg.	do	do	do
18085 BR-3059	Wagoner, Okla.	Lum A. Humphries	do	Hearing will commence in Tulsa, Okla., in November 1968.
18087 BPH-5558	Vinita, Okla.	Vinita Broadcasting Co., Inc.	do	do
18223 BR-411	San Antonio, Tex.	Howard W. Davis, t/r/as the Walmac Co. (KWAC)	June 19, 1968	Renewal hearing is to commence in October 1968. 13 FCC2d700.
18224 BRH-691	do	Howard W. Davis, t/r/as the Walmac Co. (KISS-FM)	do	do
18240	Tulare, Calif.	Blue Ridge	July 3, 1968	Revocation proceeding is to commence Oct. 22, 1968, in California.
18285 BR-1953	Lexington, Ky.	Bluegrass Broadcasting Co., Inc.	July 31, 1968	Renewal hearing is scheduled to commence in October 1968 in Lexington, Ky.
18343 BR 1758	Ogden, Utah	North American Broadcasting Co.	Oct. 9, 1968	Renewal applications of 2 Utah AM stations set for hearing on alleged misrepresentations made by principal owner awaiting hearing (FCC 68-989).
18344 BR-3443	Golden, Colo.	George I. Norman, Jr., and Phillip B. venturers D/B as Norman Broadcasting.	do	do
18349, 18350, 18351, 18352, 18353	Medford, Oreg.	Medford Broadcasters, Inc.	Oct. 2, 1968	Awaiting pretrial conference.
BTC-224, BR-2641, BR-3775, BPH-424, BPH-5429	do	W. H. Hansen, R. H. Hansen, Radio Medford, Inc.	do	do

APPLICANTS OR LICENSEES DESIGNATED FOR HEARING ON MISREPRESENTATION ISSUES

1967

Docket No.	Location	Licensee	Comment
17914 BR-4380	Nashville, Tenn.	Second Thursday Corp.	Awaiting trial.
17613 BR-2983	Milton, Fla.	Milton Broadcasting Co. (WEBY)	Do.
17141 BR-4178	Media, Pa.	Brandywine-Main Line	B/B recommended that license not be renewed, awaiting ID.
16813, 16814, 16815 BR-2937	Henderson, Nev.	1400 Corp. (KBMI)	Awaiting trial.
16789	Asheboro, N.C.	Asheboro Broadcasting Co.	Initial decision released on June 20, 1968, recommended that the license not be revoked, awaiting B/B appeal.
16612 BR-1144	Indianapolis, Ind.	Star Stations of Indiana, Inc.	Examiner released ID recommending denial of the renewal application (Dec. 27, 1967); applicant filed exceptions. Awaiting oral argument before the Commission.
16663 BRCT-326	Jackson, Miss.	Lamar Life Broadcasting Co.	Commission decision released June 27, 1968; granted regular 3-year renewal. 14 FCC 2d 431.
17231-4885-C2-P-65; 17232-2979-C2-R-66; 17233-6893-C2-P-65.		Association Telephone Answering Services	An application for authority to provide services in the Domestic Public Land Mobile Radio Services was designated for hearing on demand for service and possible misrepresentation on the part of the applicant. 7 FCC 2d 143. Awaiting decision.
16864 BR-1852		(KLAV) Arthur Powell Williams	After 2 year litigation Commission concluded that licensee had not misrepresented material facts, issued reprimand and \$1,500 forfeiture. 7 FCC 2d 519.

1966

16533 BAL-5418		Washington Broadcasting Co.	Allegations of misrepresentation resolved in favor of applicant; exceptions to initial decision withdrawn. 6 FCC 2d 35.
16341 BP-16625		Edgefield-Saluda Radio Co.	Misrepresentation issue added against applicant by the Review Board. 5 FCC 2d 148. Issue subsequently resolved in favor of applicant.
16155-Revocation		Palmetto Broadcasters Co., Holly Hill, NC	Designated for hearing on misrepresentation issues. License revoked May 22, 1967. 8 FCC 2d 248.
16050		Continental Broadcasting, Inc. ID released June 23, 1967.	Examiner has found that no misrepresentations were made; now awaiting final action by the Commission (67D-26).

1965

15196-Revocation; 15177 BR-1709; 15274 BR-3030; 15275 BP-13649.		Radio Station WTIF, Inc.	After lengthy proceeding the Commission resolved misrepresentation and lack of candor issues in favor of applicant. 1 FCC 2d 1543.
14425 BP-13844		Saul M. Miller	Applicant held not qualified to be a licensee of the Commission because of certain misrepresentations made to the Commission. 1 FCC 2d 1388.
15769 BR-3228		Dwight L. Brown (WBVL)	Commission denied approval of assignment agreement and designated application for hearing on possible misrepresentation issues. 1 FCC 2d 71 applicant dismissed. Application 4 FCC 2d 852.
16120 BL-10568		Jefferson Radio Co.	Commission designated applicant for hearing on possible misrepresentation issues. 1 FCC 2d 361.
16125-Revocation		Tinker, Inc.	Commission directed licensee to show cause why license should not be revoked; hearing held on alleged misrepresentation. 1 FCC 2d 384.
12604 BPH-2458; 13294 BPH-2636; 13296 BRH-179.		Evelyn R. Chauvin Schoonfield	Licensee after hearing found not to have misrepresented material facts to the Commission. 1 FCC 2d 629.
15864 BR-4064		Radio 13, Inc.	Renewal application designated for hearing on alleged misrepresentation and abdication of ownership responsibility 4 RR 877. Subsequently, licensee surrendered application. 4 RR 2d 877.
15006 BRCT-397; 15007 BALCT-181; 15008 BTC-3965.	Las Vegas, Nev.	Television Co. of America (KLAV)	Renewal application denied on findings that licensee had misrepresented material facts to the Commission. 1 FCC 2d 91.
14043 BR-2855	Hollywood, Fla.	Melody Music, Inc.	Application for renewal granted for 1-year period on condition that licensees divest themselves of broadcast interest. 2 FCC 2d 958.
15165	Salem, Oreg., released Jan. 22, 1965.	WMOZ, Inc. Salem Television Co. (TV)	Renewal application denied after 5 years of hearing on misrepresentation and wrongful conduct. 36 FCC 202. No specific issue was added by the Commission to afford inquiry into possible misrepresentations. Nevertheless, the applicant was disqualified from comparative consideration because of false and misleading submissions to the Commission. 38 FCC 233.

The staff was requested to furnish a list of precedents governing the situation where a licensee makes misrepresentations in one application and the Commission has moved against related authorizations held by the licensee.

WMOZ, Inc., 1 RR 2d 801: Edwin Estes held 99% of the stock of WMOZ, Inc., licensee of WMOZ, Mobile, Alabama. As an individual, Estes was also the licensee of WPFA, Pensacola, Florida. In 1961, following inspection of WMOZ and investigation of the station's affairs, the Commission determined that the licensee had, *inter alia*, filed false annual reports, and had submitted false and forged programming logs and false information in earlier renewal applications for WMOZ. In view of this, the pending WMOZ renewal application was set for hearing. There was no showing that such misrepresentations to the Commission had been made in connection with Estes' Pensacola station, WPFA. Nevertheless, on the same day, the Commission issued a Show Cause Order pursuant to Section 312 (a) (2) and (c) of the Communications Act to determine whether the license for WPFA should be revoked because of misrepresentations made in connection with WMOZ. (1 RR 2d 812-815). The WMOZ renewal and WPFA revocation were considered in a consolidated hearing. Ultimately, the Commission concluded that the license for WMOZ should not be renewed (1 RR 2d 853) and that because of his misconduct in connection with WMOZ, Estes lacked the necessary character qualifications to continue as licensee of WPFA. Accordingly, revocation of the Pensacola license was also ordered (1 RR 2d 854).

On review, the U. S. Court of Appeals for the District of Columbia Circuit concluded that there was a substantial basis for the Commission's decision. However, it remanded the proceedings to the Commission to determine claims that Estes had been ". . . the victim of conspiratorial competitors." *WMOZ, Inc. v. Federal Communications Commission*, 120 U. S. App. D.C. 103, 344 F. 2d 197, 4 RR 2d 2005.

On remand, the Commission agreed with the Examiner that the "conspiracy" claims had not been established. However, the Commission considered Estes' plea that in view of his seriously deteriorated physical condition, he be permitted to sell WMOZ and WPFA. The Commission noted that ". . . proceedings such as this are designed to rid the airways of those who have been false to the trust we have reposed in them, while at the same time deterring licensees from engaging in such misconduct with the thought that they can always sell the station if the Commission considers withdrawing the license." (WMOZ, Inc., 7 RR 2d 373, at 376). Noting that it could not ignore Estes' maladministration of WMOZ, it denied a renewal of the WMOZ license. Noting further that the deterrent aspect of the Commission's policy would be preserved by permitting a sale of the Pensacola station to a qualified unrelated assignee, the revocation of the WPFA license was conditioned on Estes' submitting a bona fide application for assignment of the license for his Pensacola station to an entity having no connection with Estes, within ninety days of the decision (Ibid.)

WWIZ, Inc., 2 RR 2d 169: WWIZ, Inc., involves another situation in which the Commission proceeded against related authorizations held by a licensee who had misrepresented facts in connection with other authorizations. Sanford Schafitz was the sole owner and licensee of WFAR (Farrell, Pennsylvania), the sole owner of a permit for WWIZ (Lorain, Ohio), and had a 50% partnership interest in the permittee of UHF Station WXTV (Youngstown, Ohio). False statements and misrepresentations were made to the Commission in applications and reports involving WWIZ and WXTV. A consolidated hearing was held on various applications involving all three stations in which Schafitz had an interest. After hearing, the Commission refused to renew the authorizations for WWIZ and WXTV, but renewed Schafitz' license for his Farrell station (WFAR), which had not been involved in the misrepresentations. 2 RR 2d 169 *et seq.* Following a denial of reconsideration (3RR 2d 316), the Court of Appeals affirmed the Commission's decision. See *Lorain Journal Company v. Federal Communications Commission*, 122 U.S. App. D.C., 127, 351 F. 2d 854, 5 RR 2d 2111, *cert. den.*, 383 U.S. 967.

For another case involving proceedings against multiple interests of a licensee because of misrepresentations made in connection with one license, see *Tipton County Broadcasters (WKBL)*, 2 RR 2d 1121.

On occasion, in the course of a hearing on an application, evidence is adduced which reflects adversely on the character qualifications of a licensee who is not an applicant to the proceedings. In this situation, the Commission institutes a hearing (either on a renewal application or through revocation proceedings) to determine whether such licensee has the necessary character qualifications to continue as a Commission licensee. See hearing orders which have been adopted pursuant to this practice. (*In re Western North Carolina Broadcasters, Inc.*, FCC 66-1147; *In re John C. Roach et al.*, FCC 67-1002 and FCC 68 R-171; *In re Revocation of the Licenses of Asheboro Broadcasting Company*, FCC 66-656, with accompanying Bill of Particulars.) Final decisions have not been made in these cases.

For the basic case sustaining the Commission's authority to deny renewal of an authorization which was based on false information, see *Federal Communications Commission v. WOKO, Inc.*, 329 U.S. 223. Statutory authority for revocation of a license because of willful misrepresentation is set out in Section 312 of the Communications Act. As can be seen from the WMOZ case, *supra*, the Commission has instituted revocation proceedings against a "non-offending" station when the owner of that station misrepresented facts to the Commission in applications or reports filed in connection with another station, and the Court has upheld the Commission's authority. The Court has also sustained the Commission's authority to inquire into a licensee's character qualifications when evidence developed in a collateral proceeding (in which proceeding the licensee is not a party) adversely reflects on a licensee's character. See *Gordon County Broadcasting Co. v. Federal Communications Commission*, 6 RR 2d 2044.

ATTACHMENT C

The staff was requested to furnish specific precedents relied on in recommending a grant without hearing of the Overmyer-AVC transfer applications. The staff was also requested to indicate whether these precedents involved loan-option agreements combined in a request for transfer of a permit. Further, the staff was requested to indicate the precise fashion in which these precedents were relied on for action taken by the Commission in approving the Overmyer-AVC transfer.

The precedents relied on for option agreements are to be found in assignment of the permits for WOGO-TV (now WFLD-TV) Chicago, Illinois and WAFT-TV (now WKBF-TV), Cleveland, Ohio.

In WOGO-TV (BAPCT-353), the holder of the permit proposed to assign the permit to a new joint venture in which the assignor and a subsidiary of Field Enterprises would each hold a 50% interest. Each was to contribute \$250,000 to the new enterprise, with Field Enterprises to supply all additional capital needed to construct the station and operate it for three years. At the end of three years, Field had the option to purchase the 50% interest of the assignor for \$2,500,000. The Commission approved the assignment on January 19, 1965. Chairman Henry dissented on the ground that a "grant of the application would allow a controlling interest in the TV station to pass to the owner of two newspapers in the same city."

In WAFT-TV (BAPCT-399), Superior Broadcasting, the holder of a permit for a UHF station, proposed to assign the permit to a new corporation whose stock would be held in equal parts by Superior and Kaiser Broadcasting. Both Superior and Kaiser were obligated to pay \$200,000 for their stock interests in the new corporation, with Kaiser to furnish additional capital. Kaiser also obtained an option to purchase Superior's half interest in a period beginning three and one-half years after the station went on the air at prices ranging from \$1,700,000 to \$1,950,000, depending on when the option was exercised. The assignment was approved on September 19, 1967, with three commissioners dissenting and two commissioners issuing separate concurring statements. See 11 RR 2d 211.

These assignment—where the assignor retained an interest in the permit, coupled with an option to be bought out later at a higher price—were the basic precedents relied on in recommending approval of the Overmyer permits. These

precedents for a waiver of the "Interim Top-Fifty Policy" are to be found in Overmyer-AVC transfers.

The Memorandum to the Commission concerning the Overmyer-AVC transfer (Mimeo 6738) contained no discussion of the WOGO-TV and WAFT-TV precedents because it was assumed option arrangements in connection with assignment of a permit were permissible. Moreover, the WAFT-TV assignment had been approved only several months before the Overmyer-AVC transfer.

Precedents for a waiver of the "Interim Top-Fifty Policy" are to be found in a number of earlier assignment and transfer matters in which that policy had been waived. Listed below, with citations to Pike and Fischer (where available) are the Top-Fifty waivers which had been granted prior to action on the Overmyer-AVC transfer applications:

Channel 2 Corporation, 6 RR 2d 855 (Assignment of license of KCTO-TV, Denver, BALCT-283.)

WXIX, Inc., 7 RR 2d 119 (Assignment of license of WUHF-TV, Milwaukee, BALCT-288.)

Boston Catholic Television Center, 7 RR 2d 857 (Transfer of control of licensee of WIHS-TV, Boston. BTC-5101.)

Harvey Radio Laboratories, Inc., 8 RR 2d 660 (Assignment of permit for WXHR-TV, Cambridge (Boston). BAPCT-388.)

Houston Consolidated Television Co., 10 RR 2d 205 (Assignment of license of KTRK-TV, Houston. BALCT-321.)

Harcourt, Brace and World, Inc., not reported. (Acquisition of 18% interest in KHBC-TV, Denver by the Newhouse publishing interests. BAPCT-395.)

The Superior Broadcasting Corporation, 11 RR 2d 211. (Assignment of permit for WAFT-TV, Cleveland. BAPCT-399.)

Chris-Craft Industries, Inc., 12 RR 2d 326 (Transfer of control of licensees of WTCN-TV (Minneapolis), KCOP-TV (Los Angeles), and KPTV-TV (Portland, Oregon). BTC-5425, BTC-5426, and BTC-5424, respectively.)

These precedents were not set out in the Memorandum to the Commission (Mimeo 6738) because the staff knew—given the recentness of these waivers—that the Commission was thoroughly familiar with the full array of policy questions implicit in waiver of the Top-Fifty Policy. The Commission's awareness of these policy questions is evidenced by the various concurrences and dissents issued in connection with the waivers cited above. The precise manner in which these precedents were relied on in the staff Memorandum is indicated in Paragraph 20 of Mimeo 6738. There the staff explicitly noted that "The Commission is familiar with the policy considerations behind the Top-Fifty Interim Policy." The staff—which was aware of the various arguments which had been made in earlier Top-Fifty waivers—further stated that in its view, the Overmyer-AVC showing rose "... to the level of other showings which have been considered adequate to justify a grant without hearing."

(The cases referred to herein follow:)

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.—PUBLIC NOTICE—B, JANUARY 19, 1965

BROADCAST ACTION

(Report No. 5391)

The Commission en banc, by Commissioners Henry (Chairman), Hyde, Bartley, Lee, Cox and Loevinger, took the following action on January 19:

WOGO-TV, Channel 32 Television Chicago, A Joint Venture Chicago, Ill.: Granted assignment of CP from present group (Winnebago Television Corp., Transcontinental Properties, Inc., Harold Froelich and Milton D. Friedland) to a new group of the same name in which Field Communications Corp. (wholly owned by Field Enterprises) will have 50% interest and 50% by present group (BAPCT-353). The two half interests will each contribute \$250,000 to construct and operate the station (not yet on air) for three years with an option for Field, at the end of that period, to buy the other half interest for \$2,500,000. Chairman Henry dissented, and stated: "I dissent because a grant of the application would allow a controlling interest in the television station to pass to the owner of two newspapers in the same city."

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

(File No. BAPCT-399)

In re Application of

THE SUPERIOR BROADCASTING CORPORATION, ASSIGNOR

and

WKBF, INC., (ASSIGNEE)

For Assignment of Construction Permit for Station WAFT-TV Cleveland, Ohio.

ORDER

Adopted: September 19, 1967.

Released: September 20, 1967.

By the Commission: Commissioner Cox dissenting and issuing a statement in which Commissioners Bartley and Johnson join; Commissioners Loevinger and Wadsworth concurring and issuing statements.

1. The Commission has before it the above-captioned assignment application, which proposes to assign the construction permit for Station WAFT-TV, Cleveland, Ohio, to WKBF, Inc. Assignee's stock is equally owned by the assignor and present permittee, The Superior Broadcasting Corporation and Kaiser Broadcasting Corporation. In view of Kaiser Broadcasting Corporation's other interests in television stations in the Top Fifty television markets, the application comes within the purview of the *Interim Policy Concerning Acquisition of Television Stations* (5 R.R. 2d 271) enunciated June 21, 1965.

2. The Commission is of the view that the applicants have affirmatively and compellingly shown that a grant of the application would be consistent with the *Interim Policy*.

Accordingly, it is ordered, That, the application for the assignment of the construction permit for Station WAFT-TV, Cleveland, Ohio, from The Superior Broadcasting Corporation to WKBF, Inc., IS GRANTED.

BEN F. WAPLE, *Secretary*.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX, IN WHICH COMMISSIONERS BARTLEY AND JOHNSON JOIN

I dissent. This represents the most extreme departure the majority has made thus far from our interim policy against increasing concentration in the major markets. It seems to me that this is almost a point of no return insofar as our pending rulemaking is concerned.

It should be remembered that we instituted our rulemaking proceedings in Docket No. 16068 over two years ago because of our concern over the increasingly narrow concentration of control over television facilities in the largest markets. We found it difficult, if not impossible, to stem this trend in the course of case-by-case consideration of individual transfer applications. We therefore decided to attack the problem on an overall basis through rulemaking. Furthermore, we were so concerned about the accelerating trend toward tighter and tighter control of the stations serving the great bulk of our people that we took the unusual step, some six months before issuing our rulemaking proposal, of announcing that as a matter of interim policy we would not authorize the acquisition of a second VHF station in the top 50 markets without a hearing unless "a compelling affirmative showing" were made that the transfer would be in the public interest. When we later issued our now pending proposal for changing our rules, we relaxed this interim policy to the extent of permitting the holding of two VHF stations in the major markets before applying the hearing requirement.

That has been our stated policy for over two years. We have granted four waivers in that period [all but one of them over my dissent]. But all of those cases involved stations which had lost substantial sums and were in precarious condition—and one was actually off the air. Furthermore, at least some showing

was made in each case that the transferor had first tried to sell to a party whose acquisition of the station would not violate the interim policy before completing a sale to a multiple owner. Thus in these past cases it could be argued that the public was assured a service which otherwise was, or might be, unavailable to it but for the transfer.

However, neither of these conditions exists here. The station has never been built, so has suffered no losses which might imperil its continued operation. The Commission has always been concerned about the transfer of bare construction permits, and that concern should certainly be present here. I believe that WAFT-TV's pending application for extension of completion date, File No. BMPCT-6410, should be set for evidentiary hearing to determine first whether valid reasons exist for such extension of the construction permit and, accordingly, whether there is a valid and subsisting construction permit which WAFT-TV could transfer. As to the merits of the proposed transfer, certainly no showing has been made that the transferor tried to sell to parties already owning not more than one station in the top 50 markets. It presumably decided to sell to Kaiser because this was the most favorable arrangement it could make for the disposition of its permit, even though this brings it into conflict with our interim policy.

It should be noted that there were originally three applicants for this channel. The other two dismissed their applications—one of them, United Artists, presumably because it realized that it would be at a comparative disadvantage *vis a vis* Superior on grounds of diversity, local residence, and integration of ownership and management. Even though this left Superior as the only applicant, we required the latter to go through a hearing to establish its financial qualifications. After the Commission has thus gone to the trouble and expense of determining that Superior has the resources to build and operate its proposed station in Cleveland, the applicant now comes in and says that its proposal wasn't substantial enough to serve the public properly and that it should therefore be allowed to sell its permit to Kaiser, which has greater resources and can put together a more elaborate broadcast operation. In fact, this is one of the main reasons urged in support of the parties' request for a waiver of our interim policy. On the contrary, however, it seems to me that if Superior—while still in permittee status—is saying that its proposal was inadequate and that it is not financially qualified to build and operate the kind of station which is needed, then it should be found to be unqualified and its permit should be cancelled. We would then be in a position to accept further applications from parties able to build the kind of facility Superior *now* says is needed—and hopefully some of them might meet our interim policy.

It seems highly unlikely that Kaiser would apply in such a situation. It already has stations or construction permits in the Los Angeles, Philadelphia, Boston, Detroit, and San Francisco television markets. It thus has present holdings in the top 50 markets far in excess of those permitted under our interim policy, by virtue of the fact that it applied for a number of these facilities before we adopted the policy and because the Commission has already waived the policy for Kaiser once to permit it to acquire a half interest in a UHF station in Boston.¹ It really seems to me that it is rather presumptuous in pressing for still further erosion of our policy on diversification.

But our interim policy aside, these holdings would place Kaiser at a serious comparative disadvantage if it were to seek to compete with local applicants or with smaller multiple owners. Thus we have here the situation which has plagued us so often—and has recently caused expressions of concern in Congress—namely, the transfer of a permit or license to a party who could not have prevailed in a comparative proceeding, and here the transfer takes place before the station has been built. If the parties are correct in saying that the public interest requires the initial construction of extremely high powered UHF stations, and that only multiple owners with strong financing and previous UHF experience can build and operate such facilities, then it seems to me the majority should move to amend our rules to increase the minimum power required for UHF operation and to modify our comparative hearing criteria to delete all demerit for concentration of control of the mass media. I am quite sure that my colleagues are not prepared thus unequivocally to make big city UHF operation exclusively a millionaires' preserve, but if they intend to give others the benefit of the precedent here established, I think this is exactly what they will accomplish by indirection.

¹ See my dissent to that action. Public Notice of October 21, 1966, Report No. 6193.

Maybe Superior cannot build as powerful a station alone as it can in association with Kaiser—and with the latter providing nearly all the money. But when we issued our proposed rulemaking we expressly stated that the resources of the multiple owners are not needed to bring UHF service to the major markets, and in this case we have a full hearing record to establish that Superior can build and operate a station which would serve the public interest. I submit that the public in Cleveland would be better served in the long run by a locally owned and oriented station which started slowly and built as it went along, than it will be by a better financed initial operation controlled by an absentee corporation with significant other broadcast interests. Similarly, the national interest in a diversely owned broadcast system would be better served by denial of this application. Once the all-channel law achieves 100% UHF penetration, then presumably a high powered UHF station will be competitively equal to a VHF station. When that day comes, Kaiser will have—if this acquisition is approved—stations in 6 of the top 8 markets in the country, which is more than any other entity now controls. And when that comes about, it is highly unlikely that the Commission will require divestiture of such highly concentrated holdings, so that we will be faced with an irreversible centralization of control over our vital mass media. I think this is of critical importance, and that we must look ahead and consider this future before we take the easy route of approving this application on the ground that it will help UHF² or that it will provide better service quicker than would otherwise be the case.

Furthermore, the parties argue their case in a way which makes it clear that they think what we do here will have important precedential effect. In a letter of July 3, 1967, to the Commission from counsel for WKBF, Inc., they say:

"The Commission's action on the WKBF, Inc., application will speak loudly and clearly to others who may be contemplating investment in independent UHF as to the degree to which the Commission encourages or discourages initiative of the kind displayed by Kaiser."

I am quite willing to recognize—and applaud—the commitment and the contributions which Kaiser has made to independent UHF operation. But I am not willing to give it as many stations as it may desire in the top markets, nor to issue ringing assurances to others that if only they have the money to take the initial risks, they, too, can count on a handful of stations in the largest markets available. We initiated our interim policy on December 18, 1964, because of the high degree of concentration then existing in the top 50 markets, with 111 (or 71%) of the 156 VHF stations in those markets licensed to multiple owners, while 17 of the remaining 45 were owned by local newspapers. It is clear that our principal drive was to prevent a repetition of this in UHF, yet this and our earlier waivers are taking us down that same road. I am advised that there are only 28 channels still available in the top 50 markets. It seems to me that we must act—and quickly—if we are to maintain a desirable diversity of control of our television system.

The parties' other principal argument is that approval of this transfer will improve the possibility of Kaiser's developing a fourth network. This is concededly speculative, and I do not think it can serve as a basis for our action here. Clearly we cannot select Kaiser as a chosen instrument for the creation of a new network. Therefore, if this argument has any validity we would be compelled to let all other multiple owners who indicated that they were exploring network possibilities have as many stations as Kaiser. Furthermore, this argument is not cast in terms of need for revenues from owned and operated stations, but rather in terms of obtaining clearances for network programming. This obviously applies to more than six markets, so could be made the basis for still further acquisitions. I agree that we should pursue policies which would permit the development of additional networks as they are needed and feasible. But this does not mean that we should subvert other policies on the off-chance that an applicant before us *may* at some indefinite time desire to form a network. If such a network comes into existence, an independent station in Cleveland operated by Superior would have strong incentives to affiliate with it and clear for its programs. We do not have to permit Kaiser to control another station in a major market to achieve that result.

² I favor expanded UHF service like my colleagues, but I think we sometimes fall into the error of allowing almost anything in the name of UHF. We should not be emotionally predisposed to accept every argument which seeks to use UHF's cause for short range private benefit.

I have referred to the parties' contentions at some length because the majority's order doesn't even recite them. It simply announces the conclusion "that the applicants have affirmatively and compellingly shown that a grant of the application would be consistent with the *Interim Policy*," without any supporting explanation whatsoever. I think this is not a proper way to dispose of matters of this importance.

I wish to emphasize again that this action goes further than the majority has ever gone before in these waiver cases. It allows Superior to avoid the risks of implementing the permit we have granted it, and at the same time permits it to acquire a half interest in a much more substantial venture for much less money than it originally committed to this enterprise. It sanctions the acquisition by Kaiser of a franchise it probably could not otherwise obtain. It distorts our comparative hearing rules. But above all, I think it undercuts, if it does not destroy, our pending rulemaking proposal in the critical area of diversity of control of the broadcast media. Perhaps the majority will eventually abandon that proposal, but if so, that action should be taken consciously and for stated reasons after full consideration of the problem. It should not be slipped into, without explanation, in the course of disposing of particular applications on an *ad hoc* basis, thereby creating precedents which must control future actions, unless we are to be completely arbitrary and treat others differently than we treat Kaiser.

I think this matter is of great importance, far transcending the interests of these parties, the interest of the people of Cleveland in maximum service at the earliest moment, or the interest of the public generally in a strictly speculative fourth network. I do not think the majority has addressed itself to the long range problem of increasingly centralized control of the makers of American opinion. I therefore dissent.

CONCURRING STATEMENT OF COMMISSIONER LEE LOEVINGER

(In re Cleveland UHF assignment)

This proceeding involves an application for approval of a transaction that will, in effect, make the Kaiser Broadcasting Corporation a 50% owner of an UHF CP for Cleveland, Ohio. There is no question as to the qualifications of Kaiser and the transaction would probably be routinely approved but for the proposed Commission rule to prohibit acquisition of more than two VHF or three UHF television stations in the "top 50 markets" by any one licensee. I agree with the dissenting opinion that this case involves the underlying considerations and policy of our proposed multiple ownership rule. Unfortunately circumstances having no relevance to this proceeding have precluded full Commission consideration and disposition of the proposed multiple ownership rule prior to this and there is no prospect of such consideration and disposition in the immediate future.

Developments, facts and arguments coming to attention since the June 1965 proposal of the rule regarding television station ownership in the "top 50 markets" have caused me to doubt that the rule in the form proposed is the best means of achieving the objectives sought. I do not wish to commit myself to any position on this issue until we have had an opportunity for full discussion and consideration within the Commission, and therefore will not discuss the merits other than to say that for reasons indicated by Commissioner Lee's dissenting opinion in the proposed rulemaking and my own prior opinion in a similar situation it seems particularly dubious that we should impose a more restrictive rule on the expansion of UHF interests at the time that we are seeking to encourage the development of UHF.

In any event, I am unwilling to penalize the applicants here for the Commission's delay in disposition of the basic rulemaking. In view of my own doubts as to the basic policy, I am, therefore, concurring in Commission approval of the proposed transfer, without committing myself to a position on multiple ownership rule revision when that issue finally comes before the Commission for plenary consideration and disposition.

CONCURRING STATEMENT OF COMMISSIONER JAMES J. WADSWORTH

I am concurring in a grant of this assignment because I believe that the inauguration of a new television service in Cleveland at the earliest possible date is in the public interest. I express my reservations that the filing of an application, or multiple applications, by financially qualified entities, might be the vehicle for acquiring "paper CPs" for resale to entities which would not have been able to acquire them in the first place (because of lack of comparative qualifications, or otherwise), which could result in a misuse (not necessarily abuse) of the Commission's processes.

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

(File Nos. BALCT-283, BALQ-15, BALRE-1331, BALTP-179, BALTS-179)

In re Application of

CHANNEL 2 CORP. (ASSIGNOR)

and

WGN OF COLORADO, INC., CHICAGO, ILLINOIS, ASSIGNEE

For Assignment of license of Stations KCTO (TV), Remote Pickups KG-5442-3, KG-7204-5, KDJ-923-4 and TV Auxiliaries KC-8220, KG-4237, KAL-92, Denver, Colorado.

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Hyde concurring in the action but not in the opinion; Commissioners Bartley and Wadsworth concurring and issuing statements; Commissioner Cox dissenting and issuing a statement.

We have before us: (a) the above application which seeks our consent to the assignment of the KCTO (TV) Denver licenses from the Channel 2 Corp. (J. Elroy McCaw to WGN of Colorado Inc. (WGN) and an amendment filed November 19, 1965; (b) Our order (FCC 66-70, released January 21, 1966), scheduling an Oral Proceeding and (c) the transcript of that Proceeding held before us *en banc* on February 14, 1966.

1. WGN filed its application for the Denver station on October 29, 1965. Since the parent company of WGN is already the licensee of VHF stations in New York City and Chicago, we must decide, after reviewing the WGN application and amendment and the transcript of the Oral Proceeding that was held, whether WGN has made, in accordance with our Interim Policy on applications involving multiple ownership of television stations (5 RR 2d 271) a compelling affirmative showing to sustain a grant.

2. In our Order of January 21, 1966, scheduling an Oral proceeding we set out in detail our reasons for the adoption of a rule making notice and an interim policy on the acquisition of television stations in the top 50 markets. We will not repeat that discussion here except to note that the proposed rule would modify the limitations imposed in our multiple ownership rules (73.636(a) (II)) to include the ownership of "more than 3 television broadcast stations or more than 2 VHF television broadcast stations in the 50 largest television markets". We also note that the interim policy that we refer to provides that absent a compelling affirmative showing, applications filed after June 21, 1965 for television stations, the grant of which would result in the common ownership of more than 3 television stations or more than 2 VHF stations in the top 50 markets will be designated for hearing.

3. In response to the interim policy, assignee urged (Exhibit L-1):
"(1) Among Denver's commercial stations, KCTO ranks as a low fourth choice of viewers in regard to news, sports programs and movies, (2) when rated

against its competitors as to its job of serving the community, KCTO ranks as a low 5th among all of Denver's television stations . . . (3) with respect to specific program categories in which viewers regard different stations as offering the best programming, KCTO ranks lowest in all categories. Because of the resources available to applicants and the experience of applicants parent WGN Inc. in operating an independent station in effective competition with three network owned television stations in Chicago, applicant will be able to enhance the degree of effective competition between KCTO and its three network affiliated competitors."

4. In order to give the parties the optimum opportunity to make their most complete showing of the compelling affirmative circumstances that they allege are present in this application, we invited the principals of the applicants and their counsel to an en banc session with the Commission on February 14, 1966. The parties were requested to address themselves to two questions:

"(1) Whether Denver television market rankings should be determined by the American Research Bureau's net weekly circulation ranking or whether other criteria should be employed. (2) Whether WGN has presented an affirmative compelling showing to allow a grant of the above assignment under the Commission's interim policy statement."

The parties and their attorneys appeared and were given a full opportunity to address themselves to these questions.¹

5. The assignor pointed out that Station KCTO had been an unsuccessful operation.² He stated that the corporation had suffered substantial and continuing losses and that indications were that the losses would continue. Information on file with the Commission going back to 1960 confirms that these losses occurred.

6. At the oral proceeding, the assignor stated that he had attempted to sell KCTO to a local resident but that the attempt was unsuccessful. He also mentioned other instances of attempted but unsuccessful sales.

"In all cases they were either other multiple owners or they were people who were not multiple owners, or at least not in the top 50 markets, but who upon analyzing what they felt it would require to complete the job that needs to be done in order to make this sufficiently competitive, they felt the overall commitment, would be too great and they withdrew."

7. In its showing, in the application and at the oral proceeding, WGN claimed that it would measurably improve KCTO's program service. In this regard, it mentioned its facilities in Chicago and how well its Chicago unaffiliated station competed with the network owned and operated stations in that city. The Commission notes WGN's detailed efforts to ascertain the programming needs of Denver and its statements of dedication to serve those needs, as demonstrated both in the application and the oral proceeding.

8. After giving full consideration to the WGN application, to the testimony of the principals and argument of counsel at the February 14 proceeding and our interim policy statement *supra*, we conclude that a compelling affirmative showing has been made to justify a grant. Channel 2 Corporation has shown that it has sustained continued and substantial operating losses. Despite significant investment and effort, it has been unable to achieve an independent operation which is competitive with the three network outlets in the Denver market. The Denver market is one of the smallest to which our interim policy applies. In this size market, at the present state of television development, it is our conclusion that the proposed assignment of this independent television station would serve the public interest. A grant of the assignment will transfer the station to an owner who is able and explicitly committed to expanding and otherwise improving the station's operations so that it may achieve a viable and more fully competitive status in the market. We give significant weight to the fact that an unsuccessful attempt was made in the past to sell the station to other operators who are non-multiple owners. Cf. *International Shoe Company v. Federal Trade*

¹The American Research Bureau's net weekly circulation ranking shows Denver, Colorado, as the 45th television market. In the Notice of Oral Proceedings the Commission invited comment from all interested parties as well as from parties to this application on Issue (1). No comments were filed and WGN did not argue against using net weekly circulation as a test for determining the top 50 television markets. However, WGN sought to bolster its argument by indicating that under other rankings Denver would not be in the top 50 markets.

²J. Elroy McCaw has had an interest in Channel 2, Denver (now KCTO) since July 27, 1955. In response to a question from one of the commissioners at the oral proceeding, Mr. McCaw stated that "more than \$4,000,000 has been placed into the station in a good faith effort to make it a viable and competitive source in the Denver market . . ." He advised that his figures show that "for example his loss the past December is twice that of what it was in December 1964."

Commission, 280 U.S. 281. We have also considered, but given less decisional weight, to WGN's experience and success as an independent operator in the much larger Chicago market, its detailed efforts to ascertain the needs and interests of Denver, and its commitment and obvious ability to serve these needs.

In view of the foregoing we find that the applicant has made a compelling showing justifying the grant of the application. Accordingly, *It is ordered*, That the above application is granted.*

BEN F. WAPLE, *Secretary*.

Adopted: March 3, 1966.
Released: March 10, 1966.

CONCURRING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I believe that, on the basis of the total showing made, a grant of the application would comport with our Interim Policy and serve the public interest.

The assignor (McCaw) shows that KCTO-TV has suffered continuing losses since 1955, with over \$4,000,000 expended in a good faith effort to make the station a viable and competitive service in the Denver market. The assignor also states that an option by local residents was not exercised and that other operators who are non-multiple owners felt the overall commitment too great and withdrew.

The assignee (WGN) shows that KCTO-TV, an independent operation, is the lowest-ranking commercial television station in Denver. WGN has made a showing of numerous consultations with community and state leaders to determine the needs of Denver from the view point of the respective groups which they represent. Specific programs and series of programs are proposed by the assignee to meet those needs.

For example, Mayor Thomas Currigan and members of the Downtown Improvement Association indicated a need to keep the public informed on progress of the Denver urban renewal project; and the assignee will present periodic reports on special programs or series and give coverage on regularly scheduled newscasts and discussion programs. Mayor Currigan and Mr. Gerald Phipps, one of the owners of the Denver "Broncos", indicated a need for a new or enlarged Municipal Stadium, to keep the "Broncos" professional football team from moving to another city, and to fulfill its civic entertainment functions; and the assignee will present a campaign of announcements and a program "City Speaks—Denver Looks At Denver", devoted to supporting a bond issue for a new municipal stadium, as well as enlisting support of other local radio and television stations and newspapers for this project.

The business manager of the Denver Symphony Orchestra indicated a need for televising the orchestra's concerts; and the assignee states that feasibility depends on factors requiring further exploration, but broadcasts will be presented if this can be arranged. Dr. Harold Mendelson and other staff members of the University of Denver indicated a need for a traffic safety project; and the assignee will present "Stop And Go," a weekly Saturday morning program on traffic safety, as well as preparing programs, announcement campaigns and program formats for use by broadcasters throughout the United States in promoting highway safety.

Representatives of colleges and universities in Denver indicated a need for a continuing supply of young people trained for careers in broadcasting; and the assignee will implement an "Internship" program at the station in cooperation with academic programs of local schools, as well as scholarships and grants. Denver community leaders indicated a need for additional diverse dramatic television programs; and the assignee will present "Reperatory Theatre," "U.S.A.," "Festival of Performing Arts," and "Play Of The Week" television programs.

The Denver Convention Bureau indicated a need for promotion of Denver and Colorado as twelve-month vacation and convention centers; and the assignee will present a regular series of promotional announcements and possibly special documentary programs to stimulate local cooperation. Business, educational, religious and other leaders indicated a need for increased monetary support of the Denver educational television station; and the assignee will donate announcement campaigns and services of its key personnel to assist in fund raising drives.

*See attached statements of Commissioners Bartley, Cox, and Wadsworth.

WGN shows that it will bring adequate financial backing and independent programming experience at WGN-TV and WPIX to carry out its programming proposals, to improve the overall operation of KCTO-TV, and strengthen its competitive position in the Denver market.

WGN shows also that operation of KCTO-TV would strengthen its position as a syndicator of independently-produced television programs throughout the country and thus add to the diversification of program sources.

On the basis of the total showing made, I believe a grant of the application comports with our Interim Policy and would serve the public interest.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX

I do not believe we should waive our interim policy and approve this transfer. I agree that the applicants have made a number of persuasive arguments which show that the public interest would be served in one way or another by the proposed change in ownership. However, I believe that a proper concern for the basic policy favoring diversity of control of the mass media still preponderates over the claims advanced here.

There can be no doubt that WGN of Colorado, Inc. has made a careful survey of the needs of the Denver audience and has proposed programs—especially in the non-entertainment fields—well designed to serve those needs. But we require this of all applicants, whether they seek to acquire existing facilities or to get authorization for a new station. I do not think that the fact that WGN has done a substantially better job in discharging these responsibilities than most applicants do is enough to outweigh our legitimate concern over the increased concentration which this transfer will involve.

Our rule making proposal, and the related interim policy, were not designed to improve programming, desirable though that would be. Rather, they were intended to block the further aggravation of an already serious condition of concentration of control over the most potent known means for reaching and influencing the minds of the people of this country. While I applaud the improvements proposed by WGN, I am not ready to concede that Denver can get this added service only at the price of further concentration.

It is clear that the transferor has suffered substantial losses. While this fact gives him valid reason for selling the station, it does not necessarily establish that an immediate sale is required to prevent the facility from going dark—with consequent loss of service to the public. Similarly, Mr. McCaw testified to the giving of one option which fell through and to a number of other inquiries which either involved multiple owners or were dropped when the prospective purchasers concluded that it would take too much money to make the station competitive. While this demonstrates good faith efforts to sell to parties who would not have posed the concentration problem now presented to us—though much of this must have transpired prior to December 18, 1964, when we first announced our interim policy—I do not think it proves such efforts to find alternatives more in accord with our policies as to constitute the affirmative compelling showing required during the pendency of our rule making. I am not sure just what would satisfy that nebulous standard—I just do not think this case does so.

I must confess that I have substantial sympathy with the problems and the hopes, respectively, of the principals of the two parties who appeared before us. Since the transfer is being approved, I hope it will result in improved service for both Denver and Seattle-Tacoma, where Mr. McCaw's remaining television station is located. If the action here taken simply means that a man who has lost as much money as Mr. McCaw can sell his station to a man who proposes as substantial improvements in service as Mr. Quaal has offered here, then perhaps no great harm is done. But if it means that our proposed—or established—multiple ownership limitations can be subverted by any kind of showing of improvement in programming, then I think the cause of diversity will have suffered a serious blow.

CONCURRING STATEMENT OF COMMISSIONER JAMES J. WADSWORTH

I would not have required WGN to make any extraordinary showing in support of its application; I do not think we need either the proposed amended multiple ownership rules or the Interim Policy. Therefore, I concur only with the result and not with the language of the Memorandum Opinion and Order which granted this application for assignment of the KCTO(TV) license.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

PUBLIC NOTICE—B, MARCH 24, 1966

BROADCAST ACTIONS

(Report No. 5930)

The Commission, by Commissioners Henry (Chairman), Hyde, Bartley, Lee and Cox, took the following actions on March 24:

ASSIGNMENT OF WUHF (TV), MILWAUKEE, TO WKY TELEVISION APPROVED

The Commission granted the application for assignment of license of UHF TV station WUHF, Channel 18, Milwaukee, Wis., from WXIX, Inc., to WKY Television System, Inc. (BALCT-288); consideration \$550,000 plus \$150,000 for agreement not to compete for three years within 75 miles of station's transmitter.

Commissioner Bartley dissented and stated: "I favor an en banc expedited hearing".

Commissioner Cox concurred and stated: "I concur in the authorization of the assignment of the license of WUHF to WKY Television System, Inc. While I continue to be concerned about the drift toward greater concentration of control of the television stations in our major cities, it seems to me that the only chance of making this station reasonably competitive, and therefore able to provide a significant service to the public, lies in its transfer to an entity with substantial resources and broadcast experience.

"I believe this case is distinguished from that of KCTO in Denver for the following reasons. First, we are here concerned with a UHF station which occupies a much weaker competitive position in Milwaukee than KCTO did in Denver. Its facilities, compared to those of the VHF stations in Milwaukee, are much less adequate competitively than was the case in Denver, thus necessitating immediate and substantial expenditures of funds for their improvement. This, added to the normal technical problems of UHF operation and the normal programming problems of independent operation, makes the present and prospective situation much more serious than was true of KCTO.

"In the second place, it seems clearer here than in the case of KCTO that sale to a party other than a substantial multiple owner is unlikely and that continued operation by the present owners, in the face of substantial losses, is questionable—at least on anything but a nominal basis. We are therefore faced with a choice between a transfer to WKY or some other multiple owner firmly based in the top 50 markets or continued diminution or loss of the service. The price to be paid the transferee here is less than its accumulated losses from the operation of the station.

"Finally, with the approval of this transfer WKY will control stations in markets having combined net weekly circulation—without adjustment for the fact that two of its stations are UHF—slightly less than one half the circulation of but one of the markets in which the Denver transferee operates, and less than one third of the total of all its markets. Thus the degree of concentration which results here is much less substantial.

"I therefore concur in this action."

Other TV stations owned by WKY Television System are KTVT, Channel 11, Fort Worth-Dallas (15th market); WTVT, Channel 13, Tampa (32nd market), and WKY-TV, Channel 4, Oklahoma City (51st market). Assignee also controls Houston Television Co., permittee of KHTV, Channel 39, Houston (25th market).

FURTHER EXTENSION OF FILING TIME IN DOCKET 16068

By Order, the Commission further extended the time for filing comments and reply comments in Docket 16068, concerning proposed amendment of Section 73.636(a) of its rules in the matter of multiple ownership of TV stations in the top 50 markets, to and including October 3 and December 1, 1966, respectively. This was done on petition of the Council for Television Development (a group of TV station licensees) which wants more time for a research organization to complete economic and other studies for the council. Commissioner Cox concurred and issued a statement.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

PUBLIC NOTICE—B, JULY 29, 1966

BROADCAST ACTION

(Report No. 6094)

The Commission en banc, by Commissioners Hyde (Chairman), Lee and Wadsworth, with Commissioners Bartley and Cox dissenting and latter issuing statement, and Commissioners Loevinger and Johnson not participating, took the following action on July 27:

TRANSFER OF CONTROL OF WIHS-TV, BOSTON, TO STORER APPROVED

The Commission waived Sect. 1.597 of the three-year holding rule and granted the application for transfer of control of New Boston Television, Inc., licensee of station WIHS-TV, Channel 38, and adjuncts, Boston, Mass., from Boston Catholic Television Center to Storer B/cg Co. (BTC-5101, BRTP-664, BRTS-597); consideration \$2,276,513 for Center's 6,000 shares. Storer also has contract to purchase remaining 1,000 shares from Austin Harrison for \$365,000.

The transfer of WIHS-TV give Storer the permitted maximum of seven TV stations. Its other TV outlets are WJBK-TV, Channel 2, Detroit, Mich.; WJW-TV, Channel 8, Cleveland, Ohio; WAGA-TV, Channel 5, Atlanta, Ga.; WGBS-TV, Channel 23, Miami, Fla.; WITI-TV, Channel 6, Milwaukee, Wis., and WSPD-TV, Channel 13, Toledo, Ohio. It also operates seven (maximum number) AM and five FM stations—WJBK AM-FM, Detroit; WJW AM-FM, Cleveland; WGBS AM-FM, Miami; WSPD AM-FM Toledo; WIBG AM-FM, Philadelphia, Pa., WHN, New York City, and KGBS, Los Angeles, Calif.

DISSENTING STATEMENT OF COMMISSIONER KENNETH A. COX

"I dissent. While I am sympathetic with the transferor because of the difficulties it has encountered in operating the station. I do not think such considerations of private interest should weigh as heavily in the decision of these matters as has been the case here. No one compelled the transferor to apply for this channel or to engage in the peculiar form of operation which it adopted, and which has undoubtedly caused at least part of its difficulty. It pressed its application with great vigor, even though the Commission had proposed the 2500 mc educational fixed service, which it now regards as much more attractive, nearly seven months before that application was filed and the rules establishing the system were adopted just two and a half months after the construction permit was granted and long before the station was constructed.

"Putting the private interests of the transferor aside, I think the public interest in diversification of control of television service has been completely ignored here. The Commission has proposed a rule which would bar grant of applications like this one. Pending consideration of the matter, we have adopted an interim policy which provides that, absent a compelling affirmative showing sufficient to justify an exception, no one will be permitted to acquire more than one UHF and two VHF stations in the top fifty markets. Grant of this application gives Storer seven television stations—five VHF and two UHF, of which one is in permit status—in the top *twenty-six* markets. A more glaring violation of the interim policy would be difficult to imagine.

"Boston is the fifth largest television market in the country. If an independent UHF station cannot succeed there in competition with three VHF stations, I don't see how such operation can be looked for anywhere. We stated specifically in our Notice of Proposed Rulemaking announcing the interim policy that we did not believe it was necessary to rely upon multiple owners to bring independent UHF operations to the major markets. I still believe this to be true, despite the rather sketchy showing made by the transferor that it was not able to interest others in buying this station. I would note in this connection that transferor apparently consulted other multiple owners primarily, and presumably price may have been a factor in discouraging other possible purchasers.

"I am still persuaded that the Commission should pursue policies designed to halt—even at this admittedly late date—the continuing trend toward increased concentration of control of our broadcast outlets, particularly in the major

markets. It seems to me that the arguments advanced by the parties here, and apparently tacitly accepted by the majority, would be equally applicable to any situation in which a UHF station in one of the top markets, having suffered losses in the face of competition from three VHF stations, applied for approval of a transfer to a multiple owner with holdings already exceeding those permitted under our interim policy. In fact, it seems to me that the criteria urged by Storer would permit all major multiple owners to have seven stations in the top fifty markets so long as the supply of frequencies lasts. I think this is contrary to the public interest and represents a development having extremely serious implications for the future of our society. It is not enough to adhere to a policy of diversity in the abstract. Such a policy has to be applied in specific cases, and these can often be very difficult in terms of the interests of the individuals concerned. However, I simply cannot condone this further erosion of our interim policy which goes far beyond anything contemplated in the two waivers heretofore granted."

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

PUBLIC NOTICE—B, OCTOBER 21, 1966

BROADCAST ACTION

(Report No. 6193)

The Commission en banc, by Commissioners Hyde (Chairman), Bartley, Lee, Cox, Loevinger, Wadsworth and Johnson, took the following action on October 20:

LICENSES OF WXHR(AM), CAMBRIDGE, WXHR-FM, BOSTON, AND CP FOR WXHR-TV, CHANNEL 56, CAMBRIDGE, MASS., TO WKBG, INC

WXHR AM-TV, Channel 56, Cambridge, Mass., WXHR-FM, Boston, Mass., Harvey Radio Laboratories, Inc.: Granted assignment of licenses of AM-FM stations and CP for TV station to WKBG, Inc. (BAL-5831, BALH-910, BAPCT-388); consideration \$1,750,000 and agreement not to compete in radio or TV broadcasting within 25 miles of Boston State House for 10 years. WKBG, Inc., is 50% owned by Globe Newspaper Co., which has no other broadcast interests, and 50% by Kaiser B/cg Corp., which controls 4 UHF TV stations and 1 FM station. WXHR-TV is now off the air.

Attached are the concurring statements of Chairman Hyde, Commissioner Loevinger joined by Commissioner Lee, and Commissioner Wadsworth; and the dissenting statements of Commissioners Bartley, Cox and Johnson.

CONCURRING STATEMENT OF CHAIRMAN HYDE

I am satisfied that the applicant has made a compelling showing justifying a grant of the application without hearing under our Interim Policy. I do not construe this action as a reproach to that Policy nor as being determinative of any issues pending in the "Top Fifty" proceeding. However, in applying the Interim Policy I do not believe that the hard realities and substantial hazards which have attended major market UHF efforts may be overlooked. Successful operation of an independent UHF-TV station in a major market already served by four VHF-TV stations is indeed enhanced when the applicant possesses the requisite background and financial resources, as in the case at present. At the present state of UHF television development, it is my opinion that the proposed assignment presents the opportunity to make the station reasonably competitive and therefore able to provide a significant service to the public.

A grant of the assignment will transfer the station to an experienced television broadcaster (all of whose television interests are in UHF) who has joined forces with a local group with deep community roots. Together they present a substantial plan for restoring the UHF station to the air and diversifying further the program choices available to the Boston metropolitan area in a manner responsive to ascertained community needs. This is the second case in recent months in which the Commission has found it appropriate to permit acquisition of a Boston UHF station by a group with ownership in other large markets. *cf. New Boston Television, Inc., 7 Pike & Fischer R.R. 2d 857 (1966). In both cases I*

believe that we are making possible a substantial contribution to the establishment of UHF on a viable and competitive basis. For the foregoing reasons I concur in the Commission's order.

CONCURRING STATEMENT OF COMMISSIONER LOEVINGER, JOINED IN BY
COMMISSIONER LEE

The policy which the Commission should—and does—try to follow is that diversity of program sources in broadcasting should be encouraged and that the Commission should, within its jurisdiction, forbid transactions which tend to lessen competition unduly or to create monopolistic control in any market or economic area. Establishment of a numerical limit on the number of broadcasting licenses that may be controlled by a single enterprise undoubtedly serves this policy but is necessarily arbitrary, as any quantitative limit is arbitrary. The advantages of effectiveness and specifically justify such an arbitrary limitation so long as the limit—even though arbitrary in its numerical nature—is within the range of reasonableness. Further, the differentiation between large and small markets for the purposes of such a limitation is more reasonable than the establishment of a single numerical limitation applicable to all markets. Consequently the attempt to formulate a policy or rule applicable to the "top fifty" markets is an improvement on the multiple ownership rules that makes no differentiation among markets.

Similarly, however, it seems to me that a rule or policy on this subject should differentiate between kinds of stations—particularly between VHF and UHF television stations. Realistically VHF stations are more profitable and prosperous at the present time than UHF stations. Realistically, also, there is need for enterprises that are relatively strong financially to help develop UHF, and there is no evidence of any present tendency toward undue concentration of control of UHF stations. Consequently I am satisfied that there is no danger to the public interest in maintenance of a healthy competition within the field of broadcasting by allowing a single enterprise to have as many as five UHF stations in the "top fifty" markets. Accordingly I concur in the Commission order.

CONCURRING STATEMENT OF COMMISSIONER WADSWORTH

I agree with the result reached in this case, which is to grant Commission consent to the assignment of licenses of Stations WXHR and WXHR-FM, and the construction permit for WXHR-TV to WKBG, Inc. However, since I dissented to the original adoption of the Commission's so-called "Interim Policy" relating to assignments of television authorizations in the top fifty markets, I would not have applied that requirement of any special showing or justification in this case. Therefore, I would not have to reach the question of the adequacy of the showing advanced by the proposed assignee.

DISSENTING STATEMENT OF COMMISSIONER BARTLEY

I dissent because in my opinion the information submitted in support of a grant without hearing is inadequate to meet the compelling showing requirement of our Interim Policy on acquisition of TV stations in the top 50 markets.

DISSENTING STATEMENT OF COMMISSIONER COX

I must dissent, as I did to the authorization of the transfer of another UHF station in Boston a short time ago. *New Boston Television, Inc.*, 7 RR 2d 857 (1966). The majority continues to flout our interim policy limiting acquisition of television stations in the top 50 markets, while indicating that it still favors the objectives of that policy.

Chairman Hyde is satisfied that applicant has made a compelling showing justifying a grant here, but he does not in any way indicate what that showing consists of. His further comments are simply general observations about the financial hazards of major market UHF operations. There is no showing that the added service of this station is critically needed in Boston, which now has 3 commercial VHF, 1 commercial UHF and 1 educational VHF stations in operation. The station here involved has been off the air for many years, and while I suppose it is always in the public interest to provide an added broadcast service if this can be accomplished in accordance with our policies, if that's all the Chair-

man has in mind, then obviously every transfer would be granted without regard to the issue of concentration.

The Chairman further notes that the transfer here is to an experienced television broadcaster. But here, as in so many cases, we can substitute the words "multiple owner." It is possible to find people experienced in broadcasting in capacities other than ownership, but such people can never successfully bid for stations offered for sale if the Commission is willing to give the inside track to multiple owners who already have a substantial advantage in terms of their ability to raise funds with which to bid up the price. The Chairman also refers to the fact that Kaiser "has joined forces with a local group with deep community roots." Nothing is said, however, to indicate that this local group consists of the owners of one of the two principal newspapers in Boston, thus posing another form of the media concentration problem. While Chairman Hyde says that this action should not be regarded as determining any of the issues pending in our top 50 market proceeding, it seems to me that each additional waiver grant on a slender showing, or no showing at all, seriously undercuts the consideration the Commission is supposed to be giving to the matter now out for rule making.

Commissioner Loevinger regards the protection of diversity of program sources as desirable, and agrees that the use of a numerical limitation undoubtedly serves this Commission policy. He recognizes, as we all must, that the use of such a limit is necessarily arbitrary, but points to the advantages of effectiveness and specificity which can be obtained in this way, saying only that the number selected must be in the range of reasonableness. Further, he agrees that some differentiation must be made between large and small markets for the purpose of such limits and concedes that our attempt to formulate a policy applicable to the top 50 markets is an improvement over the multiple ownership rules now in effect, which take no cognizance of market size.

However, Commissioner Loevinger says that our policy should differentiate between VHF and UHF television stations, on the ground that the former are more profitable. He therefore suggests that we need relatively stronger enterprises to help develop UHF, although the Commission, with Commissioner Loevinger concurring, specifically stated that it had decided to use the 50 market concept, among other reasons, because of "the availability of ample economic support for individual, local ownership of both VHF and UHF stations in these markets." I know of no evidence to rebut this judgment; all we have had are indications that multiple owners are paying higher prices for permits of off the air stations, or for the acquisition of faltering operating stations, than others can afford. While the obtaining of the highest possible price is undoubtedly in the private interest of the sellers concerned, it is the essence of our entire proposal in this area that the public interest is not served in this process if it results in the aggregation of more and more stations in the major markets into fewer and fewer hands.

Commissioner Loevinger says that there is no evidence of any present tendency toward undue concentration of control of UHF stations. If he thinks the present limitation of 5 VHF stations is reasonable—and apparently he does—then I think he should find some reason for concern in the list of permits held by the Overmyer Broadcasting Company and the apparent plans of Kaiser to acquire 5 or more UHF stations in major markets. There is substantial evidence that it may be too late to deal effectively with concentration of VHF ownership in the major cities, unless we can require splitting up of holdings in connection with future transfers. Clearly, one of the main objectives of our proposed rule, and the interim policy which supports it, is to prevent the development of the same degree of concentration in UHF as presently exists in VHF. If we are right in our hope that, whatever their difficulties in the near future, UHF stations in the major markets will eventually be successful, then Commissioner Loevinger's willingness to accept the proposition that everyone should be allowed to own 5 stations in the top 50 markets means that he is willing to accept the same order of concentration in this newly developing segment of broadcasting as now exists in VHF television. I suppose one could even argue that his suggested limit of 5 UHF stations is discriminatory because the existing rule would permit one entity to own 5 VHF's plus 2 UHF's in the top markets. No one in fact does so, at the present time, and the proposed tightening of the rules would prevent this from coming about. However, if we continue to disregard the proposed rule, and eventually abandon it, then it would seem to me that we would have a double

standard permitting more extensive holdings for those multiple owners already entrenched in major market VHF.

I concur in Commissioner's Johnson's statement that we should hold the line until we have made up our mind as to proper direction to be taken, as a matter of policy, with respect to multiple ownership in the major markets. That was the whole purpose of the interim policy. We adopted that policy because of a conviction that the handling of transfers on an individual basis under the existing numerical limit was aggravating the concentration problem. We recognized, quite properly, that it might be shown in a special case that there was a compelling reason for a grant despite the interim policy. I simply cannot begin to find that kind of a showing here. In particular, the majority cannot find here, as it did in *Channel 2 Corp.*, 6 RR 2d 855, that the transferor had made substantial but unsuccessful efforts to sell the station to a non-multiple owner, or to a multiple owner whose interests would not conflict with the proposed rule. It seems clear here that the transferor initially attempted to effectuate a merger transaction, and when his efforts were unsuccessful, did not attempt an outright sale of the stations to any one other than Kaiser. So even this ground for earlier action, which I find generally unpersuasive, is not available to the majority here.

I think it all boils down to the fact that the transferor wants to get the most money possible out of its rather tenuous hold on a UHF channel in Boston, and quite logically decided it could do better in this regard if it sold to a well financed multiple owner. Kaiser simply wants to get as many UHF stations as it can in the top markets before the Commission adopts an effective limit, if it ever does so. Being an experienced and hard-headed business corporation, it obviously expects these stations to become profitable, and while they may never equal VHF stations in profitability, I think they will eventually become very substantial and influential mass media, held in a concentrated form which the Commission will be unable to reduce if it is ever permitted to come about. Additionally, Kaiser wants this transfer approved as quickly as possible to improve its competitive posture in relation to Storer Broadcasting Company, which the majority just recently permitted to buy the other commercial UHF station in Boston.

Where is the public interest in all of this? In the short run, the people of Boston will have the benefits of an added program service. In the long run, however, they will have lost the opportunity to have that service provided by local citizens without other media interests, and the people of all our other major markets will have similarly lost the protection against concentration of control sought in our proposed rule. The majority, in effect, says it does not see how it can deny Kaiser since it granted Storer. I think the answer is that it should not have granted Storer in reliance on its earlier grant of Channel 2 in Denver. I simply cannot agree that two wrongs make a right, or that the continued dilution of the objective of our multiple ownership rules is any thing other than a serious blow to the public interest.

DISSENTING STATEMENT OF COMMISSIONER JOHNSON

I dissent.

This is a classic instance of the kind of issue that ought not be decided on a case-by-case basis.

Indeed, in this instance, the Commission is already on record with its realization of this truth. That, presumably, is why development of the Top-50 policy was undertaken.

Now that policy is under review. We have the benefit of probing Congressional hearings. The Commission has before it a thorough and thoughtful analysis by United Research, Inc. Other comments are worth consideration. There is much validity in the arguments of Commissioner Loevinger, concurring in this case. The Commission's original thinking in proposing the policy is worthy of great respect.

I take no position on the substance of our present proposed policy. I will when it has been given the thorough review and analysis it deserves. I certainly have serious questions about both the underlying conception of the problem and the precise formula offered as a solution.

Nevertheless, until the matter is finally resolved, I believe the most rational and administratively workable course for the Commission is to hold to its proposed policy as now drafted. Such a holding action seems to me a more just and responsible course. It would also provide more guidance for those in the industry who must be somewhat unsettled at best by the quantity of conflicting opinions produced by us today on this issue.

Washington, D.C.

PUBLIC NOTICE—B, JUNE 16, 1967

CAPITAL CITIES BROADCASTING CORP. EXCHANGES CHANNEL 12, PROVIDENCE, FOR CHANNEL 13, HOUSTON

The Commission granted assignment of the license of VHF television station KTRK-TV (Channel 13), Houston, Texas, and auxiliaries, from Houston Consolidated Television Company to Capital Cities Broadcasting Corporation for a consideration of \$21,289,500 (BALCT-321).

Also granted was the application (BALCT-322) for assignment of the license of VHF television station WPRO-TV (Channel 12), Providence, Rhode Island, from Capital Cities Broadcasting Corporation to Providence Television, Inc., for a consideration of approximately \$16,000,000.

Capital Cities' applications involved an exchange of a station in the 12th largest television market (WPRO-TV, Providence) for one in the 25th television market (KTRK-TV, Houston).

Grant of the assignment of WPRO-TV to Providence Television, Inc. gives Poole Broadcasting Corporation, parent corporation of Providence, its second television station.

Action by the Commission en banc, by Commissioners Hyde (Chairman), Bartley, Lee, Cox, Loevinger and Johnson on June 14. Commissioner Bartley dissenting and Commissioner Johnson dissenting and issuing a statement.

DISSENTING STATEMENT OF COMMISSIONER NICHOLS JOHNSON

This case constitutes Commission approval of a multiple station owner's acquisition of a fourth station in one of the top fifty markets—albeit an exchange of one such station for another.

The Commission's action is, thus, in apparent conflict with its proposed Top Fifty Market Policy. 30 FR 8166, 5 P & F Radio Reg. 2d 571 (1965). That policy would prohibit a single owner controlling more than a total of two VHF and one UHF television stations in the fifty most populous television markets. The proposed policy is, in that respect, a refinement of this Commission's multiple ownership rules which limit the number of stations anyone can own to a total of seven AM and seven FM radio, and five VHF and two UHF television stations. 47 C.F.R. § 73.35; 47 C.F.R. § 73.240; 47 C.F.R. § 73.636 (1967).

For reasons stated in my dissenting opinion in Harvey Radio Laboratories, Inc. [WXHR, Boston], 6 F.C.C. 2d 898, 903 (1966), I do not believe the Commission should take case-by-case actions inconsistent with its proposed Top Fifty Markets Policy until it has finally passed upon that policy. Consistent with my reasons and vote in WXHR I dissent here.

I believe that questions of the ownership and responsible operation of the major outlets of information and opinion in a free society are among the most important confronting the country, the Congress, and this Commission. See generally, *e.g.*, ABC-ITT Merger, 7 F.C.C. 2d 245, 278 (1967), Paris-Bourbon County Broadcasting, Inc., 6 F.C.C. 2d 894, 9 P & F Radio Reg. 2d 122 (1967). There are numerous illogical and inconsistent features of our current media ownership laws and policy. For example, although a single owner may not control two AM radio stations (or two television stations) with overlapping signals, 47 C.F.R. § 73.35; 47 C.F.R. § 73.636 (1967), there is nothing to prevent the common ownership, in a single market, of an AM and an FM radio station, or an AM and FM radio station and a UHF or VHF television station. Concentrated regional ownership, newspaper ownership of broadcast properties, or local newspaper-AM-FM monopolies, may be given great weight in comparative hearings and virtually ignored in considering unopposed applications or license renewal proceedings. See Farragut Television Corp., — F.C.C. 2d —, — (1967) (dissenting statement) [FCC 67-611, May 22, 1967]. Indeed the Top Fifty Market proposal grew out of the Commission's awareness that it was illogical to equate the issues involved in ownership of television stations in the most profitable and populous markets with the issues involved in joint ownership of five geographically diffuse VHF television stations in the 100 smallest markets.

Not only are the present Commission policies toward ownership of broadcast properties inconsistent and illogical, there are other relevant factors that should

be considered. Just by way of a few examples, what is the effect of our present ownership rules on the potential for establishing a fourth network? Are multiple owners better able to compete as affiliates with networks? What is the effect of multiple ownership on the broadcast product of a licensee? What is the effect of our ownership rules on entry into UHF? What "local service" is needed, and is being provided in fact, by local stations today? What is the impact of the type of ownership (conglomerate, other media interests, total area served, media monopolies) on the service and program product provided? How much diversity do we want at what cost in terms of effective organization, or unremunerative programming, and what has been our experience in terms of the ability and actual performance of multiple owners?

I believe these, and comparable issues are interrelated and ought to be viewed and evaluated as such. I would like to see this Commission undertake such evaluation. Meanwhile, it does not ease the ultimate resolution of such issues, in my judgment, to take actions contrary to an interim policy concerning control in media while evaluating its wisdom.

MINUTES OF THE FEDERAL COMMUNICATIONS COMMISSION

Minute #488-A-67 Commission Meeting (Assignment and Transfer Matters)
November 22, 1967 3:00 P.M.

Present: Commissioners Hyde, Chairman; Bartley, Lee, Cox, Loevinger, Wadsworth and Johnson.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., this date, the above-named Commissioners being present, the Commission took the following actions on Assignment and Transfer Matters, all actions being by unanimous vote, except as otherwise indicated:

Agenda Item No.	File No.	Applicant	Call letters
2	BAPCT-395	Harcourt, Brace & World, Inc. (assignor); the Denver Post, Inc. (assignee), Denver, Colo.	KHBC

Granted consent to assignment of construction permit.

Commissioner Bartley dissenting and stating:

"I vote for an evidentiary hearing to determine how the public interest would be served by granting the assignor's application to extend completion date merely for the purpose of assigning the construction permit of KHBC (TV).

"I would withhold action on the assignment application until it had been determined in the hearing proceeding whether the assignor retained any construction permit to assign."

Commissioner Cox dissenting and stating:

"I do not think that the public interest is served by authorizing this assignment. Harcourt, Brace and World, Inc., acquired two UHF construction permits. It has apparently become disenchanted with the prospects of television and has surrendered one of the permits and dismissed three pending applications for UHF in Portland, Phoenix, and Salt Lake City. It is here seeking to assign its channel 20 permit for Denver, and the majority grants its application.

"It is disposing of its permit for \$12,370.52, which apparently represents its out-of-pocket expenses in acquiring the authorization. We normally allow permittees to transfer their permits on this basis, since they otherwise might suffer losses which for many of them would be significant. But certainly the sum involved here is of no real importance to Harcourt, and one wonders why it did not simply surrender this permit as it did the other one. Certainly I see no great public interest to be served by allowing it to recoup the minimal expenses it incurred in its fleeting entry into broadcasting—a venture which it presumably undertook after careful study and with the realization that losses might be incurred.

"On the other hand, approving this transaction results in the permit's passing into the hands of The Denver Post, Inc., an entity which quite probably could never have acquired a permit in a contest with any other applicant because of its ownership of a major local newspaper. While this is often true in transfer

cases, as suggested above there seems to be no public policy reason for permitting it here.

"Furthermore, the transfer to this particular buyer involves a further breach of our Interim Policy on Television Multiple Ownership, 5 RR 2d 271, adopted June 21, 1965. This arises from the fact that 18.8% of the stock of The Denver Post, Inc., is owned by Samuel I. Newhouse (through various corporate entities). He controls, in turn, Newhouse Broadcasting Corporation, which controls six television stations—all but one in the top 50 markets to which our Interim Policy is addressed. Thus the majority allows the Newhouse interests to acquire a minority interest in a sixth station in the top 50 markets—and does so, again, without any explanation for its abandonment of our announced policy. I think both this result and this procedure are contrary to the public interest. I do not think we should approve this further concentration of ownership and control in the major markets simply because Harcourt has lost interest in its proposed broadcast operations and would like to recover the relatively nominal sum it had spent in acquiring this permit. I certainly think this is a classic case for application of our Interim Policy, with no significant public interest considerations to tip the balance the other way. I therefore dissent."

Commissioner Johnson dissenting.

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In re Applications of

CHRIS-CRAFT INDUSTRIES, INC., TRANSFEROR

and

BALDWIN-MONTROSE CHEMICAL COMPANY, TRANSFEREE

For Transfer of Control of the Following Licensee Corporations: (The Auxiliary Stations for Each License Corporation are Included as Attachment I.)

1. WTCN Television, Inc., Licensee of Station WTCN-TV, Minneapolis, Minnesota, BTC-5425.
2. KCOP Television, Inc., Licensee of Station KCOP-TV, Los Angeles, California, BTC-5426.
3. Oregon Television, Inc., Licensee of Station KPTV (TV), Portland, Oregon, BTC-5424.

ORDER

Adopted: November 8, 1967.

Released: February 12, 1968.

By the Commission: Commissioner Bartley absent; Commissioners Cox and Johnson dissenting; Commissioner Loevinger concurring in the result.

1. The Commission has before it the above-captioned applications, which propose to transfer control of the licensee corporations of Stations WTCN-TV (Minneapolis, Minnesota), KCOP-TV (Los Angeles, California) and KPTV (TV) (Portland, Oregon) from Chris-Craft Industries, Inc., to Baldwin-Montrose Chemical Company.

2. Since the stations involved are in the Top 50 television markets, and control of their parent company is being transferred, the applications come within the purview of the Commission's *Interim Policy Concerning Acquisition of Television Stations* (5 RR 2d 271). In addressing itself to the Policy, the transferee stated, *inter-alia*, that the parent company of the three licensees, namely, Chris-Craft Industries, Inc., is a widely held corporation with some 6400 stockholders, with no individual stockholder or group holding a majority of the stock.

3. The proposed transferee, having acquired approximately 25% of Chris-Craft stock in the open market over a period of time, is presently the largest single stockholder but it has never attempted to exercise de facto control. The present management group, comprising 20 stockholders and owning in the aggregate approximately 10% of the stock, propose to sell their interests to the trans-

ferree. With this acquisition, the transferee would have and will exercise *de facto* control.

4. In considering the overall showing made in the applications, the Commission is of the view that the applicants have affirmatively and compellingly shown that a grant of the applications would be consistent with the *Interim Policy*.

Accordingly, it is ordered, That the applications for transfer of control of the licensees of Stations WTCN-TV (Minneapolis, Minnesota), KCOP-TV (Los Angeles, California), and KPTV-TV (Portland, Oregon) from Chris-Craft Industries, Inc., to Baldwin-Montrose Chemical Company, are granted.

BEN F. WAPLE, *Secretary*.

ATTACHMENT D

Mr. Hautanen was asked to explain what he relied on for the statement made in paragraph 17 of the Memorandum (Mimeo 6738) to the effect that the Overmyer-AVC loans were ". . . fully collateralized by mortgages and notes on various warehouse properties . . .", and to indicate what documents had been relied upon to support this statement.

This statement was based on specific provisions of the "Loan Agreement" which was filed with the transfer applications. These provisions accord AVC a legal right to obtain second mortgages from various Overmyer warehouse subsidiaries to whom AVC makes loans. The requirement for execution of a second mortgage is specified at page 3 of the Loan Agreement, in Article II(A)(2)(iii), which governs the making of the First Loan. Article II(D)(3) of the Loan Agreement (page 6) further provides AVC is not obliged to make the First Loan unless, *inter alia*, ". . . the aggregate of all equities of the Subsidiary Companies in the real properties which are to be made subject to the liens of said Mortgages shall not be less than \$6,000,000 . . ." as determined under the formula provided in Article II(D)(3). Parallel provisions for the execution of second mortgages upon making of the Second Loan are set out at page 9 of the Loan Agreement (Article III(A)(iii)) and page 22 thereof (Article III(C)(3)). The Article and Exhibit refer to real properties of the warehouse subsidiaries which would satisfy the conditions (Articles II and III) regarding the necessary equity which a warehouse subsidiary had to have in a property subjected to a second mortgage to secure a loan from AVC.

Of course, in addition to a second mortgage which AVC could demand, the loans are further secured by the "Stock Pledge and Escrow Agreement" made contemporaneously with the other Overmyer-AVC agreements, and filed with the application. Under this pledge, Overmyer's remaining 20% stock interest in the permittee corporation serves as additional collateral for the loans, subject to prior rights of the Girard Trust Company and Pacific National Bank of San Francisco in respect of loans made by those banks to the WBMO permittee and the KEMO permittee.

It might also be noted that additional non-tangible security for the loans is to be found in the provisions for the issuance of Promissory Notes for any loans made (Exhibit B, attached to Loan Agreement), and by the guaranties of the loan from the subsidiary, from the Overmyer company, and from D. H. Overmyer personally. See Exhibits C, D and E, respectively, attached to the Loan Agreement.

Finally, it is recognized that since AVC's specific designation of warehouse properties it considered acceptable as collateral was left to the future, the language on this point should have stressed that the loans ". . . are to be collateralized" at a later date.

There was no one-page sheet which was relied upon as showing that the loans were fully collateralized.

ATTACHMENT E

Mr. Hautanen was requested to document the basis for the statement in paragraph 17 of the Memorandum to the Commission (Mimeo 6738) that Overmyer had suffered losses in his efforts to establish a fourth network.

The statement was based on the following statement, which appears at page 8 of the affidavit of Mr. Thomas J. Byrnes, explaining the basis on which out-of-pocket expenses had been determined:

"Finally, much of the incentive in attempting to develop a new network grew out of the need for programming for the six TV stations. A goodly portion, there-

fore, of the monies invested and lost in the Overmyer Network could properly be taken into account in determining Mr. Overmyer's investment in the TV stations." (Affidavit filed in WBMO-TV transfer application, BTC-5379.)

Of course, as paragraph 17 makes clear, Overmyer's alleged losses in trying to establish a fourth network were only one—and a relatively minor—factor in recommending a grant of the applications.

ITEM 33

REASONS FOR PROPOSED TRANSFER

EXHIBIT I (JUNE 1967)

D. H. OVERMYER/AVC CORP., FORMS 315 RE WBMO-TV, KEMO-TV, WSCO-TV, WECCO-TV, AND KJDO-TV

D. H. Overmyer commenced his warehousing business with rented space for one warehouse in Toledo in 1947. Within about seven years he began projecting a national warehousing and distribution system for large national manufacturing enterprises which need warehousing and distribution space and services in the many major consumer markets throughout the country.

Such a national warehousing service with its standardized procedures, simplified handling and lower costs was warmly accepted by many large companies looking for ways to distribute their goods faster and cheaper to the country's major markets.

Although Overmyer initially used rented facilities in expanding to other cities, in the middle 1950's he began to buy choice sites and to have new buildings constructed which he owned. The real estate values inherent in these properties and the prospects of assured revenues from the national concerns using the warehouse facilities produced a ready supply of long-term credit for purposes of constructing the new warehouse facilities. Over approximately the last ten years the Overmyer Warehouse companies have generated first mortgage loans substantially in excess of \$100,000,000 for construction of over 16,000,000 square feet of warehouse facilities in 53 major consumer markets in the United States and Canada.

One of the better contractors used by Overmyer to construct the buildings during the initial part of the expansion program was a W. J. Nixon, who later organized Nixon Construction Company. When Overmyer began to implement his program for a national system, the Green & White Construction Co. was formed and became Overmyer's principal contractor. Nixon Company became a subsidiary of Green & White (Overmyer has an option to buy Green & White's stock). Green & White has operated since in close association with the Overmyer companies. It set up a field organization and had the construction done principally by local subcontractors. Large-scale building began in 1965, and between January 1965 and August 1966, Overmyer increased its warehouse space from approximately 2,000,000 to 8,000,000 square feet with an additional 8,000,000 square feet under construction.

In the Summer of 1966, however, complaints began to reach the Overmyer Warehouse Company that Green & White was unduly slow in paying its subcontractors on Overmyer jobs. The initial inquiry indicated that the general restriction of credit usually available to subcontractors accounted for pressure on Green & White for accelerated payment. But further investigation showed that Green & White, probably due in large part to the great inflation in construction costs in 1966 and to the extensive scope of its undertakings, lost money on many of its projects, had a large deficit and owed millions of dollars to subcontractors. Overmyer's warehousing operations were soon seriously hampered, because completion of buildings was delayed and commitments to serve customers could not be met, and because the liens placed on its buildings by subcontractors prevented expected loans from being consummated.

The Overmyer Warehouse Company had no alternative under the circumstances to assuming and endeavoring to pay the liabilities of Green & White. This presented Overmyer with a critical two-pronged problem: (1) payment of the debts required cash of many millions of dollars which the Warehouse Company did not have; and (2) the construction and—it had become increasingly evident—anticipated large early operating deficits of Overmyer's six UHF stations

already faced Overmyer with demands upon most of the cash the warehousing operations could be expected to generate over the next few years.

Study of these financial problems made it clear that there was but one solution. It did not appear that Overmyer, with the first mortgages on its principal assets, had the resources to produce the cash needed to meet both Green & White debts and the requirements of the UHF stations. Trying to preserve the UHF enterprises alone was futile because they depended on the cash which the warehousing operations and assets alone could produce. Unless the warehousing operation could be preserved, everything would be lost. Hence, Overmyer was forced to adopt the alternative of paying the Green & White debts in order to keep the warehousing operations viable and of trying to get relieved of the substantial present and prospective cash drain caused by the UHF stations.

Accordingly, during the latter part of 1966 and early 1967, Overmyer explored the double approach of (1) extending payment of Green & White debts and putting payment of them on an orderly schedule over a period of two-three years, and of trying to realize some present cash from the warehousing properties by means of sale-leasebacks, and (2) trying to find a partner, preferably a minority stockholder, in the UHF stations which would provide the financing necessary to carry them. Considerable progress has been made in making arrangements for the orderly liquidation of the Green & White debts and in generating cash through sale-leasebacks. The attempt to find a minority stockholder for the UHF operations was unsuccessful; accordingly, the present arrangement was worked out with A.V.C. Corporation, the proposed transferee, under which Overmyer would be able to (1) get back part of his overall investment in UHF, (2) retain a significant interest (20%) in the UHF operations, the future financing of which will be largely the obligation of the proposed transferee, and (3) realize through loans from A.V.C. cash needed to meet the early maturing Green & White obligations.

It was originally thought that it would be necessary for Overmyer also to sell his Toledo UHF station, which is still operating at a deficit. But with the success of the other measures described above, it is the present intention to keep WDHO-TV and to bring it to a profitable status.

Mr. Overmyer entered UHF broadcasting with the full expectation of not only placing all the stations on the air, but of financing the early deficits through loans and by warehousing profits. Not only has WDHO-TV been on the air over a year, but as shown in Exhibit II hereto, plans were proceeding according to schedule to put all or most of the other five stations on the air during 1966 when the rug was pulled out during the latter part of 1966 by the unexpectedly large deficit of the company constructing the warehouses. If the efforts to realize cash through sale-leasebacks of the warehouses continue successfully, and if the present transaction with A.V.C. is consummated, it is expected that the Green & White debts can be paid off over the next two-three years and that the warehouse operations can be preserved.

EXHIBIT II (JUNE 1967)

ACTIVITIES OF D. H. OVERMYER COMPANIES IN CONNECTION WITH TV STATIONS IN ATLANTA, SAN FRANCISCO, NEWPORT (KY.), PITTSBURGH, AND ROSENBERG (TEX.)

Initiation and Development of Interest in UHF

In late 1962, D. H. Overmyer, while engaged in providing a national warehouse service, concluded that the forthcoming all-channel law plus a need for a third TV service would provide a reasonable chance for a new television station in his home city of Toledo, Ohio. In April 1963, he filed for Channel 79 there, the only available assignment at that time. A permit was granted on March 10, 1965. The Station (WDHO-TV) went on the air in May 1966.

In the course of presenting this application and studying the television industry, Mr. Overmyer concluded that the establishment and operation of UHF stations in other markets provided a good business opportunity in an expansive new industry.

An experienced broadcaster was employed in June 1964 to head up these communications operations as Executive Vice-President. A thorough review was made by the Overmyer organization of markets showing a need for and the capability of supporting a new UHF TV service. It was finally decided to seek

additional authorizations in Atlanta, Newport-Cincinnati, Pittsburgh, San Francisco, Rosenberg-Houston and Dallas-Fort Worth.

Applications were planned, prepared and filed for each of these six cities between August 1964 and February 1965. In some, extensive negotiations were carried on to acquire the permits of dark UHF stations. In all cases, plans were made and negotiations were carried on for antenna and studio sites, for financing commitments, etc.

Applications and Other Proceedings to Improve Facilities

While the several applications were pending, extensive studies were made of UHF, its economics, its engineering, UHF set circulation, available programming, its requirement of success—generally and in each market. It was concluded that maximum signal facilities and full color were a *sine qua non*, and and searches were commenced—in some cases before final authorization was obtained—for appropriate transmission and studio sites. The equipment market was canvassed thoroughly and all potential suppliers were contacted. In some cases, the high channel allotted was regarded as a serious drawback, and studies were made to determine the availability of lower frequencies and, where appropriate, were initially for a change to a lower channel (i.e. Newport, Rosenberg and extensive studies for Pittsburgh).

In all cases, the initial authorizations needed to be improved. Proposals for new and improved antenna sites, studio locations, higher towers, vastly expanded transmitting power and studio equipment proposals and new or substitute financing had to be planned, negotiated, implemented and filed with and processed by the FCC. Final authorizations for the maximum facilities presently being constructed were obtained in Atlanta—January 1967; Newport—May 1966 (transmitter) and December 1966 (studio); Pittsburgh—March 1967; and Rosenberg in January, 1967; and San Francisco—March 1967.

At the same time, with the aid of other Overmyer companies construction planning went forward—selection and ordering of equipment, acquiring titles to sites, expanding staff, making arrangements for programming, etc. Activities in various areas are detailed below.

Present Status

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). (See Exhibit III, Schedule D.)

Summary of Construction Activity by and for the Five Stations

As noted above, commencing even before the authorizations for the several stations were finally granted, planning has gone forward to implement them and construct maximum-facilities stations in the following areas:

1. Expanding the headquarters staff, and organization, and setting up procedures and policies for the several stations and recruiting and training station personnel;
2. Carrying out plans, and arranging, for financing the construction and operations of the stations;
3. Searching out, studying and acquiring new antenna sites where improved facilities were necessary.
4. Studying, negotiating for, acquiring and constructing towers, transmitter buildings and studio buildings and offices;
5. Studying, negotiating and acquiring antenna, transmitting, studio, and related equipment;
6. Negotiating for and acquiring a film inventory and making other program plans;
7. Other related activities.

(1) *Expanding the headquarters staff, and organization, and setting up procedures and policies for the several stations and recruiting and training station personnel.*—Though reliance continued to be placed heavily on the resources of the Overmyer operations and personnel, after as well as before grant of the authorizations, the Overmyer Communications Companies (herein called "OCC") needed an organization with people trained and experienced in broadcasting to carry forward the plans to make the Stations operational. It was necessary to expand the headquarters organization to serve all the stations and to recruit personnel to staff the individual stations. With the assistance of the general

Overmyer personnel department, a large number and a wide variety of personnel were interviewed and hired for the OCC headquarters staff over the period of June 1965 through Fall 1966, including a President, Engineering Director, Financial V.P., Research Director, Administrative Assistant, Attorney, National Operations Manager, National Sales Manager and Secretaries.

Also for the Stations, three V.P. General Managers were engaged for Newport, San Francisco and Atlanta with chief engineers and secretaries in each location, a Business Affairs Manager in Newport, and a Production/Program Director in Pittsburgh who was subsequently transferred to San Francisco. An employment recruiter, representing the home office Personnel Department, was rotated to each of the locations in Atlanta, Pittsburgh, Newport and San Francisco, through the period February 1966 thru August 1966, to organize and assist in the development of a recruitment program. Hundreds of applicants were screened for all positions for station staffing, and recruitment interviews were held during this period. This procedure involved newspaper advertising, solicitation, review of applications, interview arrangements and preliminary testing for qualifications, coordination with home office for hiring authorizations, and follow-up contact with each applicant.

The headquarters staff had the principal responsibility from the outset of carrying out the construction and other preoperational plans of the several stations. A specially designed form of report to show weekly construction progress at each station is attached. (See figs. 1a, 1b, 1c.)

One of the main functions of the headquarters staff has been the development of common policies and procedures to be followed by the stations—with respect to employee relations, finances, sales reporting to headquarters, accounting, etc. These procedures were developed for integration with other Overmyer service departments. For example, accounting codes were developed to adapt to Overmyer accounting methods as were basic credit procedures, expense reporting practices, time reporting and capital expenditure requests. Procedures unique to the communications operation, however, were designed for incorporation into the Overmyer service operations. This was done so controls and accounting procedures could be serviced by central departments of the Overmyer Companies.

(2) *Carrying out plans, and arranging for, financing the construction and operation of the stations.*—The Overmyer Finance and Development Department provided a ready organization of personnel with knowledge of potential credit sources across the country and experience in dealing with bankers and other finance contacts. OCC utilized this resource from the outset in 1964. On various occasions, seminars have been conducted with the Overmyer finance-development staff for the purpose of outlining OCC objectives, organizing assignments and exchanging finance market information. OCC personnel, aided by a large number of personnel of general Overmyer departments (Treasurers, Finance Home and Regional Offices, Legal, etc.) spent a very large amount of time with bankers, insurance companies and other potential lenders in the local areas of the five cities involved, in New York City and other areas in initial and follow-up contacts, protracted negotiations, securing loan agreements and establishing bank accounts. In all instances, negotiations, whether successful or unsuccessful, demanded numerous visits to each institution for discussions, review, re-appraisals and final decisions.

All Overmyer Company staffs were utilized to assist the program. Overmyer Company field personnel would explore and advise on local lending conditions, offer suggested leads and arrange for the introduction of OCC finance officers. In each location, every major bank was contacted, and negotiations were commenced with as many as six institutions in one area. Constant coordination was maintained during this process with local Overmyer Company financial personnel and headquarters officers for advisory assistance and progress reporting, as well as preliminary and final approval. Since the standard practice of bank credit required the guarantee of other Overmyer Companies, each negotiation included the explanation and evidence of other Overmyer financial interests, and required the presence of a qualified Overmyer staff officer.

To finance improvements to acquired transmitter sites, Overmyer staff personnel regularly explored the possibility of financing with local investment groups, mortgage companies and insurance firms.

(3) *Searching out, studying and acquiring antenna sites.*—As noted, it has been a basic principle of OCC to construct stations with maximum broadcast facilities. Maximum facilities were deemed necessary not only to transmit an adequate UHF signal at the outset, but to reduce the competitive advantage of

the already established stations in the market and the disadvantage of operating without attractive network programming. Antenna location and height were critical. Among the specifications required for antenna locations to provide this prime service to the community were locations central to the area being served, locations that would permit maximum antenna height, a plot of sufficient size to accommodate the tower installation at an investment that was not prohibitive, and a location which would be accepted under local zoning and other neighborhood requirements and which would not interfere with other broadcast signals. Most locations meeting these tests were concentrated in areas of developed population and possessed built-in problems of availability, clearance, and high costs.

There has been no area of activity involved in planning the stations which has required more time or effort on an almost continuous basis since 1964 than that of locating and studying prospective land areas as potential antenna sites and of getting the numerous local and federal approvals. Each of the five cities presented very difficult problems. Many possible sites—even after weeks of searching and studying—had to be discarded because of their inability to measure up to the requirement of antenna height above ground comparable to that of the established stations—usually a minimum of 1,000 feet. Selection of other sites—after additional months of negotiations for their acquisition—was frustrated by unanticipated subsoil conditions, zoning problems and price demands.

All resources available to OCC were utilized to resolve each site problem. Independent engineers were continuously consulted to supplement staff advice regarding desirable areas. Fortunately, other Overmyer companies have large departments engaged in land acquisition and development throughout the country and maintained regional offices in or near each of the five cities. Specialists from these departments made concentrated and sustained efforts since 1964 to locate suitable sites in solving the many complex problems that constantly arose and to assist in negotiating and concluding their acquisition. Also, local real estate agents were frequently called in for consultation. Civil engineering and other advice to provide site-feasibility and other assistance was repeatedly sought from other Overmyer Companies, their general contractor (Green & White Construction Co.), and local firms. In each market, no possible resource was left unused in an effort to secure a desirable antenna site.

In Atlanta, where the CP was acquired without a tower site, the problem of finding a suitable location was greatly intensified by virtue of the four airports which circle the city. OCC engineers and aeronautical consultants advised that there was but a limited area acceptable as a tower location which would permit use of maximum height. This area was centered in the neighborhood of existing station towers, but it had become densely populated (and thus high-priced) was tightly restricted by zoning regulations and had virtually no available tracts large enough for a guyed tower. In the summer of 1965, Overmyer regional representatives, working with ten local real estate firms, suggested a number of sites, only one of which was suitable for the more practical guyed construction. While negotiations for this site continued, and engineering surveys were made, the owners consummated a sale to a thirty party for a larger tract of which the site under consideration was a part. Alternate arrangements were immediately pursued with the new owners but were unsuccessful because of construction requirements.

Almost simultaneously, negotiations were begun for acquisition of land rights in a local golf course and for a site owned by Mead Paper Co. Engineering studies and topographical surveys were again made. After many weeks of investigation and meetings, the golf club declined to permit the erection of a tower on its property. The Mead property was eventually eliminated because of a combination of construction difficulties, inflated cost, and interference problems resulting from its proximity to AM broadcast stations.

During much of this time, consideration was also being given to the possibility of using a very costly self-supporting tower; to erecting a tower on top of a major office building being constructed in mid-town; and to a joint venture with other applicants and existing VHF operations. Also, extensive discussions were carried on with the local and state Boards of Education regarding the possibility of utilizing Board property for a tower, the greater portion of the cost of which would be borne by the commercial stations but which would have been used by both the commercial and the educational stations. Again, engineering studies were made, and again negotiations were carried on until it became apparent that Board approval would not be forthcoming.

Finally, late in 1966, regional representatives of Overmyer, working with a local realtor and one of the OCC general managers, located a piece of land which, although available only on a rental basis, was adjacent to the area previously determined to be acceptable. Negotiations were conducted over an extended period. FAA approval was eventually obtained, and OCC now holds a lease for the necessary site.

The Pittsburgh area, because of its terrain, is one of the most critical in the country from the point of view of UHF coverage and, accordingly, the right location and optimum HAAT are vital. An intensive search for sites by realtors, Overmyer regional personnel, and OCC executives uncovered a number of sites, of which at least 12 were studied in detail. Although most were eliminated for reasons of construction difficulties on sloping terrain or insufficient land area, one site appeared to be excellent. FAA clearance for the 2049 feet above MSL enjoyed by the area's VHF stations was obtained, and an application to the Commission was prepared. Negotiations for the site involved settlement of difficult issues of domicile concessions, estate considerations, etc. only to be abruptly ended when the local city planning agency revealed its intention to develop the area and requested that our endeavors be directed elsewhere. Further search in early 1966 resulted in negotiations with Western Union for a site it owned and used for transcontinental relay. During the ensuing months, discussions to accommodate both uses were held by representatives of both companies and engineering surveys began. Additional area was required for the OCC tower which necessitated making an agreement for use of adjacent local school property, which was ultimately reached. Overmyer construction plans were proceeding rapidly, when an engineering survey of subsoil conditions disclosed a severe problem created by an abandoned coal mine which would either render the site unusable or require very expensive site preparation operations. Extensive investigation was begun by Overmyer personnel, professional soil consultants and engineers in an effort to find a workable, practicable solution. In the meantime, the search for other sites continued, and in the Spring of 1966, Overmyer representatives recommended an alternate site owned by a local manufacturer who was planning plant relocation. When engineering surveys disclosed that this offered improved construction possibilities, negotiations for lease or purchase were begun. FAA clearances and FCC approvals were requested and given for relocating the transmitter facilities to this location.

Shortly after the Newport CP was assigned to OCC in early 1965, and the application for increased power to 1000 KW was granted, it was determined that the Newport, Ky. tower site (one of the assets acquired in the assignment) was not adequate because of its close proximity to the greater Cincinnati airport to the west and the Lankin Airport to the East. Here the tower height was restricted to 509 ft. HAAT which would produce a submarginal television signal in the market. (Approximately 1000 ft. HAAT was enjoyed by the tallest V station serving the area). A search was begun by the OCC and Overmyer staffs, consultants, and local realtors for an improved tower location close to those of the existing competitor stations and yet near downtown Newport, Covington and Cincinnati. The initial search in Northern Kentucky was frustrated by FAA height restrictions throughout the area between Lankin and greater Cincinnati airports and by zoning restrictions.

At least fifteen separate tower site locations were explored and studied in detail during 1965 and 1966. Finally the selection of Bald Knob in Cincinnati was made. Bald Knob is within one mile of all other existing towers serving the market, one mile from downtown Cincinnati, two miles from downtown Covington, Kentucky and three miles from downtown Newport, Ky. This location permitted a tower height in excess of 1,000 ft. HAAT and thereby upgraded the potential signal service of the station. In May 1966, the FCC approved the Bald Knob tower location and granted the channel change to 19 from 74.

As long as it seemed possible that the planning for a tall tower in San Francisco might provide a unified solution for all new station entries there, an active participation, beginning in 1965, was maintained by OCC in the development of the Mt. Sutro Tall Tower project. Coincidentally with pursuing this possibility, other choices were explored by Overmyer regional staff and consultants, with the obvious choice of San Bruno being the most practical alternative. When it was apparent that the development of Mt. Sutro's joint Tall Tower would not satisfy

the needs of OCC for an early start, and when it was learned that no other sites were available on Mt. Sutro, negotiations were carried on with the owners to secure a location on Mt. Bruno. These negotiations and arranging for development of the site consumed many months and resulted in execution of a lease in late Fall 1966. This site is now secured and ready for operation.

It should be noted that to expedite station progress and reduce the capital investment necessary for construction, the possibility of using space on existing structures for OCC antennas was explored at length in each location. For reasons of design, too heavy weight loading and other considerations, however, such a solution to the antenna location problems had to be abandoned.

(4) *Searching out, studying, negotiating for, acquiring and constructing towers, transmitter buildings and studio buildings and offices.*—The above noted activities have constituted a principal activity of OCC and other Overmyer personnel and consultants throughout the period since 1964.

The design and cost of towers of the leading companies were reviewed at length by OCC and other engineering personnel, and proposals for several station orders were submitted to competitive bidding. Contracts were handled by the general Overmyer legal department. In addition to the 1,400 ft. tower in Toledo, towers of the following heights have been designed for each of the several stations: 919.5 ft. in Newport; 658.4 ft. in Pittsburgh; 1,386.5 ft. in Rosenberg; 1,083 feet in Atlanta and 152 feet on Mt. Bruno for San Francisco. In some cases as in Pittsburgh, because of the unavoidable site difficulties, the design was made, revised, discarded and begun again.

The tower for Newport is completely erected; the tower for Pittsburgh has been fabricated and is ready for erection; the San Francisco tower is erected; the Atlanta tower has been designed and is ready for fabricating; and the Rosenberg Tower is in a stage of final design proposal.

Transmitter buildings for the several stations have been designed to meet the same basic requirements of providing permanent structures with adequate equipment and operating spaces for expanded as well as initial installations. They also were designed on a custom basis to meet the construction problems of the specific site involved. Thus, at the Bald Knob site in Cincinnati, the unavailability of water and power required special study and construction of special facilities. Construction was carried out under the supervision of OCC and Green & White engineering personnel and consultants.

The transmitter building in San Francisco was begun immediately after execution of the lease and is now complete and ready for occupancy. The building for the Newport station was begun last fall and is substantially completed; delay has been caused by the current city-wide construction work stoppages. Material for construction of a transmitter building are on location in Pittsburgh; however, the most recent change in site location may eliminate the need for new construction. A contract for construction of the Atlanta building has been signed and will provide a building by the time the tower is completed. Plans for Rosenberg are to install a prefabricated building on the tower site, and preliminary arrangements have been made.

In each market, many possible studio and office facilities have been inspected and considered in order to select the one best suited from the point of view of location, size, cost, ceiling heights and proximity or line of sight to the antenna. In some cases, construction of new facilities had to be investigated and reviewed.

For the Newport station, numerous sites on the Ohio and Kentucky sides of the Ohio River were reviewed and rejected. Studies showed that the original studio location in Newport was as substandard as the original antenna site was deficient. It had originally been planned by the prior owner to combine tower and studio in a complex which would also house a nite club and gambling casino on a hill overlooking Newport. When gambling activities were prohibited, the entire real estate of Newport degenerated and became totally substandard. With this background, Overmyer personnel, realtors and engineers assisted station personnel in exploring locations in Newport and Covington. However, only former night clubs and gambling casinos were available for possible studio use. Five sites were rejected for the most part because of their previous gambling identifications or poor roadway access.

A search in downtown Cincinnati immediately across the river from Newport and Covington was begun and included a survey of over twenty different

buildings: theatres, office buildings, former tv studios, the music and convention halls. In general, all downtown sites were unsuitable because of limited ceiling heights at ground levels. The area north of Cincinnati was then explored and in July 1966 an application was filed for a site at Sharonville, Ohio, eighteen miles from Newport and downtown Cincinnati. During the waiting period, a new development became available in a renewal project three miles from Newport and close to the transmitter site. This site at Queensgate was greatly superior in all respects, so in November 1966 a request was made and later granted to revise the location accordingly: Construction has been virtually completed to close in the building; additional work is necessary, however, to finish internal improvements for studio use.

In Pittsburgh, suitable studio and office space has been intensively sought since 1965. With the assistance of local realtors and the Overmyer staff, several good facilities were located. OCC set up its local offices in one, a leading local hotel, while negotiations were being conducted and plans were made for the extensive alterations necessary; months of discussions proved abortive, however. The recent change of transmitter sites brought with it the availability of a building on the site of the new tower location, and negotiations are underway at the present time for its acquisition.

The search for a studio office building location in San Francisco was begun by Overmyer real estate officers. After a number of available sites were screened, and a Geary Street building was investigated and found wanting, the Whitcomb Hotel was studied and approved, and negotiations were begun for its lease and improvement. Engineering and architectural layouts were drawn and ready until, in March 1966, negotiations ended because the owner consummated a lease with another party. Two alternate buildings were explored in the meantime by Overmyer local representatives and rejected because of excessive conversion costs. In June 1966 the Whitcomb Hotel reinstated the original negotiations and began preparing working plans for the alterations. These activities continued into October 1966 before the owner removed the planned space from the market because of a change in plans. Additional sites were again sought, and seven were studied. The present location on Marin Street was found to have many advantages. Engineering advice, drawings and specifications for the building alterations were provided by engineers of Green & White. After competitive bids, construction began in March 1967 and is now completed, and after final acceptance will be ready for service.

In Atlanta, a number of different sites were considered. Negotiations for a lease on one site were in the last stages when they were aborted by the owner's demands. Preliminary arrangements have now been made for new construction of studio facilities at the transmitter site.

The total unavailability of suitable facilities in Rosenberg has dictated plans for construction of a studio at the transmitter site, although highly desirable space at a proposed art center in Houston may be available.

(5) *Study, negotiation and acquisition of antenna, transmitting, studio and related equipment.*—One of the areas of most intensely concentrated activity was by OCC and other Overmyer personnel and consultants related to equipment to be used by the several stations. In line with basic OCC policy, the best and most powerful equipment was specified. Equipment for full colorcasting was decided upon. Radiation of at least 1 megawatt of power was proposed for all stations; 5 megawatts was planned for such time as this power became feasible and permissible. Examination and detailed review was made of equipment of all available manufacturers over most of 1965. Other broadcasters opinions were sought for experience with various manufacturers. Innumerable conferences were held with representatives of the several companies.

Many visits were made to the manufacturers' plants. In early 1965, a trip was made to England to see the operation and manufacture of the Marconi 50 kw transmitter. Finally, after competitive bidding by several companies on the various kinds of equipment, and after extensive negotiations over many months, during which personnel in other Overmyer companies were extensively

called on for advice, contracts were entered into for the following equipment:

Antennas: A basic contract in November 1965, under which antennas were ordered for Atlanta November 1966, Newport and Pittsburgh February 1966, San Francisco December 1966. (The antenna order in December 1966 for San Francisco was actually a reorder following a failure in a previously manufactured unit by another supplier).

Transmitters: A basic contract in October 1965, under which transmitters were ordered for Atlanta, Newport, Pittsburgh and San Francisco in March 1966, May 1966, February 1966, and March 1966, respectively.

Studio and mobile equipment of various kinds were ordered in San Francisco, Atlanta, Newport and Pittsburgh during the course of the year 1966 under basic contract orders for major items dated early 1966.

Each antenna, of course, required a custom design to product the most effective coverage of the particular service area involved. Moreover, OCC required that each antenna be adaptable to increased power (5 megawatts) without the need for extensive antenna modifications.

The antenna for Newport has been constructed and delivered. Its installation awaits resolution of a belated suggestion that a single 9-inch transmission line would be superior to the twin 6-inch cable initially proposed.

The antenna for Pittsburgh has been constructed and is in storage, awaiting installation.

The antenna for San Francisco was originally completed by one supplier in November 1966, only to have it destroyed when its supporting structure collapsed during testing at the fabricating plant. When that manufacturer could not remanufacture to contracted specifications at an early date, OCC turned to another manufacturer, which has just completed fabrication of a new antenna. Shipping and installation await additional testing to ensure compliance with specifications.

The antenna for Atlanta is under construction. New design details for Rosenberg, following the change to a lower channel, are being formulated.

The transmitters all had to be fabricated specially to OCC order. To obtain the highest power available and to provide a back-up in case of equipment failure, OCC provided space and facilities at each station of two 30 kw. transmitters or other combinations of higher power units. Moreover, OCC again required that the equipment be capable of being expanded to higher power when permitted.

Transmitting equipment has been delivered and installed in the San Francisco and Newport stations. It has been delivered and is in storage in Pittsburgh and Atlanta. The design for the Rosenberg transmitter has been completed.

In the case of studio equipment, it was OCC's purpose to diversify its suppliers in order to obtain the advantages of the latest developments by each. Accordingly, various items have been ordered from and supplied by RCA, Visual Electronics, General Electric, Raytheon, Microwave Associates and Gates. Mobile units have been ordered and delivered for San Francisco, Newport, Atlanta and Pittsburgh.

Most of the studio equipment for San Francisco has been delivered and installed. The equipment for Newport has been delivered and awaits completion of the studio. Most of the equipment for Pittsburgh and Atlanta has been delivered and is in storage locally. In the case of four of the five cities, the studio and mobile equipment *on hand* represents an investment of \$500,000 or more.

(6) *Programming.*—While the real estate, building and hardware problem of the Stations were being resolved, OCC undertook to plan their programming for on-the-air dates throughout 1966. It was planned to put Toledo on the air in the Spring of 1966 and follow it every two months, or thereabout, with another Station—Newport, Pittsburgh, Atlanta, San Francisco and Rosenberg. Local managers have been in Newport since April 1966, and in San Francisco since September 1966. (The latter was originally sent to Pittsburgh in May 1966, but, because of the delay in resolving the antenna site problem, he was shifted to San Francisco.)

Negotiations for film purchases have been carried on over an extended period and have resulted in contracts for the following films for the several stations:

Atlanta :	Rosenberg :
Features, 1033 titles :	Features, 78 titles :
United	T.E.C.
Embassy Pictures	Embassy Pictures
American International TV	Cartoons, 2 packages :
Independent TV Corp.	TV III, Inc.
Cartoons, 4 packages :	Syndicated :
American International TV	T.E.C.
United Artists	W. Schwimmer
TV III Inc.	Screen Gems
Syndicated, 1118 episodes :	Colorvision International Inc.
W. Schwimmer	TV III Inc.
Screen Gems	P. Roebeck Co.
Colorvision International Inc.	San Francisco :
TV III Inc.	Features, 117 titles :
P. Roebeck	Embassy Pictures
Embassy Pictures	T.E.C.
TV Enterprises Corp.	Cartoons, 2 packages :
Peter Roebeck Co.	TV III Inc.
Cincinnati :	Syndicated, 605 episodes :
Features, 550 titles :	TV III Inc.
T.E.C.	Colorvision International Inc.
Screen Gems	Embassy Pictures
Embassy	T.E.C.
ITC	Pittsburgh :
Cartoons, 2 packages :	Features, 577 titles :
TV III Inc.	T.E.C.
Syndicated, 1308 episodes :	U.A.A.
Screen Gems	Cartoons, 1 package :
Embassy Pictures	TV III, Inc.
W. Schwimmer	Syndicated, 1079 episodes :
TV III Inc.	T.E.C.
Colorvision International Inc.	W. Schwimmer
T.E.C.	Screen Gems
P. Roebeck Co.	Colorvision International Inc.
	TV III
	P. Roebeck Co.

As the study of available programming continued, and as it became evident that such programming supplemented by potential local offerings was less than desirable for competitive operation against established network-affiliated V stations in each market, OCC began to explore the possibilities of the exchange of taped shows between OCC and other independent stations. These studies developed in 1966 into an investigation of the possibilities of a network, controlled by Mr. Overmyer, which would originate programs for national distribution to OCC and other stations. That proposal was pursued under a separate network organization during the last half of 1966 and in early 1967. Mr. Overmyer transferred his interest (initially 80% and later the balance) to another group which changed the name to United Network.

(7) *Other related activities.*—Many other activities have been carried on in preparing to put the Stations on the air—such as advertising and public relations, and sales.

(a) *Advertising and Public Relations*

OCC undertook to promote and advertise not only their own activities, but UHF generally, in all media and on all possible occasions, nationally as well as in each market where a Station was located. For these purposes, OCC used both a consultant and Overmyer personnel. The latter were called on, almost daily for advice, assistance, preparation of releases, instructing station personnel, preparing local or national campaigns, handling ceremonies, interviews, meetings with media representatives, etc. from 1965 on.

(b) *Commercial Activity of the Stations*

Beginning in early 1965 a concentrated effort was directed toward planning the commercial aspect of the several stations. Many conferences were held with the leading national station representative firms; consideration was given to the wisdom of one firm to represent all stations in contrast to using a number of firms; discussions were had with leading advertising agencies to solicit their thinking and advice. Finally, National Television Sales was selected to represent all OCC stations, and a formal representation contract was consummated in November of 1965.

Local commercial potential was similarly examined in depth in each market. The value of regional representation was considered, and proposals were received and analyzed. Careful scrutiny was given to the commercial practices and rate cards of the other stations in the several markets; informal discussions were held with local advertisers and agencies; and commercial formats were outlined to mesh with the proposed programming concepts of each station. For those stations with the most imminent air dates, proposed rate cards were prepared, sales contract forms were drafted, and initial sales visits were made by headquarters personnel and local general managers to both national and local agencies and advertisers. In addition, basic sales policies were formulated which were to have essentially uniform application to all stations. In all their activities, OCC called on the personnel and resources of other Overmyer Companies and their general contractor not only for assistance in areas where expert advice was available—such as accounting, financial, construction, real estate—but for the performance of housekeeping, service and other functions which could be better performed by them—such as purchasing of supplies, auditing, banking and payroll, legal, taxes and insurance, personnel, public relations, etc. The President (and his office) of the Overmyer Companies was actively and continuously engaged at every stage of development.

FIGURE 1c

	TARGET	ASSIGNED	COMPL'D	STATUS AS OF
<u>BUSINESS AFFAIRS (CONT)</u>				
CONTRACT FORMS DIST.				
REPORT FORMS DIST.				
INSURANCE COVERAGE				
SALES RATE CARD				
MARKET DATA				
STA. BOOK & MAT.				
<u>PROGRAMMING</u>				
PROG. SCHEDULE				
FILM INVENTORY				
MUSIC LIC. CONTR.				
NEWS SVS. CONTRACT				
<u>ADV. & PROMO</u>				
ADV. PLANS				
ADV. DISPLAY				
CIVIC PROMO.				
AIR PROMO. INV.				
OTHER PROMO SUPPLY				

Submitted _____

Date _____

AFFIDAVIT

STATE OF NEW YORK,
County of New York, ss:

Thomas J. Byrnes, being duly sworn, deposes and says:

This statement is being submitted to detail and explain the investment of Daniel H. Overmyer in the five companies of which he is transferring control to A.V.C. Corporation.

I have been employed by Overmyer since August 1964 in various capacities in the companies which he owns and controls. My original appointment was as Treasurer and Controller of all of the Overmyer companies. I served in one or both of those capacities until March 1966 when I was elected Executive Vice President of the various Overmyer companies (except the Communications Companies, of which I am Vice President). I am also a Director of all of the companies controlled by Mr. Overmyer.

The Overmyer companies have been set up as follows: three operating company groups—warehousing, communications and leasing—and a management staff organization to provide services for the operating groups. Since September 1, 1966, the management staff functions have been housed in a separate corpora-

tion, The Overmyer Company, Inc. The "staff" personnel assigned to this corporation are broken down into the following departments:

- | | | |
|-----------------------|-------------------------|-----------------------|
| President's Office | Controller's Dept. | Human Relations Dept. |
| Treasurer's Office | Purchasing & Office | Data Processing Dept. |
| Legal Dept. | Services | Acquisition Dept. |
| Advertising & Public | Personnel Dept. | |
| Relations Dept. | Corp. Relations Dept. | |
| Finance & Development | Taxes & Insurance Dept. | |
| Dept. | Auditing Dept. | |

The operating companies look to the staff of The Overmyer Company, Inc. for the performance of services of the nature indicated by the titles of these departments, and the staff of these departments exists solely to serve the needs of the operating companies.

Before September 1, 1966 these staff functions were largely concentrated in the Overmyer Warehouse Company (Ohio). At that time they were separated out and concentrated in a new corporation with its separate personnel and accounting, in order to limit the salary and other costs of each operating company to its respective "line" employees and the day-to-day operations of its particular activities.

The Overmyer Warehouse Company group operates warehouses, and has 60 regional and branch offices throughout the country. The Overmyer Leasing Co. rents equipment to various customers, including affiliated Overmyer companies. The Overmyer Communications group includes an operating UHF station in Toledo and an applicant for Dallas, Texas as well as the five companies which are involved in the present transfer and are engaged in developing stations in Pittsburgh, San Francisco, Newport (Kentucky), Atlanta and Rosenberg (Texas).

Since joining the Overmyer Companies in 1964, I have been closely connected with the operating companies and with the performance of the staff functions for them and am familiar in reasonable detail with the activities in both areas.

As Treasurer and Controller of the Overmyer Companies, I assumed certain duties which were formalized upon my becoming Executive Vice President. These duties included a "line" relationship with the chief executives of each of our operating companies, including the Communications group. Matters of corporate policies, financial budgeting and forward planning were all discussed in depth by the Communications executives and myself. Meetings of this type would be held on an average of two or three times a week during or after business hours Monday thru Saturday and usually lasted from one to two hours each. At least once a week, the Communications group executives, other Overmyer personnel and I would have a general meeting with Mr. Overmyer on communications matters which were currently under discussion. These meetings would last anywhere from one to three hours.

While I normally was not involved in day-to-day recruiting outside of the staff area, I did, at Mr. Overmyer's direction, take a very active part in the recruiting and interviewing of several key executives in the Communications operating group. In addition, since the acquisition department of our company reported directly to me, all potential TV acquisitions were discussed with and cleared through me.

During the last few years, we have constantly "shopped" the equipment market using Leasing Company personnel as well as Overmyer "staff" purchasing personnel. Many discussions and negotiations with equipment manufacturers have taken place. I often participated in both our preliminary Company discussions and meetings with manufacturers.

One of my duties as Treasurer and Executive Vice President has been visiting frequently with the principal officers of various financial institutions with which Overmyer Companies do or hope to do business. This includes commercial banks, investment and financial brokers and the major insurance companies throughout the country. I discuss with them in detail our activities, and our financial needs, plans and prospects, in the communications field as well as other areas.

Since all "staff" department heads have reported through me to Mr. Overmyer, I have been involved on a day-to-day basis in all of their workings, including their activities on behalf of the Communications group. In conjunction with Mr. Overmyer, I arrange for funds needed by the Communications companies to be made available to them. Whenever any question of policy or problem would arise between the Communications group and "staff" department heads or personnel, I would take part in settling the situation. At Mr. Overmyer's direction, I

saw to it that "staff" departments such as public relations, personnel, finance, real estate, advertising, etc. made themselves available for any assistance required by the Communications people on a regular or special basis. I also arranged for other departments, such as data processing, to explore with the Communications people and discuss potential utilization of data processing; and for human relations to explain policy and advise on suggested wage rates or benefit programs for the Communications group. I have, therefore, in my capacity described above been intimately familiar with the many details of the development of the TV properties and investment of money and time in such development.

The investment of Mr. Overmyer in the five companies involved in the present transfer is of two kinds: (1) money spent directly by or for the five companies, which is represented by capital or property and equipment bought by other companies wholly owned by Mr. Overmyer and being donated to the five companies, or debts for advances by other Overmyer companies which are being cancelled; (2) the cost of services rendered and facilities provided by other Overmyer companies, in particular the "staff" departments and personnel described above, which has not been reimbursed by the five companies.

This investment is in excess of \$1,300,000. It is summarized in the attached Schedule A. In the first category are items totalling \$665,386 as follows:

a) *Net Worth*.—The paid in capital for the issued common stock of the five corporations as shown on the attached individual and combined balance sheets of the five companies (marked "Schedule B"), \$53,500.

b) *Cancellation of Intercompany Accounts*.—It is our custom with all new companies in their development stage, to have funds they need supplied by another Overmyer company, usually through the Treasurer's or Controller's offices of the "staff" company. Funds needed to cover expenses or purchases of the new company will be advanced to the latter or paid directly by the "staff" or other Overmyer companies. In either event, the "borrowing" company (in this case the five TV companies) is appropriately entered on its books and those of the disbursing company. For example, funds needed for payroll or for payments on film purchases are advanced to the new company until it is able to generate its own cash resources and begin repaying the disbursing company. A summary of the major items of expense (salaries, film rights, etc.) is attached and marked "Schedule C". On March 31, 1967, the date of the balance sheets attached hereto (Schedule B), the net result of these money transactions resulted in a debt of the five Communications companies to the other Overmyer disbursing companies of \$253,046. This debt will be forgiven as part of the Agreement with A.V.C. The cancellation of this debt, which will not be repaid now to Mr. Overmyer's other companies has created in effect an additional capital investment on his part of \$253,046.

c) *Assets Donated*.—In addition, certain assets of the Overmyer Leasing Company which are used by the five Communications Companies will be donated to these five companies without recompense to the Leasing Company, again resulting in an additional investment by Mr. Overmyer in the TV companies. These include a transmitter site acquired in the Cincinnati area at a cost of \$58,688 and TV equipment on which the Leasing Company has made payments or deposits of \$300,152 making an additional capital investment on Mr. Overmyer's part of \$358,840. A detailed schedule of the assets involved, by location, is attached and marked "Schedule D".

The second category of the investments by Mr. Overmyer in the five TV companies involved in the present transfer includes the unreimbursed services performed and facilities provided for them by other Overmyer Companies, especially the "staff" departments and personnel of The Overmyer Company, Inc. since September 1966 and of the Overmyer Warehouse Company (Ohio) before that. As indicated above, these services and facilities embraced all those within the purview of the staff departments listed above (Page 1), ranging from providing space, messenger and accounting services, assistance in recruiting personnel, preparing payroll, looking for sites and negotiating loans to overall executive review and direction by the President's Office.

The cost of the "staff" services was never separated out when they were rendered by the Warehouse and other companies prior to September 1966. Such costs, especially the non-personnel costs of the various functions, were buried within the total expenses of the Company involved.

The concentration of the "staff" services in the separate corporation, The Overmyer Company, Inc. in September 1966, however, enabled the non-personnel as well as the personnel costs of the separate "staff" departments involved to be

pinpointed and determined with substantial accuracy. Accordingly, when in the early part of this year it became necessary to explore a transfer of the TV stations, four months (September–December 1966) of the personnel and other costs of each department were available to determine proper allocation of costs to the communications' operations.

In making the allocation of "staff" costs to Communications, the following steps were taken:

a) It was determined that an allocation of the *total expense* for each "staff" department to communications work could be fairly and properly based on an allocation to communications work of the *salaries* of the personnel in that department, because of personnel costs amounted to the great majority of all costs; overall, salaries amounted to approximately 60% of the total expenses of the several departments; and other personnel costs (taxes, benefits, insurance and the like) increased total personnel costs of all departments to about 70% of all expenses of the "staff" Company.

b) Persons familiar with the work of each "staff" department for the Communications operation, in most cases a "staff" department head of The Overmyer Company, Inc., was asked (1) to review the work of such department which has been devoted to communications matters from July 1964 through March 1967, and (2) for the four-month period September–December, 1966 (for which precise departmental costs are available) to allocate to Communications the portion, if any, of the salary of each employee in such department proportionate to his work for Communications during that period. The affidavits of Messrs. Connery, Silcox, Lake, Guinan, Dorfner, Murray and Overmyer, on the basis of such an allocation, fix the per cent of total salaries for each such department fairly and properly chargeable to the Communications Companies for the four-month period. The affidavits are attached as an Appendix.

c) The percentage of salaries thus determined for each department as allocable to communications was then applied to the total expense of the department during that period. (See Schedule E attached.)

d) The amounts thus arrived at for the several departments were then added together to determine the total amount of the cost of "staff" services and facilities allocable to communications for that four-month period. This amount was \$121,325. The percentage of total departmental expense allocated to communications—11.1% was then applied to additional non-departmental Company expenses of \$71,038 to compute the total "staff" Company expense chargeable to the Communications Companies for the four-month period, namely \$129,281. (See Schedule E attached.)

e) After a review by the undersigned and those listed in subparagraph (b) above of the work performed by the "staff" departments for the Communications group during other periods than the base period from mid-1964 to the end of March 1967 (the approximate date of the contract with A.V.C.), it was concluded that the assignment of the costs for such work should properly be made according to the level of activity by such department on communications matters during the several periods as follows:

- For 1966, other than base period—at the same level as the base period.
- For 1965—at 75% of the 1966 level.
- For the last half of 1964—10% of 1966.
- For the first three months of 1967—at 75% of the level of 1966; this is equivalent to 18¾% of the 1966 amount.

The resulting total amount chargeable to Communications for the entire period is \$790,230 (See Schedule F).

f) From these total unreimbursed costs of other Overmyer Companies allocable to Communications, an appropriate deduction for Toledo, Dallas and the network was determined to be 20%, or \$158,046, leaving a balance of \$632,184 (see Schedule F).

g) To the foregoing balance of unreimbursed costs in the amount of \$632,184 was added the amount of \$34,330 representing the costs of the Overmyer Leasing Company over the period from June 1965 through March 1967 attributable to the five TV Companies involved here. (See affidavit of Robert Rader, President of the Overmyer Leasing Company in the Attachment hereto). This amount of \$34,330 is appropriately included in Mr. Overmyer's investment in these five companies, since the assets acquired by the Leasing Company and leased to them are being donated by him to them upon consummation of the present transfer, and the Leasing Company will forgo the profit to be expected from the transactions.

The net amount of \$666,514 is, in my judgment, a conservative estimate of Mr. Overmyer's investment in the five TV Companies contributed through unreimbursed services and facilities by the other Overmyer companies named above.

It should be noted that no allocation of costs of certain departments in the "staff" company—Data Processing, Corporate Relations, Human Relations and Acquisitions has been made to Communications although their personnel rendered significant services to that group at various times. For example, Mr. Dale Hardin, who headed up our Washington, D.C. office (Corporate Relations) and his secretary gave significant time to communications, but no part of the cost of his office has been allocated to the five TV Companies. Also main "line" employees in the Warehouse Company regional and branch offices have rendered assistance to the Communications people from time to time in their various cities, but not part of the costs of these offices has been allocated to the Communications Group.

Further, in view of the assumption by Overmyer Companies of liabilities of Green & White Construction Co., the cost of services by it for the Communications group to an amount of over \$50,000 could properly be added to Mr. Overmyer's investment in the TV Companies (see affidavit of Robert Sant 'Angelo, President of Green & White, in the Attachment hereto). That amount has not been included in the total set out here, however.

Moreover, certain of the physical assets to be transferred have increased in value, and it would be entirely proper for Mr. Overmyer to be paid the amount of these increases. For example, the market value of the equipment being included in the transfer has increased substantially over its cost (See Schedule D and affidavit of Robert Rader in the Attachment hereto). Also, we believe our film inventory to have increased in value.

Finally, much of the incentive in attempting to develop a new network grew out of the need for programming for the six TV stations. A goodly portion, therefore, of the monies invested and lost in the Overmyer Network could properly be taken into account in determining Mr. Overmyer's investment in the TV stations.

I personally have reviewed the statements of Messrs. Lake and Murray with respect to the services by the Treasurer's and Controller's Offices on communications matters, and it is my judgment that the percentage of salaries in those offices properly allocable to communications matters is at least as great as those given.

I have also reviewed the activity of the employees attached to the President's Office, including myself, on communications matters for the base period September to December 1966 inclusive, and for the period July 1964 to March 31, 1967 and am satisfied that the salaries and expense of that office which are allocated to communications in Attachments E and F are conservatively allocated, and, indeed, for 1964 and 1965 are substantially understated.

THOMAS J. BYRNES.

Subscribed and sworn to before me this 16th day of June, 1967.

RICHARD F. LERACH,
Notary Public.

Commission expires March 30, 1968.

EXHIBIT III, SCHEDULE A

D. H. Overmyer investment in station properties (Atlanta, Ga., San Francisco, Calif., Newport, Ky., Pittsburgh, Pa., Rosenberg, Tex.) As of March 31, 1967

	Amount
New worth of 5 companies (schedule B)-----	\$53, 500
Cancellation of net amount payable by 5 companies to other Overmyer companies (schedule B)-----	253, 046
Assets donated by other Overmyer companies:	
Equipment deposits and payments-----	300, 152
Transmitter land site-----	58, 688
Total-----	358, 840
Unreimbursed staff and facilities charges by other Overmyer companies (schedule E and F)-----	666, 514
Total investment-----	1, 331, 900

OVERMYER COMMUNICATIONS COMPANIES—COMBINED BALANCE SHEET AS AT MAR. 31, 1967

	Newport, Ky., WSCO-TV	Pittsburgh, Pa., WECO-TV	Atlanta, Ga., WBMO-TV	San Francisco Calif., KJDO-TV	Rosenberg, Tex., KEMO-TV	Total
ASSETS						
Current assets:						
Cash-----	\$550. 00	\$1, 000. 00	\$6, 350. 00	\$7, 983. 10	0	\$15, 883. 10
Accounts receivable-----	225. 00	0	172. 38	1, 000. 00	0	1, 397. 38
Inventories-----	0	0	3, 118. 70	3, 534. 84	0	6, 653. 54
Total, current assets-----	775. 00	1, 000. 00	9, 641. 08	12, 517. 94	0	23, 934. 02
Land-----	90, 000. 00	0	0	0	0	90, 000. 00
Other assets:						
Broadcast rights-----	483, 858. 23	586, 962. 41	717, 188. 24	501, 565. 40	\$268, 136. 32	2, 557, 710. 60
Preoperative expenses-----	218, 139. 13	225, 955. 96	278, 384. 08	183, 876. 94	64, 426. 69	970, 782. 80
Deposits-----	0	0	0	1, 870. 00	0	1, 870. 00
Total, other assets-----	701, 997. 36	812, 918. 37	995, 572. 32	687, 312. 34	332, 563. 01	3, 530, 363. 40
Total, assets-----	792, 772. 36	813, 918. 37	1, 005, 213. 40	699, 830. 28	332, 563. 01	3, 644, 297. 42
LIABILITIES						
Current liabilities:						
Notes payable-----	15, 000. 00	0	7, 000. 00	66, 996. 80	0	88, 996. 80
Accounts payable-----	22, 717. 05	4, 488. 42	27, 240. 53	33, 785. 40	3, 249. 11	91, 480. 51
Broadcast rights-----	28, 300. 76	110, 970. 00	116, 053. 82	78, 234. 76	59, 502. 92	393, 062. 26
Accrued expenses-----	4, 506. 00	0	7, 131. 24	2, 691. 74	0	14, 328. 98
Accrued taxes-----	1, 129. 74	0	1, 091. 26	1, 405. 87	0	3, 626. 87
Total, current liabilities-----	71, 653. 55	115, 458. 42	158, 516. 85	183, 114. 57	62, 752. 03	591, 495. 42
Long-term liabilities:						
Notes payable-----	45, 000. 00	0	342, 000. 00	350, 000. 00	0	737, 000. 00
Broadcast rights-----	431, 758. 30	448, 983. 80	575, 393. 32	370, 470. 48	182, 650. 21	2, 009, 256. 11
Total, long-term liabilities-----	476, 758. 30	448, 983. 80	917, 393. 32	720, 470. 48	182, 650. 21	2, 746, 256. 11
Affiliated company accounts-----	243, 860. 51	248, 476. 15	171, 696. 77	1253, 754. 77	86, 160. 77	253, 045. 89
Capital: Common stock-----	500. 00	1, 000. 00	1, 000. 00	50, 000. 00	1, 000. 00	53, 500. 00
Total, liabilities and capital-----	792, 772. 36	813, 918. 37	1, 005, 213. 40	699, 830. 28	332, 563. 01	3, 644, 297. 42

EXHIBIT III, SCHEDULE C

D. H. OVERMYER COMMUNICATIONS COMPANIES—DETAIL ANALYSIS OF MAJOR PROOPERATING EXPENSES AS OF MAR 31, 1967

	WBMO-TV, Atlanta, Ga.	WSCO-TV, Newport, Ky.	WECO-TV, Pittsburgh, Pa.	KJDO-TV, Houston, Tex.	KEMO-TV, San Francisco, Calif.	Total
Salaries and fringe-----	\$75, 350. 01	\$88, 363. 65	\$65, 805. 03	\$31, 962. 84	\$69, 739. 05	\$331, 220. 58
Travel and entertainment-----	14, 781. 73	15, 160. 03	18, 979. 73	6, 754. 12	18, 842. 52	66, 518. 13
Professional services-----	29, 347. 17	22, 258. 31	39, 597. 02	10, 331. 18	38, 873. 84	140, 407. 52
Equipment leases-----	7, 815. 47	31, 233. 79	17, 924. 57	871. 84	15, 015. 52	82, 861. 19
Material and supplies-----	5, 914. 59	5, 020. 93	2, 817. 73	772. 91	4, 028. 09	18, 554. 25
Rent-----	7, 296. 84	6, 268. 55	5, 971. 84	2, 045. 89	5, 173. 78	26, 756. 90
Insurance: Land and building-----	1, 143. 00	1, 306. 00	1, 306. 00	1, 143. 00	1, 143. 00	6, 041. 00
Utilities-----	2, 877. 88	6, 083. 80	2, 044. 89	245. 52	2, 844. 55	14, 099. 64
Interest on leased equipment-----	3, 545. 04	2, 673. 84	2, 277. 15	-----	2, 501. 68	10, 977. 71
Advertising-----	9, 534. 68	8, 935. 07	14, 409. 46	6, 715. 32	8, 939. 41	48, 533. 94
Studio equipment-----	683. 14	978. 05	97. 67	-----	-----	2, 637. 91
Moving and storage-----	2, 725. 44	3, 285. 59	846. 69	322. 04	3, 032. 47	10, 212. 23
Equipment repairs and maintenance-----	40. 57	547. 15	40. 57	30. 42	40. 57	699. 28
Research and development-----	3, 016. 27	3, 016. 27	3, 016. 27	2, 887. 21	3, 016. 27	14, 952. 29
Miscellaneous-----	748. 09	4, 870. 31	11, 442. 29	341. 40	5, 806. 39	23, 208. 48
Interest expense-----	14, 564. 16	7, 425. 00	-----	-----	-----	34, 868. 96
Construction permits acquired-----	99, 000. 00	10, 712. 79	28, 500. 00	-----	-----	138, 212. 79
Total, prooperating expenses-----	278, 384. 78	218, 139. 13	225, 955. 96	64, 426. 69	183, 876. 94	970, 782. 80
Film rights paid to date-----	25, 741. 10	23, 799. 17	27, 008. 61	25, 983. 19	52, 860. 16	155, 392. 23

EXHIBIT III, SCHEDULE D

ASSETS OWNED BY D. H. OVERMYER LEASING CO., INC., AND TO BE DONATED BY 5 TV COMPANIES

	Original cost	Amount paid as of Mar. 15, 1967	Balance unpaid	Estimated replacement cost
WBMO-TV, Atlanta, Ga.:				
Transmitter proper	\$268,247.83	¹ \$32,189.74	\$236,058.09	\$370,000
Antenna	119,030.36	¹ 2,380.60	116,649.76	119,030
STL	18,697.00	¹ 373.94	18,323.06	19,000
Tower	175,000.00		175,000.00	175,000
Studio and mobile	529,793.05	¹ 44,504.97	485,288.08	580,000
Land				
Buildings				
Total	1,110,768.24	79,449.25	1,031,318.99	1,263,030
KEMO-TV, San Francisco, Calif.:				
Transmitter proper	268,247.83	¹ 5,364.96	262,882.87	370,000
Antenna	106,003.00	¹ 2,120.06	103,882.94	106,000
STL				
Tower				
Studio and mobile	414,873.92	¹ 12,211.14	402,662.78	456,000
Land				
Buildings				
Total	789,124.75	19,696.16	769,428.59	932,000
WSCO-TV, Newport, Ky.:				
Transmitter	202,000.00	¹ 24,240.00	177,760.00	279,500
Antenna	110,720.94	¹ 2,214.42	108,506.52	110,720
STL	18,697.00	373.94	18,323.06	19,000
Tower	132,200.00	¹ 92,200.00	40,000.00	135,000
Studio and mobile	540,406.22	¹ 40,756.45	499,649.77	595,000
Land	58,687.91	¹ 58,687.91		58,700
Buildings	54,451.86	¹ 11,049.04	43,402.82	60,000
Total	1,117,163.93	229,521.76	887,642.17	1,257,920
WECO-TV, Pittsburgh, Pa.:				
Transmitter proper	202,000.00	¹ 24,240.00	177,760.00	279,500
Antenna	106,761.21	2,135.22	104,625.99	106,800
STL	18,697.00	1,869.70	16,827.30	19,000
Tower	111,563.00	19,814.23	91,748.77	115,000
Studio and mobile	528,157.86	41,525.84	486,632.02	580,000
Land				
Buildings				
Total	967,179.07	89,585.09	877,594.08	1,100,300
KJDO-TV, Rosenberg, Tex.:				
Transmitter				
Antenna				
STL				
Tower				
Studio and mobile	148,326.80	¹ 5,933.07	142,393.73	163,000
Land				
Buildings				
Total	148,326.80	5,933.07	142,393.73	163,000
Total, all stations	4,132,562.79	424,185.23	3,708,377.56	4,716,250

¹ Items to be donated to 5 TV companies: Total, \$358,840.24.

EXHIBIT III, SCHEDULE E

ALLOCATION OF STAFF SERVICES CHARGES TO D. H. OVERMYER COMMUNICATIONS COMPANIES, BASED ON ANALYSIS OF PERIOD SEPTEMBER 1966 THROUGH DECEMBER 1966

The Overmyer Co., Inc. (staff)	(1) Total salaries for period	(2) Salaries allocated	(3) Percent of salaries allocated	(4) Total dept. expenses	(5) Total expenses allocated (4 x 3)
President's office	\$56,564	\$9,830	17.4	\$88,044	\$15,320
Controller's department (personnel department, purchasing and office services, taxes and insurance department)	207,603	14,303	6.9	352,065	24,292
Auditing department	20,864	2,146	10.3	33,205	3,420
Legal department	41,990	4,827	11.5	71,228	8,191
Treasurer's department	28,557	3,578	12.5	37,581	4,698
Corporate relations department ¹	12,455			16,477	0
Human relations department ¹	2,704			3,186	0
Advertising and public relations department	15,228	2,712	17.8	84,617	15,062
Data processing department ¹	13,209			22,285	0
Acquisition department ¹	4,984			14,175	0
Finance and development department:					
Home office	134,025	18,004	13.4	208,364	27,921
Regional offices	126,396	17,992	14.2	157,895	22,421
Total, department expenses and amount of allocation				1,089,122	² 121,325
Undistributed general expense allocated on same percentage (11.1 percent) as total expense above				71,038	7,956
Total, expenses and amount allocated to communications companies				1,160,160	129,281

¹ These departments rendered services to the communications companies but no allocation of these expenses to communications has been made.

² Represents 11.1 percent of total department expenses.

EXHIBIT III, SCHEDULE F

Summary of charges to 5 communications companies for unreimbursed services by other Overmyer companies

Year ended Dec. 31, 1966: Base period, 4 months ended Dec. 31, 1966, per schedule E (\$129,281), 1966 year (\$129,281 times 3)	\$387,843
Year ended Dec. 31, 1965 (75 percent of 1966)	290,882
6 months ended Dec. 31, 1964 (10 percent of 1966)	38,784
3 months ended March 31, 1967 (18.75 percent of 1966)	72,721
Total charges for period July 1964-Mar. 31, 1967	790,230
Deduct portion applicable to other activities (20 percent)	158,046
Balance applicable to 5 station companies	632,184
Add Overmyer leasing company expense chargeable to 5 station companies	34,330
Total chargeable to 5 station companies	666,514

Attached hereto are the affidavits of Messrs. Connery, Dorfner, Guinan, Lake, Murray, Overmyer, Rader, Sant'Angelo and Silcox.

STATE OF NEW YORK,
County of New York, ss:

I, Edmund M. Connery, being duly sworn, depose and say:

I am and have been since August, 1964, Secretary and General Counsel of the various Overmyer companies of which not less than 80% of the stock is owned directly by Daniel H. Overmyer.

Prior to September, 1966, the attorneys under my supervision were primarily on the payroll of the Overmyer Warehouse Co., and the General Counsel and Legal Department for all Overmyer companies were in said company. After September, 1966, the Legal Department became a department of The Overmyer Company, Inc., formed to provide "staff" services to the various operating companies, including the Communications Companies.

Since my association with the Overmyer companies my responsibility, either "staff" or "line", has extended to the supervision of the activities of up to twenty-two attorneys, whose duties ranged from those pertaining to the office of the Secretary to matters of real estate acquisition and included legal work and services required by the following-named corporations and TV stations:

- D. H. Overmyer Communications Company, Inc. (Georgia), WBMO.
- D. H. Overmyer Communications Company, Inc. (Ohio), WSCO.
- D. H. Overmyer Broadcasting Company, Inc. (Pennsylvania), WECO.
- D. H. Overmyer Communications Company, Inc. (California), KEMO.
- D. H. Overmyer Broadcasting Company, Inc. (Texas), KJDO.

Legal services for such corporations included work on their incorporation negotiations with local counsel in connection with the usual aspects of incorporation and discussion with various company officials concerning the corporate organization and capitalization. Thereafter such duties embraced the maintenance of corporate Minute Books on a day-to-day basis. Such minutes related among other matters, to the changes in officers and directors, opening of bank accounts, acquisition of land, financial arrangements, and other business matters.

The Legal Department was also called upon to perform services for the communications and broadcasting companies in the areas of real estate acquisition, lease negotiation, and negotiation of finance agreements. Considerable amounts of time were spent by attorneys specializing in real estate matters, during the period that they worked under my direct supervision, and also during the period that they were responsible to me in a staff capacity, in reviewing titles and conducting preliminary negotiations with sellers, as well as reviewing potential land site questions with engineering consultants, broadcast attorneys, and with the Engineering Division of Green & White Construction Company, Inc. For each of the sites selected it is estimated that attorneys were called upon to review no less than twenty (20) potential sites and evaluate the same in the areas aforementioned before a final decision could be reached by management that such site was appropriate for the contemplated usage. During part (1 year) of the time involved, attorneys handling land acquisitions were on the payroll of the Finance and Development Department and hence are not included in the estimate below for that year.

The services of the Legal Department were also required in the leasing of transmitter, studio and office sites. In addition, a considerable amount of time was devoted to the preparation of leases for personal property, such as station equipment, as distinguished from real property. In this area the Legal Department was called upon to participate in negotiations and in drafting and re-drafting the leases, upon a very extensive basis.

Substantial services were also required by the Legal Department in connection with the negotiations, contracts and closings on station acquisitions. A considerable amount of time was devoted by attorneys in assisting the executives of the TV companies and others to negotiate financing arrangements with banks, and other lending institutions, for the benefit of TV. In this area, as in others, considerable time was expended which did not result in a completed transaction, but, nevertheless, was a proper charge against TV.

Among other services performed by attorneys for TV were negotiations and drafting of documents pertaining to program acquisition, the maintenance of the

station "public files", and the preparation of reports and applications to the Federal Communications Commission. However, since for most of the period in question the attorney involved was on the payroll of the Communications Companies, he is *not* included in the estimate herein.

Based upon my experience and my personal supervision of the attorneys directly involved, it is my considered judgment that during the base period, September to December, 1966, inclusive, the salaries of professional and secretarial personnel in the Legal Department properly allocable to the Communications Companies amount to \$4827 out of \$41,990, or 11.5%.

I am familiar with the formula used in allocating staff service costs to the Communications Companies set forth in Exhibit III, Attachment F, for periods other than the base period. In my opinion, based upon my personal experience, the formulas are applicable to the Legal Department for the rest of 1966 and the first 3 months of 1967 but result in a substantial understatement of Legal Department costs for communications for the other periods—by more than 50%.

EDMUND M. CONNERY.

Subscribed and sworn to before me this 16th day of June 1967.

[SEAL]

ALAN J. GARDNER,
Notary Public.

Commission expires March 30, 1968.

STATE OF NEW YORK,
County of New York, ss:

Arthur M. Dorfner, being duly sworn, deposes and says:

1. I am Executive Vice President of the several D. H. Overmyer Communications (broadcasting) Companies holding authorizations for Atlanta, San Francisco, Toledo, Newport (Ky), Rosenberg (Texas) and Pittsburgh. I have been Vice President or Executive Vice President of such companies since October 1965. Before that I was Business Manager of WABC-TV in New York City.

2. I am intimately familiar with the work performed for the Communications Companies by the Public Relations and Advertising Department of the Overmyer Company, Inc. since the summer of 1966 and before that by the corresponding department of the Overmyer Warehouse Company (Ohio). I am informed about the activities before I joined Overmyer from those in the Public Relations and Advertising Department and other Communications Company personnel. These services have been of the following kinds:

A) Overmyer Public Relations and Personnel advised the Communications Companies on publicity, both national and local, relations with mass media, preparation of releases of information and other material to such media and the public; it gave assistance in arranging many meetings in New York City and the cities where the stations are located with representatives of civic organizations, mass media, etc.; it gave instructions through seminars and manuals prepared by it to managers of the local stations on promotion and public relations. Significant amounts of time were spent daily by Overmyer Public Relations personnel on such matters as the above.

B) The Communications Companies have relied exclusively on the Advertising Department personnel of the Overmyer Companies for leadership in planning and carrying out advertising campaigns. The advertising personnel have served the Communications Companies in designing layouts for business papers, forms, Communications Companies' and individual station logos; in planning and carrying out several national advertising campaigns to promote the Communications Companies and the stations; in planning comprehensive campaigns in each local area to stimulate conversion of UHF, including on-the-air promotion, business cards, local ads, store posters, etc.; reviewing each Communications Company expenditure for space, art work, production, etc. Practically daily meetings were held by such personnel with Communications Companies' people.

3. I have reviewed the work of the personnel of the Advertising and Public Relations Department for the Communications Companies during the September-December, 1966 period and have concluded that 17.8% of the total salaries for such personnel for that period (or \$2712 out of \$15,228), should be allocated to such companies. The level of activity for the Communications Companies for the rest of 1966, was at least as great as during the September-December period.

I have reviewed the level of activity set out in Attachment F of Exhibit III, for other periods and believe them to be reasonable so far as public relations and advertising are concerned.

ARTHUR M. DORFNER.

Subscribed and sworn to before me this 16th day of June 1967.

[SEAL]

ALAN J. GARDNER,
Notary Public.

Commission expires March 30, 1968.

STATE OF NEW YORK,
County of New York, ss:

Thomas R. Guinan, being duly sworn, deposes and says:

1. From February, 1965 to February, 1967, I was the Chief Internal Auditor of the Internal Audit Department of The Overmyer Company, Inc. and its predecessor corporation. I am now Assistant Treasurer of The Overmyer Company, Inc.

2. In my position as Chief Auditor, I supervised the activities of the Internal Audit Department and its staff, and I am submitting this statement in order to assign to the Communications Companies their proper portion of the expenses of Internal Audit Department.

3. For the period September, 1966 to December, 1966, the staff of the Internal Audit Department consisted of myself as chief, two regional auditors, three construction auditors, two audit clerks, and my secretary.

4. The efforts of the Internal Audit Department were concentrated primarily in the areas of Home Office review of accounting records, field audits, and special projects. In pursuing these duties the Internal Audit Department reviewed the operations of the Communications Companies in the following areas:

A. *Home Office Accounting Records.*—Reviewed the accounting records and internal control procedures of the Communications Companies, including analyses of general ledger accounts, review of purchasing procedures and processing of invoices for payment, audit of payroll records, cash receipts and disbursements, sales and collections; and audited all expense reports submitted by employees of the Communications Companies.

B. *Construction Audits.*—Reviewed costs incurred by Green & White Construction Co. under contracts with outside engineering services and sub-contractors for the construction of TV facilities.

C. *Field Audits.*—Worked with local station managers reviewing accounting procedures, Home Office reporting, corporate policies in connection with travel and entertainment, employment, purchasing, preparations of payrolls, and other internal accounting procedures.

In warehouses where transmitter and studio equipment was stored, the Internal Auditor reviewed the recordkeeping of the warehouse for the receipt and storing of merchandise. Inventory test counts were made to check the accuracy of inventory records and to establish that high price items were adequately safeguarded.

5. I have reviewed the work of the people in my department on communications matters during the last four months of 1966 in order to assign the appropriate portion of salary of each to communications. In allocating the salaries to the Communications Companies, I have taken into consideration such elements as (a) the relative newness of the type of problems involved and the additional time required to familiarize oneself with a new operation; (b) the percentage of Communications Company employees submitting expense reports to the total number of employees submitting reports; (c) the percentage of travel and entertainment expenses of Communications Company employees to the total amount of travel and entertainment expenses for all company employees; (d) my recollection of audits and auditing functions performed both at the Home Office and in the field; (e) the relative volume of activity during the base period used; and (f) the extent to which accounting records were available for audit during the development period.

6. Based upon the foregoing, it is my considered judgment that of the total salaries of \$20,864 of the Internal Audit Department from September through December, 1966, \$2146, or 10.3% of the total, is properly attributable to the Communications Companies. Based on the same percentage, \$3420 of the total expenses of the Department for the period is assignable to communications.

7. I have reviewed the allocations of expenses to the Communications Companies for other than the base period as set forth in Attachment F of Exhibit III. In my opinion, the amount allocable to communications during the first

8 months of 1966 was slightly less (approximately 10%). Otherwise, the allocation in such Attachment as applied to Internal Audit Department is reasonable.

THOMAS R. GUINAN.

Subscribed and sworn to before me this 16th day of June 1967.

[SEAL]

ALAN J. GARDNER,
Notary Public.

Commission expires March 30, 1968.

STATE OF NEW YORK,
County of New York, ss:

Frank J. Lake, being duly sworn, deposes and says:

1. I am presently and since October 1966 have been Treasurer of the Overmyer Co., Inc. and each of the associated warehouse and communications companies—a total of approximately fifty.

2. Before that, I was Vice President for Finance of the Overmyer Warehouse Company (Ohio) and its subsidiaries (December 1965—October 1966) and Regional Vice President for Finance, Chicago (August—December 1965).

3. I am familiar in detail with the operations of the Treasurer's office and the functions of and time spent by its personnel in the entire four month period September—December 1966; in September prior to my assuming the office of Treasurer in October 1966, I was participating in the work of the Treasurer's office in preparation for formally assuming the Treasurer's duties.

4. While I was Treasurer of the Overmyer Companies, the Treasurer's Office of the D. H. Overmyer Co., and the Treasurer's office personnel performed the following services for the Overmyer Communications Companies during the September—December 1966 period:

a) It consulted with Communications Company personnel and officials of other Overmyer Companies with respect to capital needs of the Communications Companies; its personnel traveled to many cities throughout the country seeking credit or loans from banks and others and for the Communications Companies; it negotiated such loans and serviced such loans after they were committed; it carried on correspondence with banks and others with respect to such loans and prepared resolutions and documents with respect to such loans.

b) It handled the opening and managing of bank accounting for the Communications Companies, reviewed and approved payments by the Communications Company, signed checks, handled transfers and similar functions.

c) It consulted with and assisted Communications and other Overmyer personnel in making projections of station performance, reviewing expenses, cash flow, etc.

d) It established and reimbursed payroll accounts of the Communications Companies.

5. I also was personally involved for a substantial amount of time during this period in making surveys in both Pittsburgh and San Francisco for studio and office space.

6. I have reviewed the work of the personnel in the Treasurer's office during September—December 1966 and out of the 15 persons involved, the Treasurer, three Assistant Treasurers and two Secretaries-Clerks devoted portions of their time to Communications Companies' matters. In my judgment a minimum of 12.5% of the total salaries paid by the Treasurer's office during that period should properly be charged to the Communications Companies. Since the total expenses of the Treasurer's office during that period amount to \$37,500, the Communications Companies should, as a minimum, properly be charged with 12.5% or \$4,698.00.

7. I know from my familiarity in general with the work of the Treasurer's office and from what I learned from my predecessor and others in that office, that the same work and services listed above as being performed for the Communications Companies was carried on during the other periods of Communications Companies' activities. I have reviewed that allocation of Treasurer's office expense to the Communications Companies in these other periods as summarized in Exhibit III, Schedule F; in my judgment the level of activity in the Treasurer's Office devoted to the Communications Companies set forth in that exhibit is conservative and that it was exceeded by a significant amount.

FRANK J. LAKE.

Subscribed and sworn to before me this 16th day of June 1967.

[SEAL]

ALAN J. GARDNER,
Notary Public.

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STATE OF NEW YORK,
County of New York, ss:

John T. Murray, being duly sworn, deposes and says:

1. I am presently and have been, since April 1967, the Controller for all Overmyer corporations. Since March 1967, I have been head of the Personnel and the Purchasing/Office Services Departments. Since May 1965, I have been Tax and Insurance Manager.

2. Prior to September 1966, I carried out these functions as an employee of D. H. Overmyer Warehouse Co., Inc., an Ohio corporation. After September 1966, I have acted as an employee and an officer of The Overmyer Company, Inc., a Delaware corporation.

3. As Controller, I have supervision over the departments referred to in paragraph "1" above. Since, during the September to December 1966 period, I was generally acquainted but not personally involved with the day to day operations of some of the departments which I now supervise, I requested long-term employees in those departments to inform me of the functions they performed for the Communications Companies during that period, and of the level of activity before and after such period. I also consulted with Thomas Byrnes, Executive Vice-President of The Overmyer Company, Inc., who was a predecessor of mine as Controller and reviewed the various activities of the Communications Companies since 1964 with Communications personnel.

a. *Accounting.*—For each of the Communications Companies, the Controller's office established and maintained general and subsidiary ledgers; books of original entry; prepared payrolls and payroll checks; cash receipts; disbursements; billings and collections; prepared financial statements and, as required, special management reports; and handled financial correspondence with respect to the foregoing.

The above accounting services are rendered to approximately 50 corporations.

My estimate of percentage of time expended to serve the Communications Companies is based in part upon the number of Communications Companies; newness and complexity of the books and records in a new field; the number of Communications Companies' employees; and the information received by me from others familiar with the work.

b. *Taxes.*—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 Companies I relied upon my personal experience in this field.

c. *Insurance.*—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.

d. *Personnel.*—As the Communications Companies were formed, personnel were recruited which required interviews, testing and screening of job applicants; requesting and processing background checks and other information relating to personnel matters; processing of correspondence and other functions relating to termination, vacations and similar personnel matters.

e. *Purchases/Office Services.*—This department provides mail, messenger and switchboard services to all entities in the home offices; purchases and controls supplies and equipment; and provides maintenance, janitorial and equipment moving services, as required.

In making the above allocations, I also took into account the fact that in most areas (accounting, taxes, insurance, and personnel) we were dealing with a new field, far different from our usual functions in warehousing, and that accordingly, specialized skills and a disproportionate amount of time was required for communications work.

In summary, the Controller's Department and other operating departments now 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 1966, 1965 and parts of 1964 and 1967, as set forth in Exhibit III, Attachment F, are reasonable and accurate in my judgment.

JOHN T. MURRAY.

Subscribed and sworn to before me this 16th day of June 1967.

ALAN J. GARDNER,
Notary Public.

Commission expires March 30, 1968.

STATE OF NEW YORK,
County of New York, ss:

D. H. Overmyer, being duly sworn, deposes and says:

I have been closely and directly connected at all stages, on almost a day-to-day basis, with the activities and operations of the various Overmyer broadcast companies since the initiation of my interest in UHF in 1962.

My intent, from the beginning of the planning for the first station—in Toledo—and at all times since, has been to construct and operate each station for which one of my companies received a grant. That we have progressed a very great distance toward that objective is clear. That we would have achieved that objective completely is clear in my mind, if it had not been for entirely unexpected and adverse developments last year in connection with a non-broadcast part of my overall operations as set forth in Exhibit I to these applications. As a result of these developments and the financial burdens unexpectedly placed on the warehousing part of my operations, I had no choice except to transfer the financial burden of pursuing the developments of the 5 UHF stations here involved to another company better able to shoulder that burden at the present time.

I have, as stated, been intimately familiar with the activities of the broadcast companies from 1962 on and the expenditures both in money and time by and for the benefit of these companies by me and my other operations. I have, at all times since, made the personnel and facilities of my other operations available to the broadcasting companies whenever such personnel and facilities could in any way be helpful to carry on any of the activities of such companies. I know in detail, therefore, the extent of the assistance of these operations to the broadcasting activities. I believe that the amount for those services and facilities set forth by Mr. Byrnes is a minimum figure and really understates my total investment.

It is my considered judgment that my investment, directly and through companies owned by me or whose debts have been assumed by my companies, in the 5 companies involved in the present transfer and the cost to such companies of operations of which the 5 companies have benefited is approximately \$1,500,000, consisting of over \$800,000 in services and facilities contributed to the 5 companies and approximately \$665,000 in cash expenditures by or for their benefit.

In addition, the physical assets to be transferred to the 5 companies by the Overmyer Leasing Company have a market value of many thousands of dollars in excess of their cost upon which my investment is based. And the contracts for acquisition of equipment—to be made available to the 5 companies—have terms, particularly on rates of interest, which a purchaser of equipment today cannot duplicate. These assets represent values for which it would be entirely proper, I believe, for the Leasing Company to be paid.

D. H. OVERMYER.

Subscribed and sworn to before me this 16th day of June 1967.

ALAN J. GARDNER,
Notary Public.

Commission expires March 30, 1968.

STATE OF NEW YORK,
County of New York, ss:

R. W. Rader, being duly sworn, deposes and says:

1. I am presently President, and since June 1965 have been the Executive Vice-President or President, of the D. H. Overmyer Leasing Co., Inc. (hereinafter "Company").

2. Company provides services such as negotiating contracts, purchasing, leasing and financing equipment of various kinds both for companies within the Overmyer organization and outside of the organization.

3. Between June 1965 and December 31, 1966, Company entered into approximately \$6¼ million of leasing contracts of which approximately \$2¼ million or 40% were for Overmyer Communications. Furthermore, Company negotiated contracts for the purchase of an additional \$3½ million in equipment which became or will become leases after December 31, 1966. Because of the nature of the Communications contracts, the size of the contracts and the different terms, negotiations for the contracts and processing the contracts themselves took a greater amount of time than normal, standard leasing contracts.

Although the rate of activity of services for Communications has varied, based upon my personal experience and on supervising the employees of Company, it is my estimate that approximately 20% of the Company payroll can reasonably be attributed to services performed for Communications between June 1965 and April 1967. Using this percent of salaries as a base, but excluding interest expense from operating cost, (the bulk of which interest expense is attributable to other contracts), the total expenditures of Company for Communications over the June 1965-March 1967 period were \$41,200.

Since the contracts were negotiated for six stations, and since one of the companies involved is the permittee of WDHO-TV Toledo (which station is not involved in the AVC transaction), I have attributed 1/6th of the expenses to Toledo. This sum when subtracted from the total expense leaves \$34,330. Properly attributable to the five Communications companies whose stock is being transferred.

I was directly and closely involved in the negotiation during 1965 for the various items of equipment for the Overmyer stations and in fixing the terms of the contracts entered into covering such equipment. And, from recent and current contact with the suppliers involved, I am familiar with the prices and terms upon which such equipment can be obtained at this time.

There have been two significant changes:

(1) the prices at which the equipment involved can be obtained have, in the case of most items, gone up substantially—approximately 10% in the case of antenna and studio equipment; nominally (1-3%) in the case of towers; and over 35% in the case of transmitters;

(2) some of the terms obtained on the purchase of the equipment by the Overmyer Leasing Company are far more beneficial to the buyer than are presently obtainable. For example, Overmyer Leasing pays 6% simple interest on the unpaid principal balance of the equipment; current terms are stated in terms of "add-on" interest—in the case of RCA, 4% "add-on", the equivalent of 7.8% simple interest; in the case of GE, 5% "add-on", the equivalent of 9.8% simple interest. On a balance of \$4,000,000, the annual difference between 6% and 8% simple interest would be \$80,000; and on \$1,000,000, the annual difference between 6% and 9% would be \$30,000.

I have reviewed Schedule D of Exhibit III and the estimated replacement costs there given for the various items of equipment are in accordance with the latest and best information we can obtain.

ROBERT W. RADER.

Subscribed and sworn to before me this 16th day of June 1967.

ALAN J. GARDNER,
Notary Public.

Commission expires March 30, 1968.

STATE OF NEW YORK,
County of New York, ss:

Robert Sant'Angelo, being duly sworn, deposes and says:

I am President of The Green & White Construction Company (hereinafter "Green & White"), which company acts, and has acted, as a General Contractor in the construction of the D. H. Overmyer warehouses. Prior to May 1967, I was Treasurer and prior to October 1966, General Counsel of Green & White. Prior to September 1966, I was employed in the D. H. Overmyer Warehouse Co. as Divisional Vice President, Real Estate, and worked closely with personnel of Green & White. From July 1965 to January 1966 I was an attorney and Assistant General Counsel of the D. H. Overmyer Warehouse Co. and from January to March 1966 General Counsel of Green & White.

It is my opinion, based upon my observation and experience, that in excess of \$50,000 in unrecovered salary and overhead costs were expended by Green & White for the Overmyer Communications Companies over the period between mid-1964 and the end of the first quarter of 1967.

ROBERT SANT'ANGELO.

Subscribed and sworn to before me this 16th day of June 1967.

[SEAL]

ALAN J. GARDNER,
Notary Public.

Commission expires March 30, 1968.

STATE OF NEW YORK,
County of New York, ss:

G. R. Silcox, being duly sworn, deposes and says:

1. I am now and since September 1966 have been Vice-President of Finance and Development of the Overmyer Company, Inc. From 1963 to September 1966 I held the corresponding position in the D. H. Overmyer Warehouse Company (Ohio), when the functions of that Department were included in that Warehouse Company.

2. The Finance and Development Department maintains a home office staff in New York and presently has five regional offices in Atlanta, San Francisco, New York City, Dallas and Chicago, and formerly had two additional regional offices in Detroit and Denver. Its functions are principally to search out, negotiate for and acquire real estate required for the various Overmyer enterprises including real estate for warehouses and offices, and short- and long-term financing for various Overmyer enterprises.

3. The Finance and Development Department has served the communications group primarily in two ways:

(a) locating, evaluating, negotiating for and acquiring real estate for antenna sites and studios and for office space for the TV stations and handling problems related thereto. Personnel in my Department—both home office and regional—have spent a very great deal of time in searching out acceptable TV antenna and studio office sites in Atlanta, San Francisco, Pittsburgh, Newport-Cincinnati and Rosenberg-Houston. Not just one, but many, alternatives were investigated, studied and evaluated in most markets over very extended periods. All possible staff resources were used. Because of our experience in real estate matters, and knowledge of and ability to work with local realtors, we undoubtedly have been able to make available to the TV Companies a much greater selection of sites and space than if such Companies had been left on their own. Nevertheless, because of the technical problem involved, the zoning and public relations problems, and a variety of other difficulties, coupled with the inexperience of our personnel in the TV field, the amount of time required to locate and check out each potential site has been inordinate.

Attorneys in my Department also handled the negotiating and drafting of contracts and leases, title searches, closings, etc. for about a year commencing in March 1966.

(b) searching out, negotiating for, arranging for and servicing short- and long-term loans and other financing arrangements. The personnel of my Department have scoured the country—both in the markets where the TV stations are located and elsewhere—for sources of credit for the TV stations and other Overmyer enterprises. Sources which may not be opened up immediately frequently make credit available at a later date or at a later stage of the development of an enterprise. Accordingly, bankers, insurance companies and other similar financial institutions were visited repeatedly; Overmyer operations and credit needs were explained and reviewed in detail.

In addition to seeking general credit and loans, the personnel of my department also explored fully the possibilities of mortgage and sale-lease-back financing for TV sites and studio and transmitter buildings.

4. I have carefully reviewed the list of personnel in my Department, their TV work and their payroll for the period of September-December 1966 for the purpose of determining the percent and amount of the total salaries for that period which should properly be allocated to the TV companies. Based on this review, I have allocated to the TV companies during this four month period \$18,004 or 13.4% of the sum of \$134,025 representing the total salaries paid home-office

personnel, and \$18,011 or 14.2% of the sum of \$126,396 representing the total salaries of personnel of the regional offices.

5. I have reviewed the application of the base-period figures to other periods in Attachment F of Exhibit III. It is my judgment that the level of TV activity in my Department during most of 1966 was on the order of 10% 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.

G. R. SILCOX.

Subscribed and sworn to before me this 16th day of June 1967.

[SEAL]

ALAN J. GARDNER,
Notary Public.

Commission expires March 30, 1968.

ITEM 34

FLY, SHUEBRUK, BLUME & GAGUINE,
Washington, D.C., September 16, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate
and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: In accord with the opportunity presented, there is respectfully submitted, on behalf of our client D. H. Overmyer and his interests, the annexed letter, supplementary material and covering affidavit.

Very truly yours,

BENITO GAGUINE.

AFFIDAVIT

STATE OF NEW YORK,
County of New York, ss:

D. H. Overmyer, being duly sworn, deposes and says:

The attached letter and material was prepared under my direction and to the best of my knowledge and belief, represents a true and accurate response to matters raised in the record of the Special Subcommittee in these proceedings.

D. H. OVERMYER.

Sworn to before me this 13th day of September 1968.

GERALD N. GOLDBERG,
Notary Public.

Commission expires March 30, 1970.

THE OVERMYER Co., INC.,
New York, N.Y., September 13, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate
and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: Your Subcommittee has recently held hearings on matters involving the Federal Communications Commission and its consent to the transfer of control of five construction permits issued to companies which I controlled.

The Committee has been kind enough to provide me with an opportunity to file additional material in order to insure a full and complete record. As the Acting Chairman stated on July 31, 1968:

"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 the interests the opportunity by sworn statements or audited statements to correct or rebut any of the written foundational material theretofore admitted into the hearing record. . . ."

The annexed material is submitted pursuant to this opportunity. There is annexed as Attachment A a brief review of the background and of the circumstances surrounding my commitment to UHF television, in order to place the matters brought out in the immediate proceedings in the proper context. The balance of the annexed material is directed primarily to three broad areas which, for purposes of convenience, will be treated in the manner outlined herein and which cover in Attachment I my qualifications to have become a permittee;

my efforts in constructing the stations (Attachment II); and the transfer of control of the corporations holding five of the construction permits (Attachment III).

I would like to address myself first to a question that has been raised as to whether the Overmyer interests have cooperated fully with the Subcommittee.

The matter involved the alleged failure to submit, or to make available, certain tax returns of specific Overmyer Companies. As was pointed out in my counsel's letter of August 29, 1968, a copy of which is annexed hereto for convenience (Attachment I-C), every return requested was, in fact, made available. Moreover, additional information not requested, but deemed relevant to the inquiry, was voluntarily proffered.

I believe that it is most important for the record to reflect clearly the fact that I, and everyone connected with me, cooperated fully and completely with the Subcommittee.

A question has been raised whether I or my companies were ever qualified to become the holders of the construction permits which were issued. In this connection, there were submitted to the Commission applications and supporting material, which, in the opinion of my counsel, complied fully with the requirements, procedures and practices of the Federal Communications Commission in processing such applications. From time to time, additional material or information was requested by the Commission, and such requests were promptly honored. Had further material been submitted, it would only have served to reinforce the actions which the Commission has taken.

The basic question raised on initial qualifications is premised almost wholly on finances. A specific question was raised concerning apparent inconsistencies between balance sheets which accompanied applications submitted to the FCC, and the balance sheets accompanying the tax returns of certain Overmyer companies. We have submitted a reconciliation (Attachment I-C) which establishes that the two sets of balance sheets are indeed consistent. They differ only (a) in that they encompass different groupings of companies and (b) in the use of the appraised value method for the published balance sheets and the use of the cost method for those submitted with tax returns. Appraised value is a recognized and accepted method of accounting for real estate properties. These balance sheets were prepared with the greatest care and presented in a manner considered by the management of this company to be a proper one to show the true financial condition of the corporations.

A further question was raised on the validity of the amortization schedule for long term debts in the balance sheets submitted to the FCC. The annexed copy of the reply to the Committee's inquiry (Attachment I-B) discloses that the schedules are accurate, and that the size of the amortization entries are governed by the schedules of the long term mortgages, and of construction loans.

Attachment I refers to certain other specific questions raised concerning the original grants, and in my opinion, provides satisfactory answers and sets the record and the events in proper perspective.

There was a suggestion that after I obtained the construction permits, I did not proceed to construct the stations with reasonable diligence. In this connection, it should be noted that my record in constructing the station in Toledo, within fourteen months after the grant; in proceeding on the construction of a second station (San Francisco) so that it was on the air within one month after the transfer of control; in proceeding on the construction of a third station (Newport/Cincinnati) so that it was on the air shortly after the transfer; and in the work performed on the stations covered by the other three construction permits, is a record which has seldom, if ever, been equaled in the UHF industry. It certainly surpasses the efforts and the results of virtually every multiple UHF construction permit holder which has come to my attention.

Attachment II of the annexed material refers to this record. I believe it establishes beyond any doubt that the financial commitments made by me and my organizations to the FCC in the applications filed, and in connection with the construction of the stations, was substantially met. It should be noted that I indicated in my applications to the Commission that the warehouse companies were prepared to make cash expenditures, prior to operation of the six stations, totalling approximately \$600,000 (over and above bank loans). As of the date of transfer, I had, in fact, made total cash expenditures of some \$2,200,000. Moreover, when consideration is given to contractual commitments, in excess of ten million dollars had been committed on all six stations prior to the transfer of control. (See Attachment II-E)

A question was raised as to the alleged failure on my part to keep the Commission apprised of developments by allegedly failing to file the contract for the transfer of control within the 30 day period required by the Commission's rules. The fact is that the contract for the transfer of control was filed within 30 days of its execution. (Transcript Page 495)

A brief explanation of this and of related matters appears in Attachment III-K and attempts to place the facts, the circumstances, and the Commission's requirements in proper perspective. Moreover, the record is clear that at the time the Commission acted upon the applications for the transfers and for extension of time to construct the stations, the contract and all of the pertinent material was before that body.

The last general area on which questions were raised involved the applications for transfer of control; the circumstances which led to their filing; the terms of the transaction; and the Commission's action in connection with such applications.

With respect to the last point, the majority and the dissenting views have been set forth in some detail in Commission documents and in the testimony before the Subcommittee. Obviously, the reasoning of the Commissioners in reaching their decision is one aspect beyond the scope of this filing.

However, so that the matter can properly be considered by your Subcommittee, it is important to note that no information was withheld from the Commission, nor were any of the facts submitted misrepresented.

Specific questions were raised as to the validity of out-of-pocket figures submitted to the Commission. The application fully disclosed the basis on which the out-of-pocket costs incurred by Overmyer interests up to the time of transfer. An exhibit to the application sets forth in considerable detail the specific procedure used for the computation, and the accompanying documents support the computations made by various key personnel. Since the exhibit is already in the record, it will not be retendered but is annexed hereto as Attachment III-A for the convenience of the Committee. Apparently, in an effort to explore the allocations and computations, a number of former Overmyer employees were questioned by mail. Answers were obtained which appeared to differ substantially from the computations and allocations in the application. In fact, on a number of occasions, references were made in this record to an alleged 17 out of 18 persons relied upon by me in my applications in establishing out-of-pocket costs, as not having actually performed the services in question.

Attachment III-E refers specifically to this matter. In my opinion, it demonstrates beyond any reasonable doubt that the reason for the alleged discrepancy was the misunderstanding by the employees questioned as to the precise area of inquiry. It will be noted that the letter of inquiry referred specifically to "construction permits", but did not refer to "services performed for the Communications Companies." This assumes that the words "construction permit" were equateable to all Communications activities. However, they evidently were construed by the recipients as work relating solely to the limited legal and other requirements pertaining to the preparation of an application for a "construction permit" before the Federal Communications Commission. The results of our own inquiry in this matter disclose that while there may be some differences in the recollection of pertinent employees as to the percentage of time spent on a particular project, there is no question that *services were, in fact, performed* for the Communications Companies by the personnel in question. To put it very simply, of the eighteen employees referred to by the staff, all *eighteen* performed services for the Communications Companies.

The differences in recollections as to percentages of time devoted to such services are easily understood when one considers the amount of time which has elapsed since such services were performed. However, that the services were in fact performed, is unquestioned. It should be noted that several of the operating personnel whose services were *not* claimed in the schedules, did, in fact, perform such services, as evidenced by the replies to the Subcommittee's letters.

It is also clear that a number of clerical, typographical and other similar technical errors occurred in the preparation of the material submitted to the Commission in support of the out-of-pocket expenses. A number of these errors are referred to in the record. As set forth in Attachment III-H, our review of these errors indicates that their total is but a small fraction of the amount resulting from errors which understated some of the out-of-pocket expenses.

Our further efforts in attempting to ascertain precise expenditures (a number of which were in areas to which we were alerted by the work of the Subcom-

mittee) reveal that proper expenditures in excess of \$75,000 were not claimed in the application to the FCC and should, in fact, properly have been included. This further supports our premise that the submission of additional detailed information along the lines referred to in the dissent, or as developed by the Subcommittee's staff, would not have changed the action taken by the Commission. In sum, our computation was conservative.

Questions have been raised as to the legitimacy of the loan arrangement between Overmyer and AVC. As detailed in Attachment III, such loans are fully collateralized by (a) recorded mortgages on real estate equities in excess of two times the amount of the loan; (b) the unqualified guarantees of Overmyer companies; and (c) the personal guarantee of D. H. Overmyer. In addition, the 20% equity retained by me in the Communications Companies is also pledged.

While questions have also been raised about the option by AVC to purchase my retained interest, it should be noted that this option was granted at the insistence of the buyer and over initial objections on my part. It is an option running solely to the *buyer* so that it will be exercised solely in the buyer's discretion and inevitably only in the event that the value of my retained interest will exceed the option price.

Since much of the material submitted supplements or clarifies material in the files of the FCC associated with various applications filed by me, a copy of this letter, and of the accompanying documents, is being filed with the Secretary of the Commission. A copy is also being made available to counsel for the transferee, United States Communications Corporation.

I appreciate the opportunity made available by your Subcommittee to submit the annexed material for and to correct and clarify the record.

Very truly yours,

THE OVERMYER CO., INC.,
D. H. OVERMYER, *President*.

ITEM 34(a)

ATTACHMENT A—BACKGROUND AND CIRCUMSTANCES OF OVERMYER'S
EFFORTS IN TELEVISION

In order properly to evaluate the facts and motivations involved in the Overmyer applications, it is desirable to review briefly their background and circumstances.

Beginning in the mid-1950s, Overmyer planned and developed what has now become the largest undertaking of its kind in the field of national warehousing and distribution. Since the foundation of this enterprise is real estate, it was evident that large sources of funds would be generated by depreciation and would thus be available to finance other ventures. Overmyer believed that UHF television provided an attractive vehicle for the investment of these funds; and provided an opportunity to serve the public through the production and the broadcast of desirable programs.

In line with the above philosophy, Overmyer applied for his first Construction Permit in 1963 for Toledo, Ohio. Thereafter, he obtained Construction Permits for UHF television stations in five additional major markets, not only to achieve the foregoing objective, but also to establish a potential nucleus for a fourth television network and a viable base for the production of local and network programming.

In the development of his television plans, Overmyer obtained the services of competent and experienced television personnel who were given a substantial degree of autonomy in the implementation of the television plans. It was decided that the facilities to be constructed would be the most modern feasible and would utilize heights and powers sufficient to enable them to compete, at least in relative coverage, with existing VHF stations. In line with these policies, financing was sought and contracts were negotiated and entered into with manufacturers of TV equipment, program suppliers and owners of real estate suitable for television use.

This work was accomplished even though the Communication Companies themselves primarily had only operating employees due to the fact that Overmyer had a large staff organization available first in the parent warehouse company, and later transferred to the management company.

Within fourteen months from the grant of the permit for Toledo, a station was constructed and on the air with excellent facilities. Efforts were made to place the other stations in operation as expeditiously as possible, but had to be tempered by the need in each case for modification of the Construction Permits in order to increase the height and the power of the proposed facilities and to improve the location of the proposed transmitters. This then resulted in substantial delays because of the necessary approvals required from such government authorities as local zoning boards; the Federal Communications Commission and the Federal Aviation Administration.

During this period, the warehouse companies, which constitute the principal Overmyer enterprise, were being developed at an unprecedented rate. Until at least the middle or latter part of 1966 there seemed to be no reason to doubt the security and availability of such funds as might be required to construct and operate the stations and to absorb the substantial operating losses expected of such stations during the initial period of operation.

In the Fall of 1966, it became known that Green & White Construction Company, which was then responsible for Overmyer warehouse construction, had over-extended itself. Overmyer assigned trusted personnel to investigate the matter thoroughly and ascertained that Green & White had fallen behind in payments to many subcontractors and had gone seriously over the budget in many installations. It was impossible, even in early 1967, to ascertain the total extent of the problem, but it was apparent that, in order to avoid the loss of funds advanced and funds borrowed, Overmyer would have to assume the debts of Green & White and complete the construction of various projects.

Under these circumstances, it became clear that funds which previously had been relied upon for TV station development and for the development of the newly formed Overmyer network might not be available. Moreover, whatever funds could be obtained were required to salvage the keystone of the Overmyer complex, the warehouse operation. To further complicate the matter, a tight credit condition had developed in the national economy.

The Overmyer network was immediately sold to a group which was interested in this enterprise. Although the transaction resulted in a substantial loss to Overmyer, it did accomplish the goal of curtailing a further cash drain on the Overmyer complex. Since funds would continue to be in short supply, a search was undertaken to find a financially strong associate who could assist Overmyer in the development of the television stations. Various parties were contacted over a short period of time. One of these, AVC, provided responsible, capable business acumen, and a philosophy on station development similar to Overmyer's. The negotiations resulted in the contract which forms part of this record. Overmyer retained 20% of the stock of the permittee corporations as an investment in television. The investment for which he thus was not reimbursed constitutes a sum in excess of 20% of the total funds invested by him in the five construction permits. As a part of the negotiations, AVC also agreed to certain collateralized loans to Overmyer. These loans were fully secured by mortgages on real estate equities equivalent to twice the amount of the loans extended; by guarantees of various Overmyer companies; by the personal guarantee of Overmyer; and further by the 20% remaining stock interest held by Overmyer in the permittees.

The funds received by Overmyer personally for his stock in the permittee corporations and the funds received by the Warehouse Company on the mortgage loans, were used to pay subcontractors of Green & White and to secure completion of construction projects. The completed projects were in many cases sold and leased back to generate further needed funds.

The unexpected financial problem necessitated a change in the plans of Overmyer for the development of the television stations. However, as proof that his interest in television continued and continues, Overmyer has retained a minority interest in the five permits involved in the transfer and full ownership of the operating station in Toledo, continuing its operation despite the substantial losses entailed.

It should also be noted that at the time the applications were filed, the Government was, in essence, requesting financially qualified investors to risk their funds in this new and highly uncertain industry so as to render viable the all-channel legislation passed by the Congress.

It is therefore evident that Overmyer, because of circumstances beyond his control, was unable to carry through to completion the plans he had formulated to foster the development of UHF.

ITEM 34(b)

ATTACHMENT I—THE OVERMYER APPLICANTS WERE QUALIFIED TO BE GRANTED THE CONSTRUCTION PERMITS

A. The Overmyer applicants were financially qualified

1. Balance sheets submitted to the Commission with the Overmyer applications were valid and prepared in accord with sound accounting principles.

(a) They were submitted under oath as part of the applications.

(i) The same balance sheets—*uncertified*—have been used in connection with obtaining over \$100,000,000 in loans by other Overmyer companies.

(b) They were based upon valid and independent appraisals by MAI's of fixed assets carried at market value. (See Attachment I-A) All other assets were carried at cost.

(i) The use of market values in the balance sheets was clearly identified on the face of the balance sheets submitted to the Commission.

(ii) The use of market values is an accepted real estate accounting procedure.

(iii) As noted above, these same balance sheets have been submitted and utilized by Overmyer Companies in connection with over \$100,000,000 in loans.

(c) The ratio of the current portion of long term debt to the total long term debt was correctly stated. (See Attachment I-B)

(d) They are consistent and reconcilable with balance sheets submitted to the Internal Revenue Service. (See Attachment I-C)

(i) The tax returns for the corporations were not required to be filed by the Commission. Similarly, none of the banks or financial institutions from whom various Overmyer companies have obtained loans have required the submission of tax returns in connection with applications for such loans.

(e) They met FCC requirements.

(i) The liquidity of the Overmyer Company was established on the face of the balance sheets.

(ii) Non-liquid assets were many times the amount required by the stations. The ability to liquidate these assets is demonstrated by the fact that the extensive sale/leaseback program of the Company has generated many millions of dollars in recent months.

(iii) D. H. Overmyer's personal balance sheet shows an excess of current assets over current liabilities. Although the current assets over current liabilities were limited, the total assets were more adequate to meet any reasonable contingency. (See Attachment I-D)

2. Credit letters from banks submitted to the Commission were valid.

(a) They were submitted under oath as part of the application.

(b) They were similar to letters obtained by other Overmyer companies in both Communications and non-Communications matters.

(i) Bank commitments for construction funds obtained by Overmyer are invariably qualified in much the same manner as the commitments to the Communications Companies.

(c) They were similar in nature to bank letters normally submitted to, and accepted by, the FCC at the time of the processing of the applications.

(d) Of the seven bank letters submitted to the FCC, three eventually ripened into actual loans.

(e) Overmyer followed through on each of the bank letters and attempted to consummate each loan.

(i) The statement by an officer of The First National Bank of Cincinnati to the contrary is in error. (See Attachment I-E)

(f) The qualifications contained therein did not render the letter invalid.

(i) Had certification of a Communications Company balance sheet been a strict bank requirement, such certification could and would have been obtained.

3. The withdrawal of the Dallas application in 1967 was motivated by considerations not directly related to any financial issue designated by the Commission in 1965.

4. The commitment by Adams, an officer of the Communications Company, relating to resources of D. H. Overmyer personally and of the Warehouse Company, was valid. It constituted a binding commitment by an officer of one Overmyer Company wholly owned by Mr. Overmyer, and was made upon the authority of the sole stockholder and chief executive officer of the other Overmyer Companies, Mr. Overmyer.

B. Overmyer met Commission requirements regarding programming

1. For each construction permit obtained, full and complete disclosures were made of the programming plans and proposals in the form specified by the Federal Communications Commission (See testimony page 401).

(a) While no specific programming matters regarding the applications were raised by the Commission staff in discussions by Overmyer personnel with such staff, the reason therefor was not lack of interest either by the Commission or Overmyer in this area but is the fact that full information thereon has been submitted.

2. Overmyer's interest in programming is evidenced by program contracts for all stations in excess of \$2,800,000.

3. One of the principal reasons for the formation of a fourth television network by Overmyer was to provide new and fresh programming for the Overmyer stations and other television stations.

ATTACHMENT I-A

Set forth below are the general factors involved in the appraisals listed on the D. H. Overmyer Warehouse Company statements in 1964 and 1965.

1. All of the Overmyer warehouse buildings have been constructed by utilizing first mortgage funds, in general from the investment department of life insurance companies.

2. The investment policy of these companies provides that they may lend up to two-thirds ($\frac{2}{3}$) (in some rare cases 70%) of the current market value of the proposed building and the land on which it is to be built.

3. The insurance companies insist that such market valuations be computed by a recognized and reputable member of the American Institute of Appraisers. Such individuals are normally referred to as MAI's. A few insurance companies will maintain their own staff of MAI's for this purpose and conduct their own appraisals. To ascertain the market valuation involved in such a loan, one can take the mortgage amount granted and divide by the traditional $\frac{2}{3}$ mentioned above and therefore compute the appraisal amount. The mortgages granted by these companies, are normally very similar in amounts to those granted by companies using an outside MAI and it is therefore evident that the insurance company staff MAI's using the same professional appraisal methods arrive at similar answers to the independent MAI's used around the country.

4. In general, therefore, Overmyer would normally retain an outside MAI either located in the area where building was taking place or, if available, would use a national appraisal firm. The desire to use a national firm where possible, is based on the fact that once they get to know the general building structure of an Overmyer Warehouse, economies in the cost of the appraisals can be effected.

5. The fact that Overmyer has built 21,000,000 feet consisting of over 350 separate buildings in 55 cities in the United States and Canada, appraised by many different MAI's and accepted by over 50 major financial institutions, has provided proof from various independent sources of the market valuations of this type of structure. Naturally, there are small variations based on local building costs and local land costs but the general variation country-wide in such appraisals is almost always relatively small. The range of the appraised market valuations normally runs from approximately \$900,000 to \$1,000,000 per each 120,000 sq. ft. complex.

6. In addition, due to the need to raise large sums of money in the last 1 $\frac{1}{2}$ years, Overmyer has entered into many sale leaseback arrangements with outside

parties. These third parties are buying buildings as an investment and base their purchase price on their knowledge of the market valuation of these buildings.

7. The valuation so established by third party purchases has been equivalent to the appraised valuations. Further proof of the accuracy of the MAI appraisals is the sale leaseback experience set forth in Attachment III-L.

ATTACHMENT I-B

FLY, SHUEBRUK, BLUME & GAGUINE,
Washington, D.C., August 12, 1968.

ROBERT W. LISHMAN, Esq.,
Special Subcommittee on Investigations,
Rayburn House Office Building, Washington, D.C.

DEAR MR. LISHMAN: In accord with the request by the Subcommittee, I am enclosing herewith a schedule of the long-term debt amortization of D. H. Overmyer Warehouse Company and affiliates, as per the published balance sheet, dated August 31, 1964.

I am also taking the liberty of enclosing a copy of a letter addressed to me by Mr. Byrnes, the Executive Vice President of the Overmyer Company, Inc., which explains the manner in which the schedule was arrived at.

As indicated in Mr. Byrnes letter, the material requested relating to the August 31, 1965, balance sheet is not yet ready but will be forwarded to the Subcommittee as quickly as it is received by me.

Should you have any questions concerning this matter, I would appreciate your calling me at your convenience.

Very truly yours,

BENITO GAGUINE.

THE OVERMYER CO., INC.,
New York, N.Y., August 8, 1968.

Mr. BENITO GAGUINE,
Fly, Shuebruk, Blume & Gaguine,
Washington, D.C.

DEAR BEN: I am enclosing herewith a schedule of the long term debt amortization of D. H. Overmyer Warehouse Co. & Affiliates as per the published balance sheet dated August 31, 1964. Unfortunately, the original schedule was missing from our work papers so that it was necessary to go back and completely reconstruct the details. The same work will have to be done for the equivalent information at August 31, 1965. I will forward that schedule to you as quickly as it is finished.

Before going into the details, I think it would be wise to spell out a little background since there have been comments made concerning the current portion of long term debt shown on our balance sheet which indicate a misunderstanding as to what is contained in our balance sheet classification of long term debt. There also seems to be some misunderstanding as to how our long term mortgages are amortized and at what rate. First, and perhaps most important, it must be pointed out that the total amount of long term debt shown on our balance sheet was not subject completely to amortization in the following year. The reason is as follows. It is our standard practice to obtain a long term mortgage commitment, usually from an insurance company, for the financing of a warehouse. With this commitment in hand, we would then approach a commercial bank and arrange to have funds made available to us by that bank for construction purposes against the long term commitment. A contract is signed with the bank assigning our interest in the long term commitment to the bank so that when the building is finally completed and passes engineering inspection, which might be 15 to 18 months later, the bank advances are paid off by the long term lender. Therefore, at any given time, substantial amounts of our potential long term debt are in the construction area and have no amortization provision at all. The amortization provision is only effective after the financing is transferred to the permanent lender. This makes it impossible for anyone not having the breakdown of actual permanent financing versus construction financing to compare the long term debt amount with the amount shown as current portion of long term debt and come to any logical conclusions. All of our lenders, for whom our statement is primarily pre-

pared, are aware of this distinction and therefore do not attempt to relate total long term debt to the current portion.

For example, you will note from the schedule covering the debt at August 31, 1964 that while the total debt outstanding was \$8,986,000, \$3,529,000 represented construction mortgages and only \$5,457,000 actually represented long term mortgages subject to amortization. At that point in time, the majority of our mortgages were 20 year term with rates varying from 5½% to 6% per annum. For ease in computation of the current portion of principal due in the following year, we assumed all mortgage loans to be at the highest rate then in effect, namely 6%. While we were negotiating principally 20 year mortgages, there were one or two 15 year mortgages so we assumed an average life of 17 years on all mortgages. If you will now refer to the photostatic copy of the Loan Progress Chart printed by the Financial Publishing Company of Boston, which I have enclosed, you will note that on a 17 year mortgage the amount of principal reduction in the first year is \$35 per thousand dollars face amount of mortgage, or 3½%. To be conservative, we rounded this up to 4%. As indicated by the schedule enclosed, 4% of the permanent mortgages in existence is \$216,457. There was one small item owing to the Ohio Citizens Trust Company in the amount of \$46,169 which was to be completely paid out in the following year. So 100% of this loan balance was added to the 4% calculated above. The resultant calculation of current portion on long term debt at August 31, 1964 therefore should have been \$262,626. It is obvious now that we made an error in 1964 and provided approximately \$4,500 too much in the current portion. It is impossible to understand why at this late date but the error is minor and overstates the liability. The calculations for the 1965 amount will be similar and as I said before will follow shortly.

I would like to point out one other item. I understand that when these amounts were discussed by the Committee some implication was made that if what we called the Current Portion, namely \$267,000 was correct, it would take over 30 years to pay out a mortgage. I would like to point out on the loan progress chart referred to above that in the first year of a 6%, 20 year mortgage (which by the way was a high rate for this type of mortgage in 1964), the principal payment in the first year amounts to \$27 per thousand or 2.7%. Therefore, if (1) all of the mortgages were brand new and (2) all were 6%, 20 year terms, a current provision of \$270,000 would be the correct amortization figure for \$10,000,000 worth of mortgage debt. Naturally, as the mortgage ages, the principal contribution increases but I believe it is obvious how if numbers are taken out of context without knowledge of the facts they may appear to be incorrect on the surface whereas analysis can demonstrate their accuracy.

Let me know if there is any additional information you require on these figures.

Very truly yours,

T. J. BYRNES.

6% **LOAN PROGRESS CHART** **Monthly Payments**
 Showing dollar balance remaining on a \$1,000 loan

Age of Loan	ORIGINAL TERM IN YEARS										Age of Loan	
	5	10	11	12	13	14	15	16	17	18		19
1	823	925	934	941	948	953	958	962	965	968	971	1
2	635	845	863	879	892	903	913	921	928	934	940	2
3	436	760	789	813	833	850	865	877	888	893	907	3
4	224	669	710	742	770	793	814	831	846	860	872	4
5		574	625	668	703	733	760	782	802	819	835	5
6		472	536	589	633	670	703	730	755	776	795	6
7		364	441	505	558	602	642	675	704	730	753	7
8		250	340	415	478	531	577	617	651	682	709	8
9		128	234	321	393	455	509	555	595	630	662	9
10			120	220	303	374	436	489	535	576	612	10
11				113	208	288	359	419	471	517	558	11
12					107	197	277	344	403	456	502	12
13						100	190	265	331	390	442	13
14							98	182	255	321	378	14
15								93	174	247	311	15
16									88	168	239	16
17										85	163	17
18											82	18

Age of Loan	ORIGINAL TERM IN YEARS										Age of Loan	
	20	21	22	23	24	25	26	27	28	29		30
1	912	975	977	979	981	982	983	985	986	987	988	1
2	915	949	953	957	960	963	966	968	970	973	975	2
3	915	922	928	934	939	943	947	951	954	958	961	3
4	833	892	901	909	916	922	928	933	937	942	946	4
5	849	861	872	882	891	899	907	913	919	925	930	5
6	812	828	841	854	865	875	884	893	900	907	914	6
7	774	793	809	824	838	849	861	871	879	889	896	7
8	733	756	774	792	808	822	835	848	859	867	877	8
9	690	716	737	759	777	793	809	823	834	846	857	9
10	644	674	699	723	744	762	780	797	810	823	836	10
11	596	629	657	685	709	730	750	769	784	799	814	11
12	544	582	613	645	672	695	718	739	756	773	790	12
13	489	531	567	602	633	659	684	709	727	746	765	13
14	431	478	517	557	591	620	648	675	695	717	738	14
15	369	421	465	509	546	578	610	639	663	686	709	15
16	303	361	409	457	499	534	570	602	628	653	679	16
17	233	297	350	403	449	488	527	562	590	618	647	17
18	159	229	287	346	396	438	481	520	551	582	613	18
19	81	157	221	284	339	386	432	475	509	542	576	19
20		81	150	219	279	330	381	427	464	501	538	20
21			75	150	216	271	326	377	417	457	497	21
22				77	148	208	268	323	366	410	454	22
23					76	141	206	266	313	360	409	23
24						70	141	205	256	307	359	24
25							71	141	196	251	307	25
26								73	132	192	252	26
27									64	129	194	27
28										62	131	28
29											66	29

Lender	Permanent mortgages	Interim construction mortgages	Total
Woodmen of the World.....	\$577,845.83		
Do.....	520,087.99		
Teachers Insurance Co.....	479,211.20		
Do.....	175,000.00		
New England Mutual Insurance Co.....	917,160.28		
Do.....	280,000.00		
Equitable Life Insurance Co.....	125,097.74		
Aid Association for Lutherans.....	995,659.18		
Ohio Citizens Trust Co. (B).....	46,168.79		
Northwestern Life Insurance Co.....	563,559.09		
Do.....	209,100.00		
Do.....	568,702.34		
U.S. National Bank.....		\$517,412.37	
Mercantile National Bank.....		600,000.00	
Guarantee National Bank.....		454,250.00	
Whitney National Bank.....		545,000.00	
Bank of Virginia.....		800,000.00	
American National Bank.....		367,567.02	
Hartford National Bank.....		110,000.00	
Citizens & Southern National Bank.....		104,592.00	
Miscellaneous.....		29,900.00	
Total.....	5,457,592.44	3,528,721.39	\$8,986,313.83
Current portion:			
Total permanent mortgages (A).....			5,457,592.44
Less Ohio Citizens loan due entirely in 1965 (B).....			46,168.79
Total.....			5,411,423.65
Principal payment amount at 4 percent (see memo).....			216,456.95
Add back Ohio Citizens loan (B).....			46,168.79
Total current portion.....			262,625.74

FLY, SHUEBRUK, BLUME & GAGUINE,
Washington, D.C., August 16, 1968.

ROBERT W. LISHMAN, Esq.,
Special Subcommittee on Investigations,
Rayburn House Office Building, Washington, D.C.

DEAR MR. LISHMAN: In accord with the request of the Subcommittee, I am enclosing herewith a schedule of the long-term debt amortization of D. H. Overmyer Warehouse Company and affiliates as per its published balance sheet of August 31, 1965. The format is the same as the schedule for 1964, which was submitted to the Subcommittee, and the method of calculation is also the same. Accordingly, I do not believe that it is necessary to go into any greater detail.

I am advised by Mr. Byrnes, who prepared the material, that in the preparation he discovered that the accounting department had inadvertently listed a \$64,000 item, identified as Item (1) on the annexed sheet, as long-term debt—whereas, it was actually interim construction funds and should not have been included in the base for the amortization calculation. This error was compounded by computing a current portion on the \$64,000 of one-fourth instead of four percent. The resulting calculation, therefore, for the current portion was overstated by \$16,000.

In the event that there are any further questions on this submission, please communicate with me, or if you prefer, directly with Mr. Byrnes.

Very truly yours,

BENITO GAGUINE.

Lender	Permanent mortgages	Interim construction mortgages	Total
Woodmen of the World.....	\$547,614.52		
Do.....	496,274.40		
Teachers Insurance Co.....	457,085.21		
Do.....	169,117.64		
New England Mutual Insurance Co.....	882,305.33		
Do.....	588,035.38		
Do.....	636,070.00		
Do.....	649,168.20		
Do.....	394,738.61		
Equitable Life.....	116,616.90		
Aid Association for Lutherans.....	968,684.94		
Northwestern Life Insurance Co.....	552,931.47		
Do.....	547,483.34		
Do.....	540,354.69		
American National Bank & Trust.....	692,095.44		
Massachusetts Mutual Insurance Co.....	592,082.86		
Pennsylvania Mutual Insurance Co.....	800,000.00		
U.S. Life Insurance Co.....	566,685.92		
Prudential Insurance Co.....	650,000.00		
Cleveland Trust Co.....		\$987,972.79	
First National, Boston; St. Louis County National.....		2,051,816.00	
Meadowbrook National, First City National, El Paso National.....		2,034,767.96	
Girard Trust, Western Pennsylvania National.....		1,185,000.00	
National Bank of Commerce, Commerce Union Bank.....		988,827.10	
Merchants National, Manufacturers & Traders (1).....	64,000.00	971,016.82	
Seattle First National.....		700,000.00	
San Diego Trust.....		684,900.00	
First National Bank, Boston.....		634,120.00	
Hartford National Bank.....		585,000.00	
Liberty National Bank.....		550,000.00	
Continental Bank.....		481,961.40	
Riggs National Bank.....		350,000.00	
U.S. National Bank of Omaha.....		315,000.00	
Central National Bank.....		302,000.00	
U.S. National of Oregon.....		289,300.00	
Texas Union, S. Carter.....		25,075.29	
Phoenix Mutual Insurance Co.....		12,000.00	
Citizens & Southern National Bank.....		361,600.00	
Indiana National Bank.....		550,000.00	
Bank of Virginia.....		650,000.00	
Theiss Realty Co.....		63,000.00	
American National Bank.....		62,250.00	
Total.....	10,911,344.85	14,835,607.36	\$25,746,952.21
Current portion:			
Total permanent Mortgages.....			10,911,344.85
Less Merchants National item (1).....			64,000.00
Total.....			10,847,344.85
Principal payment, percent (see memo).....			.04
Principal payment amount.....			433,893.80
Add ¼ item (1).....			16,000.00
Total, current portion.....			449,893.80

ATTACHMENT I-C

FLY, SHUEBRUK, BLUME & GAGUINE,
Washington, D.C., August 29, 1968.

Re hearings on the D. H. Overmyer Co.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. STAGGERS: During the recent hearings, questions arose as to certain alleged differences between the balance sheets submitted by certain Overmyer companies to the Internal Revenue Service with 1964 and 1965 tax returns, and balance sheets published for the Daniel H. Overmyer Warehouse Company and affiliates and submitted to the Federal Communications Commission in connection with various applications.

A "reconciliation" of your Sub-Committee (hearing transcript page 75). Pursuant to such request, the annexed material is respectfully submitted.

The material has been compiled by The Overmyer Company personnel under the personal direction and supervision of Mr. Thomas J. Byrnes. Mr. Byrnes was a witness at the hearings and the material is being submitted as part of his testimony.

In reviewing such material, it is suggested that the following points be considered:

1. The companies included in the consolidated tax returns were only the D. H. Overmyer Warehouse Co. (Ohio), the parent company, and its *wholly owned subsidiaries* at the given dates. On the other hand, the published balance sheets included *all* of the Overmyer warehouse companies, regardless of whether such companies were fully in operation, were in the process of construction or had just been incorporated. It will be noted that the *affiliates* were much greater in number than the *wholly owned subsidiaries*. The annexed material demonstrates that combining the balance sheets for the two sets of companies results in the published balance sheets. Accordingly, it is clear that there are no discrepancies between the balance sheets submitted with the tax returns and those which were published.

2. In connection with the comparison of the August 31, 1965 balance sheets, we were unable to utilize the Schedule L appearing in Mr. Druhan's study. We are not sure as to the precise basis on which Mr. Druhan compiled his schedule, but it is clear that it is *not* the Schedule L submitted by the Overmyer companies with the consolidated tax return. In our comparison, we utilized the schedule which accompanied the consolidated return. It appears to us that Mr. Druhan may have attempted to arrive at a reconciliation of the two balance sheets, but since he was not aware of all of the entities involved, and since he did not ask our personnel for the material which could have constituted a sound basis for his study, it is evident that he omitted a number of entities and thus was unable to make the reconciliation in the manner annexed hereto.

3. We were somewhat surprised at the comments of the Subcommittee counsel (Tr. 81) to the effect that we had not complied with the Subcommittee's requests for tax returns. Your attention is respectfully invited to the letters of May 24 and May 27 to Mr. Overmyer, copies of which are annexed for your convenience. It should be noted that these letters specified the tax returns requested. The returns which were made available by us were the consolidated tax returns of the parent company (D. H. Overmyer Warehouse Company (Ohio)) *plus* its subsidiaries, thus constituting more returns than actually requested. In addition, the individual returns of Mr. Overmyer and the specific returns of the Communications and of the Leasing Companies were made available as requested.

We regret that the Subcommittee's staff did not advise us of the purposes for which the returns were sought since we then could have pointed out that additional tax returns might have been germane. However, we must stress again that we at no time refused to supply any returns—and that we did in fact fully comply with the requests which we received. We believed that in all fairness, the record should reflect this fact.

Very truly yours,

D. H. OVERMYER Co., INC.

BENITO GAGUINE.

(Reconciliation of differences between August 31, 1964 Published Balance Sheet of "D. H. Overmyer Warehouse Co. and Affiliates" (Supplied to FCC) and August 31, 1964 Tax Return Balance of "D. H. Overmyer Warehouse Co., (Ohio) and Wholly Owned Subsidiaries")

1) The tax return in question includes *only* the accounts of D. H. Overmyer Warehouse Co. (Ohio) and its wholly-owned subsidiaries, D. H. Overmyer Warehouse Co. (North Carolina), D. H. Overmyer Warehouse Co. of Georgia, D. H. Overmyer Warehouse Co. of Florida and McCoy Commercial Warehouse Co., Inc.

These companies were filed in consolidated fashion because:

- They were parent and subsidiaries,
- They were all actively engaged in the warehouse business and
- They shared a common fiscal year ending August 31.

2) The published statement in question includes the accounts of the Ohio Company and its subsidiaries as mentioned in #1 above, and also includes *all* Overmyer Warehouse state corporations which were preparing to construct their

first warehouse, or were already in the process of construction. These companies were all owned by Mr. Overmyer personally and in general had different year ends than the Ohio group.

Upon completion of their first building, Mr. Overmyer would transfer ownership of the stock in the state corporations to the Ohio Company, and in that year it would then be included in the Ohio Company Consolidated Tax Return. Prior to such transfer, each corporation filed its own tax return at its own year end.

All companies were included in the published statement as "Affiliates" of Ohio, since they affiliated through common ownership. By consolidating their accounts, the entire extent of the Overmyer warehousing interests were included in one statement.

These affiliates at August 31, 1964 were:

D. H. Overmyer Warehouse Co., Inc. of Ohio
D. H. Overmyer Trucking Co.
D. H. Overmyer Warehouse Co. (Mo.)
D. H. Overmyer Warehouse Co. (Colo.)
D. H. Overmyer Warehouse Co. (Texas)
D. H. Overmyer Warehouse Co. (Ariz.)
D. H. Overmyer Warehouse Co. (La.)
D. H. Overmyer Warehouse Co. (Pa.)
D. H. Overmyer Warehouse Co. (Va.)
D. H. Overmyer Warehouse Co. (Mass.)
D. H. Overmyer Warehouse Co. (Minn.)
D. H. Overmyer Warehouse Co. (N.Y.)
D. H. Overmyer Warehouse Co. (Wash.)
D. H. Overmyer Warehouse Co. (Calif.)
D. H. Overmyer Warehouse Co. (Conn.)
D. H. Overmyer Warehouse Co. (Ore.)
D. H. Overmyer Warehouse Co. (Md.)

A schedule combining the accounts of D. H. Overmyer Warehouse Co. (Ohio) and its wholly-owned subsidiaries, per their consolidated tax return, and the accounts of the unconsolidated (for tax purposes) affiliates at August 31, 1964 is attached and marked Schedule #1. The total combined figures are equal to the published balance sheet at August 31, 1964.

SCHEDULE NO. 1

D. H. OVERMYER WAREHOUSE CO. WHOLLY OWNED SUBSIDIARIES AND AFFILIATES—BALANCE SHEET, AUG. 31, 1964

	Ohio Co. and subsidiaries per tax return	Affiliates (see memo for names)	Total per published statement
ASSETS			
Cash	\$312,155	\$1,349,574	\$1,661,729
Accounts receivable	211,213	7,432	218,645
Provision for doubtful accounts	(13,000)	(500)	(13,500)
Prepaid expenses	41,578	4,517	46,095
Short-term returnable deposits	269,152	11,210	280,362
Land	1,530,700	814,000	2,344,700
Buildings	7,581,800	1,561,000	9,142,800
Equipment	114,850	121,180	236,030
Leasehold improvements	2,147	0	2,147
Construction in progress	679,547	920,385	1,599,932
Less accumulated depreciation	(217,399)	(90,918)	(308,317)
GSV of life insurance	19,341		19,341
Other assets	93,039	47,125	140,164
Due from nonconsolidated affiliates	0	274,206	274,206
Total assets	10,625,123	5,019,211	15,644,334
LIABILITIES AND SHAREHOLDERS EQUITY			
Accounts payable	267,580	394,344	661,924
Accrued:			
Taxes	122,966	2,745	125,711
Wages	22,273		22,818
Interest	35,866	3,080	38,946
Other	36,146	101	36,247
Current portion of long-term debt	222,487	44,697	267,184
Real estate mortgages	5,339,697	3,379,433	8,719,130
Notes payable	15,000	0	15,000
Equipment mortgages	0	26,852	26,852
Due to affiliates and D. H. Overmyer	434,871	71,456	506,327
Common stock	2,000,800	16,000	2,016,800
Surplus	2,127,437	1,079,958	3,207,395
Total liabilities and shareholders equity	10,625,123	5,019,211	15,644,334

(Reconciliation of Differences Between August 31, 1965 Published Balance Sheet of "D. H. Overmyer Warehouse Co. and Affiliates" (Supplied to FCC) and August 31, 1965 Tax return Balance Sheet "D. H. Overmyer Warehouse Co., (Ohio) and Wholly Owned Subsidiaries")

1) Again as in the case of the 1964 figures the tax return includes only the Ohio Company and its wholly-owned subsidiaries which at that date were:

- D. H. Overmyer Warehouse Co. (Ohio)
- McCoy Commercial Warehouse Co., Inc.
- Texas Union Warehouse Co.
- D. H. Overmyer Warehouse Co. (Ariz.)
- D. H. Overmyer Warehouse Co. (Colo.)
- D. H. Overmyer Warehouse Co. (Fla.)
- D. H. Overmyer Warehouse Co. (Ga.)
- D. H. Overmyer Warehouse Co. (Ind.)
- D. H. Overmyer Warehouse Co. (La.)
- D. H. Overmyer Warehouse Co. (Minn.)
- D. H. Overmyer Warehouse Co. (N.C.)
- D. H. Overmyer Warehouse Co. (Texas)
- D. H. Overmyer Warehouse Co. (Va.)

The companies were consolidated for tax purposes for the same reasons as 1964 namely,

- a) They were parent and subsidiaries,
- b) They were all actively engaged in the warehouse business and,
- c) They shared a common fiscal year ending August 31.

2) Again as in 1964 the published statement includes all of the above mentioned companies as well as the following companies which were owned by Mr. Overmyer but were unconsolidated with the Ohio parent:

- D. H. Overmyer Warehouse Co. (Ala.)
- D. H. Overmyer Warehouse Co. (Delaware)
- D. H. Overmyer Warehouse Co. (Kentucky)
- D. H. Overmyer Warehouse Co. (Mich.)
- D. H. Overmyer Warehouse Co. (Miss.)
- D. H. Overmyer Warehouse Co. (Neb.)
- D. H. Overmyer Warehouse Co. (Nevada)
- D. H. Overmyer Warehouse Co. (N.J.)
- D. H. Overmyer Warehouse Co. (Okla.)
- D. H. Overmyer Warehouse Co. (Tenn.)
- D. H. Overmyer Warehouse Co. (Wisc.)

These companies were unconsolidated for the same reason as in 1964. The attached Schedule #2 combines the accounts of the Ohio Company and its subsidiaries per their consolidated tax return (plus reclassifications and adjustments to book figures) and the accounts of the unconsolidated affiliates at 8/31/64, the resultant answers being the published statement figures. One difference should be noted between this Schedule and Schedule #1. In 1964 our people gave Arthur Young & Co. a statement including appraisal type adjustments for their use in writing up the final tax return. However, in 1965 the statement we gave to Arthur Young & Co. was prior to appraisal adjustments and therefore, these adjustments are shown on Schedule #2. Such adjustments have no effect on taxable income.

It would appear from reading Mr. Druhan's memo of June 25th to Mr. Lishman that he had some inkling as to the differences between our published statements and the Ohio Company's consolidated tax return since he says on page #2, "Conceivably the difference between the two balance sheets could be a difference in the number of companies being reported. The balance sheet submitted to FCC titled, 'D. H. Overmyer Warehouse Co. and Affiliates', whereas the one submitted to IRS is titled, 'D. H. Overmyer Warehouse Company and Subsidiaries.'" Unfortunately, the question was not raised at the time of Mr. Druhan's visit or the matter could have been cleared up then.

One last point should be considered in utilizing these reconciliations. The amount which we show as derived from our consolidated return as of 1965 differs from the analysis made by Mr. Druhan in his report by some two million dollars. The reason is that Mr. Druhan included figures applicable to certain unconsolidated affiliates which amount to this two million dollars and added them to our actual consolidated return figures. Although his schedule is assumed to be "Schedule L" submitted by us to IRS, it is not a duplicate of the "Schedule L"

included in our tax return. We have therefore reconciled to the actual amounts reported by us to the IRS and not to Mr. Druhan's computation. The unconsolidated affiliates which Mr. Druhan included in this Schedule were:

- D. H. Overmyer Warehouse Co. (Ala.)
- D. H. Overmyer Warehouse Co. (Delaware)
- D. H. Overmyer Warehouse Co. (Mich.)
- D. H. Overmyer Warehouse Co. (Miss.)
- D. H. Overmyer Warehouse Co. (Neb.)
- D. H. Overmyer Warehouse Co. (Nev.)
- D. H. Overmyer Warehouse Co. (N.J.)
- D. H. Overmyer Warehouse Co. (Okla.)
- D. H. Overmyer Warehouse Co. (Tenn.)
- D. H. Overmyer Warehouse Co. (Wisc.)
- Service Center, Inc.

In addition, one of the companies actually reported in the consolidated group return namely, Texas Union Warehouse Co., is not listed on Mr. Druhan's schedule at all. In short, therefore, the schedule which apparently was submitted in evidence titled, "D. H. Overmyer Co., Inc. and Subsidiaries, Balance Sheet August 31, 1965 Schedule L, Submitted to IRS", is not in fact identical to the "Schedule L" which we submitted to the IRS and I believe the record should be so corrected.

SCHEDULE No. 2

D. H. OVERMYER WAREHOUSE CO. WHOLLY OWNED SUBSIDIARIES AND AFFILIATES—
BALANCE SHEET AUG. 31, 1965

	Ohio Co. and subsidiaries per tax return	Reclassifications and adjustments tax return to books	Affiliates (see memo for names)	Total per published statement
ASSETS				
Cash	\$1,069,526	0	\$1,192,586	\$2,262,112
Accounts receivable (net)	403,407	(\$58,300)	140,344	485,451
Prepaid expenses	842,527	(705,600)	73,184	210,111
Returnable deposits	0	720,178	2,366	722,544
Land	2,475,789	500,511	337,500	3,313,800
Buildings	12,913,715	2,959,485	1,100,000	16,973,200
Equipment	0	0	369,271	369,271
Improvements	0	6,869	11,317	18,186
Construction in progress	0	3,336,674	7,107,580	10,444,254
Depreciation reserve	(384,461)	0	(57,149)	(441,610)
CSV life insurance	0	41,574	0	41,574
Other assets	3,461,159	(3,286,542)	396	175,013
Other investments	979,682	(979,682)	273,197	273,197
Total assets	21,761,344	2,535,167	10,550,592	34,847,103
LIABILITIES AND SHAREHOLDERS EQUITY				
Accounts payable	413,681	0	72,778	486,459
Other current liabilities	2,153,459	(2,153,459)	0	0
Accrued expenses	0	502,093	111,819	613,912
Current portion long-term debt	433,894	0	16,000	449,894
Long-term debt	14,805,149	0	10,780,345	25,585,494
Due to affiliates	0	747,124	(747,124)	0
Other liabilities	46,958	(46,958)	0	0
Common stock	2,020,600	(19,800)	22,000	2,022,800
Surplus	1,887,603	3,506,167	294,774	5,688,544
Total liabilities and shareholders equity	21,761,344	2,535,167	10,550,592	34,847,103

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., May 24, 1968.

Mr. DANIEL H. OVERMYER,
New York, N.Y.

DEAR MR. OVERMYER: This is to confirm the telephone discussion of Mr. William Druhan, Special Subcommittee Consultant, this date with Mr. Thomas Byrnes of your organization.

The Special Subcommittee has directed that the following documents be requested for its examination in connection with your recent transfer of five UHF construction permits:

A copy of the federal corporate income tax returns for the calendar years 1964, 1965, 1966 and 1967 of—

- D. H. Overmyer Communications Company, Inc. (California),
- D. H. Overmyer Communications Company, Inc. (Georgia),
- D. H. Overmyer Communications Company, Inc. (Pennsylvania),
- D. H. Overmyer Broadcasting Company, Inc. (Texas),
- D. H. Overmyer Broadcasting Company, Inc. (Kentucky),
- D. H. Overmyer Leasing Co., Inc. (Del.),
- D. H. Overmyer Company, Inc. (Ohio);

And the personal federal income tax returns of Mr. Daniel H. Overmyer for the calendar years 1964, 1965, 1966 and 1967.

Your fullest cooperation in this matter will be appreciated.

Very truly yours,

ROBERT W. LISHMAN.

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., May 27, 1968.

Mr. DANIEL H. OVERMYER,
New York, N.Y.

DEAR MR. OVERMYER: In accordance with discussions held on Friday, May 24, 1968 between Mr. Russell Brown your attorney and Mr. Robert W. Lishman, and the latter's letter to you of same date, the following documents are to be made available in your office to Mr. William Druhan of the Special Subcommittee staff:

A copy of the federal corporate income tax returns for the fiscal years which include expenses recorded between July, 1964 and March 31, 1967 for—

- D. H. Overmyer Communications Company, Inc. (Calif.),
- D. H. Overmyer Communications Company, Inc. (Ga.),
- D. H. Overmyer Communications Company, Inc. (Pa.),
- D. H. Overmyer Broadcasting Company, Inc. (Texas),
- D. H. Overmyer Broadcasting Company, Inc. (Ky.),
- D. H. Overmyer Leasing Co., Inc. (Del.),
- D. H. Overmyer Company, Inc. (Ohio);

A copy of the federal corporate income tax returns for the fiscal years 1964 and 1965 for D. H. Overmyer Warehouse Co., Inc. (Ohio);

And the personal federal income tax returns of Mr. Daniel H. Overmyer for the calendar years 1964, 1965, 1966 and 1967.

Mr. Druhan will examine these returns and copy only such information as he deems relevant and important to the Special Subcommittee's continuing investigation into broadcast station transfers.

Very truly yours,

HARLEY O. STAGGERS, *Chairman.*

ATTACHMENT I-D

A question was raised as to the value, in the financing of television operations, of close corporation stock appearing on the Overmyer personal balance sheet. While the ownership of stock in a close corporation may often not establish a reasonable degree of liquidity, this is not true in those instances where the stockholder is in fact the sole stockholder of the corporation, and where the assets of such corporation can be used to generate funds needed by the sole stockholder. Where these assets can generate funds, they can be considered as establishing a degree of liquidity in the sole and controlling stockholder. In this instance, Overmyer could reasonably have looked to either the sale of buildings, or the sale and leaseback of buildings for a source of funds to finance the television stations. Since he controlled the various companies, these funds could have been loaned by the corporation to the permittees, or by the corporation to its principal stockholder, and by him to the permittees. Since the sale leaseback technique has been utilized by the various Overmyer corporations in generating funds for the

completion of warehouse construction, there is no reason to assume that this method would not have been available to Overmyer to finance the television stations, either personally or through his corporations.

ATTACHMENT I-E

AFFIDAVIT

STATE OF OHIO,
County of Lucas, ss.:

Arthur M. Dorfner, being duly sworn, deposes and says:

1) I am now President of D. H. Overmyer Telecasting Co., Inc., licensee of television station WDHO-TV, Toledo, Ohio.

2) During 1966 I was Vice President-Finance of the several D. H. Overmyer Communications (Broadcasting) Companies and as such was actively engaged in negotiations with various financial institutions throughout the country on behalf of the Overmyer television stations.

3) I have read the letter dated April 18, 1968, from Mr. R. H. Brookes of the First National Bank of Cincinnati to Mr. S. Arnold Smith, Staff Attorney of the Special Committee on Investigations.

4) I had several contacts, in person and by telephone, with representatives of the First National Bank of Cincinnati beginning in March, 1966.

5) At least five personal visits were made by me and others from The Overmyer Company in succeeding weeks in meeting with Messrs. Davis and Cadwallader as well as Mr. Brookes.

6) My records make specific note of visits to the bank in Cincinnati on March 31, May 27, June 8 and July 14, 1966.

7) I am, therefore, unable to explain the statement of Mr. Brooke's in the above cited letter to the effect that The Overmyer Company did not "follow up" with his bank on the loan request subsequent to August 14, 1964.

ARTHUR M. DORFNER.

Sworn to before me this 9th day of September 1968.

ELLWARD F. CORBETT,
Notary Public.

My Commission expires January 31, 1969.

ITEM 34(c)

ATTACHMENT II—OVERMYER INTENDED TO PUT THE STATIONS ON THE AIR AND MADE APPROPRIATE EFFORTS TO THAT END

1. Extensive time and effort was spent in searching for transmitter and studio sites; planning and modifying technical facilities; obtaining programming; hiring personnel; searching and negotiating for financing; etc. (See Exhibit II to the application for consent to the transfer, annexed hereto for convenience as Attachment II-A)

2. Overmyer's record of progress in station construction is not properly subject to criticism. The reasons for the interval of time between grant of CP and air date are set forth in detail in the applications made to the Commission for extensions of the construction permits. These applications are already a part of the record and are summarized in Exhibit II to the application for consent to the transfer which is annexed hereto as Attachment II-A.

(a) The Toledo CP was granted on March 10, 1965 and the station was on the air on May 2, 1966, less than 14 months later.

(b) The FCC first granted a construction permit for the San Francisco station in November, 1952; Overmyer obtained the CP in the Fall of 1965 (some 13 years later) and the station began commercial broadcasting in early 1968 (less than one month after the transfer of control from Overmyer to USCC).

(c) The original CP for Newport/Cincinnati was granted in 1953; twelve years later Overmyer obtained the CP and that station went into operation soon after the transfer of control.

(d) Original CP's for Atlanta and Pittsburgh were granted in 1953 and it was not until Overmyer gained control in 1965 that meaningful activity took place in recent years toward providing these communities with new, first class facilities. The Atlanta station had been off the air since 1955 and the Pittsburgh

station since 1954. The unique air space restrictions encountered in Atlanta and the countless mine shafts located beneath proposed transmitter sites in Pittsburgh accounted for many months of delay beyond the control of Overmyer.

(e) In every location, major equipment systems were ordered and extensive program contracts were executed. (See Attachment II-A)

3. Overmyer policy of constructing the most modern, most powerful facilities feasible often produced unavoidable delay.

(a) The principal and overriding reason for delay in construction of facilities was not financial but was the need to prepare applications for, and then to obtain the approval of various governmental agencies, such as the Federal Communications Commission, FAA and local zoning boards, for the improved facilities. (See Attachment II-A)

(b) Overmyer did not use any of the sites designated in the original CP's. In addition, he improved the engineering facilities specified in the original CP's.

(i) The latest modifications for those stations not yet on the air were granted by the FCC as follows: Rosenberg, January, 1967; Atlanta, January, 1967; Pittsburgh, March, 1967—all less than three months before the execution of the agreement to transfer control.

4. Substantial progress was made even in the same year (1965) when the CP's were obtained.

(a) Any suggestion that "little progress was made in 1965" is refuted by Attachment II-B.

5. Reasonable business judgment was used in acquiring sites.

(a) The wisdom of offering \$30,000 for the proposed transmitter site in Cincinnati (Bald Knob), despite an asking price of \$100,000, is clear in view of the fact that the land in question was ultimately purchased for \$55,000. This constituted a saving of nearly two-thirds of the difference between the prices bid and asked for the property.

(i) In view of the foregoing, inferences can not properly be drawn that Overmyer did not intend to hire competent personnel at competitive salaries. Indeed, the testimony at transcript pp. 62 and 70 indicates that personnel employed were appropriately compensated.

6. Bank and Warehouse Company loans were, to the extent possible, taken down in accordance with the dictated construction timetable and prudent investment practices.

(a) This clearly explains the eighteen-month interval between the date of Girard Trust Company's commitment and the date that the loan was obtained.

(b) It also explains why, at the time of transfer, the Warehouse Company had not loaned the full \$710,000 it had promised to the several Communications Companies, but had loaned \$665,000—the remaining \$45,000 was not yet called for.

(c) The circumstances surrounding the Warehouse loan to the Cincinnati station also illustrate the considerations in taking down loans. (See Attachment II-C).

7. Comparisons of relative investment in different stations are invalid as indications of status of construction. (See Attachment II-D).

8. Overmyer's total financial commitment to television was nearly ten million dollars—far in excess of the amount indicated to the FCC as estimated "expenditures" in his applications. (See Attachment II-E).

9. As further evidence of the advancement of station planning and construction, it should be noted that the transferee, USCC, is using all of the transmitter sites and all but one of the studio facilities which were selected by Overmyer. (Transcript Page 146).

ATTACHMENT II-A

EXHIBIT II (JUNE 1967)

ACTIVITIES OF D. H. OVERMYER COMPANIES IN CONNECTION WITH TV STATIONS IN ATLANTA, SAN FRANCISCO, NEWPORT (KY.), PITTSBURGH, AND ROSENBERG (TEX.)

Initiation and development of interest in UHF

In late 1962, D. H. Overmyer, while engaged in providing a national warehouse service, concluded that the forthcoming all-channel law plus a need for a third TV service would provide a reasonable chance for a new television station in his home city of Toledo, Ohio. In April 1963, he filed for Channel 79 there, the only available assignment at that time. A permit was granted on March 10, 1965. The Station (WDHO-TV) went on the air in May 1966.

In the course of presenting this application and studying the television industry, Mr. Overmyer concluded that the establishment and operation of UHF stations in other markets provided a good business opportunity in an expansive new industry.

An experienced broadcaster was employed in June 1964 to head up these communications operations as Executive Vice-President. A thorough review was made by the Overmyer organization of markets showing a need for and the capability of supporting a new UHF TV service. It was finally decided to seek additional authorizations in Atlanta, Newport-Cincinnati, Pittsburgh, San Francisco, Rosenberg-Houston and Dallas-Fort Worth.

Applications were planned, prepared and filed for each of these six cities between August 1964 and February 1965. In some, extensive negotiations were carried on to acquire the permits of dark UHF stations. In all cases, plans were made and negotiations were carried on for antenna and studio sites, for financing commitments, etc.

Applications and other proceedings to improve facilities

While the several applications were pending, extensive studies were made of UHF, its economics, its engineering, UHF set circulation, available programming, its requirement of success—generally and in each market. It was concluded that maximum signal facilities and full color were a *sine qua non*, and searches were commenced—in some cases before final authorization was obtained—for appropriate transmission and studio sites. The equipment market was canvassed thoroughly and all potential suppliers were contacted. In some cases, the high channel allotted was regarded as a serious drawback, and studies were made to determine the availability of lower frequencies and, where appropriate, were initiated for a change to a lower channel (i.e. Newport, Rosenberg and extensive studies for Pittsburgh).

In all cases, the initial authorizations needed to be improved. Proposals for new and improved antenna sites, studio locations, higher towers, vastly expanded transmitting power and studio equipment proposals and new or substitute financing had to be planned, negotiated, implemented and filed with and processed by the FCC. Final authorizations for the maximum facilities presently being constructed were obtained in Atlanta—January 1967; Newport—May 1966 (transmitter) and December 1966 (studio); Pittsburgh—March 1967; and Rosenberg in January, 1967; and San Francisco—March 1967.

At the same time, with the aid of other Overmyer companies construction planning went forward—selection and ordering of equipment, acquiring titles to sites, expanding staff, making arrangements for programming, etc. Activities in various areas are detailed below.

Present status

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). (See Exhibit III, Schedule D.)

Summary of construction activity by and for the five stations

As noted above, commencing even before the authorizations for the several stations were finally granted, planning has gone forward to implement them and construct maximum-facilities stations in the following areas:

1. Expanding the headquarter's staff, and organization, and setting up procedures and policies for the several stations and recruiting and training station personnel;
2. Carrying out plans, and arranging, for financing the construction and operations of the stations;
3. Searching out, studying and acquiring new antenna sites where improved facilities were necessary;
4. Studying, negotiating for, acquiring and constructing towers, transmitter buildings and studio buildings and offices;
5. Studying, negotiating and acquiring antenna, transmitting, studio, and related equipment;
6. Negotiating for and acquiring a film inventory and making other program plans;
7. Other related activities.

(1) *Expanding the headquarter's staff, and organization, and setting up procedures and policies for the several stations and recruiting and training station personnel.*—Though reliance continued to be placed heavily on the resources of the Overmyer operations and personnel, after as well as before grant of the authorizations, the Overmyer Communications Companies (herein called "OCC") needed an organization with people trained and experienced in broadcasting to carry forward the plans to make the Stations operational. It was necessary to expand the headquarters organization to serve all the stations and to recruit personnel to staff the individual stations. With the assistance of the general Overmyer personnel department, a large number and a wide variety of personnel were interviewed and hired for the OCC headquarters staff over the period of June 1965 through Fall 1966, including a President, Engineering Director, Financial V.P., Research Director, Administrative Assistant, Attorney, National Operations Manager, National Sales Manager and Secretaries.

Also for the Stations, three V. P. General Managers were engaged for Newport, San Francisco and Atlanta with chief engineers and secretaries in each location, a Business Affairs Manager in Newport, and a Production/Program Director in Pittsburgh who was subsequently transferred to San Francisco. An employment recruiter, representing the home office Personnel Department, was rotated to each of the locations in Atlanta, Pittsburgh, Newport and San Francisco, through the period February 1966 thru August 1966, to organize and assist in the development of a recruitment program. Hundreds of applicants were screened for all positions for station staffing, and recruitment interviews were held during this period. This procedure involved newspaper advertising, solicitation, review of applications, interview arrangements and preliminary testing for qualifications, coordination with home office for hiring authorizations, and follow-up contact with each applicant.

The headquarters staff had the principal responsibility from the outset of carrying out the construction and other preoperational plans of the several stations. A specially designed form of report to show weekly construction progress at each station is attached. (See figs. 1a, 1b, 1c.)

One of the main functions of the headquarters staff has been the development of common policies and procedures to be followed by the stations—with respect to employee relations, finances, sales reporting to headquarters, accounting, etc. These procedures were developed for integration with other Overmyer service departments. For example, accounting codes were developed to adapt to Overmyer accounting methods as were basic credit procedures, expense reporting practices, time reporting and capital expenditure requests. Procedures, unique to the Communications operation, however, were designed for incorporation into the Overmyer service operations. This was done so controls and accounting procedures could be serviced by central departments of the Overmyer Companies.

(2) *Carrying out plans, and arranging for, financing the construction and operation of the stations.*—The Overmyer Finance and Development Department provided a ready organization of personnel with knowledge of potential credit sources across the country and experience in dealing with bankers and other finance contacts. OCC utilized this resource from the outset in 1964. On various occasions, seminars have been conducted with the Overmyer finance-development staff for the purpose of outlining OCC objectives, organizing assignments and exchanging finance market information. OCC personnel, aided by a large number of personnel of general Overmyer departments (Treasurers, Finance Home and Regional Offices, Legal, etc.) spent a very large amount of time with bankers, insurance companies and other potential lenders in the local areas of the five cities involved, in New York City and other areas in initial and follow-up contacts, protracted negotiations, securing loan agreements and establishing bank accounts. In all instances, negotiations, whether successful or unsuccessful, demanded numerous visits to each institution for discussions, review, reappraisals and final decisions.

All Overmyer Company staffs were utilized to assist the program. Overmyer Company field personnel would explore and advise on local lending conditions, offer suggested leads and arrange for the introduction of OCC finance officers. In each location, every major bank was contacted, and negotiations were commenced with as many as six institutions in one area. Constant coordination was maintained during this process with local Overmyer Company financial personnel and headquarters officers for advisory assistance and progress reporting, as well

as preliminary and final approval. Since the standard practice of bank credit required the guarantee of other Overmyer Companies, each negotiation included the explanation and evidence of other Overmyer financial interests, and required the presence of a qualified Overmyer staff officer.

To finance improvements to acquired transmitter sites, Overmyer staff personnel regularly explored the possibility of financing with local investment groups, mortgage companies and insurance firms.

(3) *Searching out, studying and acquiring antenna sites.*—As noted, it has been a basic principle of OCC to construct stations with maximum broadcast facilities. Maximum facilities were deemed necessary not only to transmit an adequate UHF signal at the outset, but to reduce the competitive advantage of the already established stations in the market and the disadvantage of operating without attractive network programming. Antenna location and height were critical. Among the specifications required for antenna locations to provide this prime service to the community were locations central to the area being served, locations that would permit maximum antenna height, a plot of sufficient size to accommodate the tower installation at an investment that was not prohibitive, and a location which would be accepted under local zoning and other neighborhood requirements and which would not interfere with other broadcast signals. Most locations meeting these tests were concentrated in areas of developed population and possessed built-in problems of availability, clearance, and high costs.

There has been no area of activity involved in planning the stations which has required more time or effort on an almost continuous basis since 1964 than that of locating and studying prospective land areas as potential antenna sites and of getting the numerous local and federal approvals. Each of the five cities presented very difficult problems. Many possible sites—even after weeks of searching and studying—had to be discarded because of their inability to measure up to the requirement of antenna height above ground comparable to that of the established stations—usually a minimum of 1,000 feet. Selection of other sites—after additional months of negotiations for their acquisition—was frustrated by unanticipated subsoil conditions, zoning problems and price demands.

All resources available to OCC were utilized to resolve each site problem. Independent engineers were continuously consulted to supplement advice regarding desirable areas. Fortunately, other Overmyer companies have large departments engaged in land acquisition and development throughout the country and maintained regional offices in or near each of the five cities. Specialists from these departments made concentrated and sustained efforts since 1964 to locate suitable sites in solving the many complex problems that constantly arose and to assist in negotiating and concluding their acquisition. Also, local real estate agents were frequently called in for consultation. Civil engineering and other advice to provide site-feasibility and other assistance was repeatedly sought from other Overmyer Companies, their general contractor (Green & White Construction Co.), and local firms. In each market, no possible resource was left unused in an effort to secure a desirable antenna site.

In Atlanta, where the CP was acquired without a tower site, the problem of finding a suitable location was greatly intensified by virtue of the four airports which circle the city. OCC engineers and aeronautical consultants advised that there was but a limited area acceptable as a tower location which would permit use of maximum height. This area was centered in the neighborhood of existing station towers, but it had become densely populated, (and thus high-priced), was tightly restricted by zoning regulations and had virtually no available tracts large enough for a guyed tower. In the summer of 1965, Overmyer regional representatives, working with ten local real estate firms, suggested a number of sites, only one of which was suitable for the more practical guyed construction. While negotiations for this site continued, and engineering surveys were made, the owners consummated a sale to a third party for a larger tract of which the site under consideration was a part. Alternate arrangements were immediately pursued with the new owners but were unsuccessful because of construction requirements.

Almost simultaneously, negotiations were begun for acquisition of land rights in a local golf course and for a site owned by Mead Paper Co. Engineering studies and topographical surveys were again made. After many weeks of investigation and meetings, the golf club declined to permit the erection of a tower on its property. The Mead property was eventually eliminated because of a

combination of construction difficulties, inflated cost, and interference problems resulting from its proximity to AM broadcast stations.

During much of this time, consideration was also being given to the possibility of using a very costly self-supporting tower; to erecting a tower on top of a major office building being constructed in mid-town; and to a joint venture with other applicants and existing VHF operations. Also, extensive discussions were carried on with the local and state Boards of Education regarding the possibility of utilizing Board property for a tower, the greater portion of the cost of which would be borne by the commercial stations but which would have been used by both the commercial and the educational stations. Again, engineering studies were made, and again negotiations were carried on until it became apparent that Board approval would not be forthcoming.

Finally, late in 1966, regional representatives of Overmyer, working with a local realtor and one of the OCC general managers, located a piece of land which, although available only on a rental basis, was adjacent to the area previously determined to be acceptable. Negotiations were conducted over an extended period. FAA approval was eventually obtained, and OCC now holds a lease for the necessary site.

The Pittsburgh area, because of its terrain, is one of the most critical in the country from the point of view of UHF coverage and, accordingly, the right location and optimum HAAT are vital. An intensive search for sites by realtors, Overmyer regional personnel, and OCC executives uncovered a number of sites, of which at least 12 were studied in detail. Although most were eliminated for reasons of construction difficulties on sloping terrain or insufficient land area, one site appeared to be excellent. FAA clearance for the 2049 feet above MSL enjoyed by the area's VHF stations was obtained, and an application to the Commission was prepared. Negotiations for the site involved settlement of difficult issues of domicile concessions, estate considerations, etc. only to be abruptly ended when the local city planning agency revealed its intention to develop the area and requested that our endeavors be directed elsewhere. Further search in early 1966 resulted in negotiations with Western Union for a site it owned and used for transcontinental relay. During the ensuing months, discussions to accommodate both uses were held by representatives of both companies and engineering surveys began. Additional area was required for the OCC tower which necessitated making an agreement for use of adjacent local school property, which was ultimately reached. Overmyer construction plans were proceeding rapidly, when an engineering survey of subsoil conditions disclosed a severe problem created by an abandoned coal mine which would either render the site unusable or require very expensive site preparation operations. Extensive investigation was begun by Overmyer personnel, professional soil consultants and engineers in an effort to find a workable, practicable solution. In the meantime, the search for other sites continued, and in the Spring of 1966, Overmyer representatives recommended an alternate site owned by a local manufacturer who was planning plant relocation. When engineering surveys disclosed that this offered improved construction possibilities, negotiations for lease or purchase were begun. FAA clearances and FCC approvals were requested and given for relocating the transmitter facilities to this location.

Shortly after the Newport CP was assigned to OCC in early 1965, and the application for increased power to 1000 KW was granted, it was determined that the Newport, Ky. tower site (one of the assets acquired in the assignment) was not adequate because of its close proximity to the greater Cincinnati airport to the west and the Lankin Airport to the East. Here the tower height was restricted to 509 ft. HAAT which would produce a submarginal television signal in the market. (Approximately 1000 ft. HAAT was enjoyed by the tallest V station serving the area.) A search was begun by the OCC and Overmyer staffs, consultants, and local realtors for an improved tower location close to those of the existing competitor stations and yet near downtown Newport, Covington and Cincinnati. The initial search in Northern Kentucky was frustrated by FAA height restrictions throughout the area between Lankin and greater Cincinnati airports and by zoning restrictions.

At least fifteen separate tower site locations were explored and studied in detail during 1965 and 1966. Finally the selection of Bald Knob in Cincinnati was made. Bald Knob is within one mile of all other existing towers serving the market, one mile from downtown Cincinnati, two miles from downtown Coving-

ton, Kentucky and three miles from downtown Newport, Ky. This location permitted a tower height in excess of 1,000 ft. HAAT and thereby upgraded the potential signal service of the station. In May 1966, the FCC approved the Bald Knob tower location and granted the channel change to 19 from 74.

As long as it seemed possible that the planning for a tall tower in San Francisco might provide a unified solution for all new station entries there, an active participation, beginning in 1965, was maintained by OCC in the development of the Mt. Sutro Tall Tower project. Coincidentally with pursuing this possibility, other choices were explored by Overmyer regional staff and consultants, with the obvious choice of San Bruno being the most practical alternative. When it was apparent that the development of Mt. Sutro's joint Tall Tower would not satisfy the needs of OCC for an early start, and when it was learned that no other sites were available on Mt. Sutro, negotiations were carried on with the owners to secure a location on Mt. Bruno. These negotiations and arranging for development of the site consumed many months and resulted in execution of a lease in late Fall 1966. This site is now secured and ready for operation.

It should be noted that to expedite station progress and reduce the capital investment necessary for construction, the possibility of using space on existing structures for OCC antennas was explored at length in each location. For reasons of design, too heavy weight loading and other considerations, however, such a solution to the antenna location problems had to be abandoned.

(4) *Searching out, studying, negotiating for, acquiring and constructing towers, transmitter buildings and studio buildings and offices.*—The above noted activities have constituted a principal activity of OCC and other Overmyer personnel and consultants throughout the period since 1964.

The design and cost of towers of the leading companies were reviewed at length by OCC and other engineering personnel, and proposals for several station orders were submitted to competitive bidding. Contracts were handled by the general Overmyer legal department. In addition to the 1,400 ft. tower in Toledo, towers of the following heights have been designed for each of the several stations: 919.5 ft. in Newport; 658.4 ft. in Pittsburgh; 1,386.5 ft. in Rosenberg; 1,083 feet in Atlanta and 152 feet on Mt. Bruno for San Francisco. In some cases as in Pittsburgh, because of the unavoidable site difficulties, the design was made, revised, discarded and begun again.

The tower for Newport is completely erected; the tower for Pittsburgh has been fabricated and is ready for erection; the San Francisco tower is erected; the Atlanta tower has been designed and is ready for fabricating; and the Rosenberg tower is in a stage of final design proposal.

Transmitter buildings for the several stations have been designed to meet the same basic requirements of providing permanent structures with adequate equipment and operating spaces for expanded as well as initial installations. They also were designed on a custom basis to meet the construction problems of the specific site involved. Thus, at the Bald Knob site in Cincinnati, the unavailability of water and power required special study and construction of special facilities. Construction was carried out under the supervision of OCC and Green & White engineering personnel and consultants.

The transmitter building in San Francisco was begun immediately after execution of the lease and is now complete and ready for occupancy. The building for the Newport station was begun last fall and is substantially completed; delay has been caused by the current city-wide construction work stoppages. Material for construction of a transmitter building are on location in Pittsburgh; however, the most recent change in site location may eliminate the need for new construction. A contract for construction of the Atlanta building has been signed and will provide a building by the time the tower is completed. Plans for Rosenberg are to install a prefabricated building on the tower site, and preliminary arrangements have been made.

In each market, many possible studio and office facilities have been inspected and considered in order to select the one best suited from the point of view of location, size, cost, ceiling heights and proximity or line of sight to the antenna. In some cases, construction of new facilities had to be investigated and reviewed.

For the Newport station, numerous sites on the Ohio and Kentucky sides of the Ohio River were reviewed and rejected. Studies showed that the original studio location in Newport was as substandard as the original antenna site was deficient. It had originally been planned by the prior owner to combine tower

and studio in a complex which would also house a night club and gambling casino on a hill overlooking Newport. When gambling activities were prohibited, the entire real estate of Newport degenerated and became totally substandard. With this background, Overmyer personnel, realtors and engineers assisted station personnel in exploring locations in Newport and Covington. However, only former night clubs and gambling casinos were available for possible studio use. Five sites were rejected for the most part because of their previous gaming identifications or poor roadway access.

A search in downtown Cincinnati immediately across the river from Newport and Covington was begun and included a survey of over twenty different buildings: theatres, office buildings, former tv studios, the music and convention halls. In general, all downtown sites were unsuitable because of limited ceiling heights at ground levels. The area north of Cincinnati was then explored and in July 1966 an application was filed for a site at Sharonville, Ohio, eighteen miles from Newport and downtown Cincinnati. During the waiting period, a new development became available in a renewal project three miles from Newport and close to the transmitter site. This site at Queensgate was greatly superior in all respects, so in November 1966 a request was made and later granted to revise the location accordingly: Construction has been virtually completed to close in the building; additional work is necessary, however, to finish internal improvements for studio use.

In Pittsburgh, suitable studio and office space has been intensively sought since 1965. With the assistance of local realtors and the Overmyer staff, several good facilities were located. OCC set up its local offices in one, a leading local hotel, while negotiations were being conducted and plans were made for the extensive alterations necessary; months of discussion proved abortive, however. The recent change of transmitter sites brought with it the availability of a building on the site of the new tower location, and negotiations are underway at the present time for its acquisition.

The search for a studio office building location in San Francisco was begun by Overmyer real estate officers. After a number of available sites were screened, and a Geary Street building was investigated and found wanting, the Whitcomb Hotel was studied and approved, and negotiations were begun for its lease and improvement. Engineering and architectural layouts were drawn and ready until, in March 1966, negotiations ended because the owner consummated a lease with another party. Two alternate buildings were explored in the meantime by Overmyer local representatives and rejected because of excessive conversion costs. In June 1966 the Whitcomb Hotel reinstated the original negotiations and began preparing working plans for the alterations. These activities continued into October 1966 before the owner removed the planned space from the market because of a change in plans. Additional sites were again sought, and seven were studied. The present location on Marin Street was found to have many advantages. Engineering advice, drawings and specifications for the building alterations were provided by engineers of Green & White. After competitive bids, construction began in March 1967 and is now completed, and after final acceptance will be ready for service.

In Atlanta, a number of different sites were considered. Negotiations for a lease on one site were in the last stages when they were aborted by the owner's demands. Preliminary arrangements have now been made for new construction of studio facilities at the transmitter site.

The total unavailability of suitable facilities in Rosenberg has dictated plans for construction of a studio at the transmitter site, although highly desirable space at a proposed art center in Houston may be available.

(5) *Study, negotiation and acquisition of antenna, transmitting, studio and related equipment.*—One of the areas of most intensely concentrated activity was by OCC and other Overmyer personnel and consultants related to equipment to be used by the several stations. In line with basic OCC policy, the best and most powerful equipment was specified. Equipment for full colorcasting was decided upon.

Radiation of at least 1 megawatt of power was proposed for all stations; 5 megawatts was planned for such time as this power became feasible and permissible. Examination and detailed review was made of equipment of all available manufacturers over most of 1965. Other broadcaster opinions were sought

for experiences with various manufacturers. Innumerable conferences were held with representatives of the several companies.

Many visits were made to the manufacturers' plants. In early 1965, a trip was made to England to see the operation and manufacture of the Marconi 50 kw transmitter. Finally, after competitive bidding by several companies on the various kinds of equipment, and after extensive negotiations over many months, during which personnel in other Overmyer companies were extensively called on for advice, contracts were entered into for the following equipment:

Antennas.—a basic contract in November 1965, under which antennas were ordered for Atlanta November 1966, Newport and Pittsburgh February 1966, San Francisco December 1966. (The antenna order in December 1966 for San Francisco was actually a reorder following a failure in a previously manufactured unit by another supplier).

Transmitters.—a basic contract in October 1965, under which transmitters were ordered for Atlanta, Newport, Pittsburgh and San Francisco in March 1966, May 1966, February 1966, and March 1966, respectively.

Studio and mobile equipment.—of various kinds were ordered in San Francisco, Atlanta, Newport and Pittsburgh during the course of the year 1966 under basic contract orders for major items dated early 1966.

Each antenna, of course, required a custom design to produce the most effective coverage of the particular service area involved. Moreover, OCC required that each antenna be adaptable to increased power (5 megawatts) without the need for extensive antenna modifications.

The antenna for Newport has been constructed and delivered. Its installation awaits resolution of a belated suggestion that a single 9-inch transmission line would be superior to the twin 6-inch cable initially proposed.

The antenna for Pittsburgh has been constructed and is in storage, awaiting installation.

The antenna for San Francisco was originally completed by one supplier in November 1966, only to have it destroyed when its supporting structure collapsed during testing at the fabricating plant. When that manufacturer could not remanufacture to contracted specifications at an early date, OCC turned to another manufacturer, which has just completed fabrication of a new antenna. Shipping and installation await additional testing to ensure compliance with specifications.

The antenna for Atlanta is under construction. New design details for Rosenberg, following the change to a lower channel, are being formulated.

The transmitters all had to be fabricated specially to OCC order. To obtain the highest power available and to provide a back-up in case of equipment failure, OCC provided space and facilities at each station for two 30 kw. transmitters or other combinations of higher power units. Moreover, OCC again required that the equipment be capable of being expanded to higher power when permitted.

Transmitting equipment has been delivered and installed in the San Francisco and Newport stations. It has been delivered and is in storage in Pittsburgh and Atlanta. The designs for the Rosenberg transmitter has been completed.

In the case of studio equipment, it was OCC's purpose to diversify its suppliers in order to obtain the advantages of the latest developments by each. Accordingly, various items have been ordered from and supplied by RCA, Visual Electronics, General Electric, Raytheon, Microwave Associates and Gates. Mobile units have been ordered and delivered for San Francisco, Newport, Atlanta and Pittsburgh.

Most of the studio equipment for San Francisco has been delivered and installed. The equipment for Newport has been delivered and awaits completion of the studio. Most of the equipment for Pittsburgh and Atlanta has been delivered and is in storage locally. In the case of four of the five cities, the studio and mobile equipment *on hand* represents an investment of \$500,000 or more.

(6) *Programming.*—While the real estate, building and hardware problem of the Stations were being resolved, OCC undertook to plan their programming for on-the-air dates throughout 1966. It was planned to put Toledo on the air in the Spring of 1966 and follow it every two months, or thereabout, with another Station—Newport, Pittsburgh, Atlanta, San Francisco and Rosenberg. Local managers have been in Newport since April 1966, and in San Francisco since September 1966. (The latter was originally sent to Pittsburgh in May 1966, but,

because of the delay in resolving the antenna site problem, he was shifted to San Francisco.)

Negotiations for film purchases have been carried on over an extended period and have resulted in contracts for the following films for the several Stations:

Atlanta:

Features, 1,033 titles:

United
Embassy Pictures
American International TV
Independent TV Corp.

Cartoons, four packages:

American International TV
United Artists
TV III Inc.

Syndicated, 1,118 episodes:

W. Schwimmer
Screen Gems
Colorvision International Inc.
TV III Inc.
P. Roebeck
Embassy Pictures
TV Enterprises Corp.
Peter Roebeck Co.

Cincinnati:

Features, 550 titles:

T.E.C.
Screen Gems
Embassy
ITC

Cartoons, two packages:

TV III Inc.

Syndicated, 1,308 episodes:

Screen Gems
Embassy Pictures
W. Schwimmer
TV III Inc.
Colorvision International Inc.
T.E.C.
P. Roebeck Co.

Rosenberg:

Features, 78 titles:

T.E.C.
Embassy Pictures
Cartoons, two packages:
TV III, Inc.

Syndicated:

T.E.C.
W. Schwimmer
Screen Gems
Colorvision International Inc.
TV III Inc.
P. Roebeck Co.

San Francisco:

Features, 117 titles:

Embassy Pictures
Cartoons, two packages:
T.E.C.
TV III Inc.

Syndicated, 605 episodes:

TV III Inc.
Colorvision International Inc.
T.E.C.

Pittsburgh:

Features, 577 titles:

T.E.C.
U.A.A.

Cartoons, one package:

TV III, Inc.

Syndicated, 1,079 episodes:

T.E.C.
W. Schwimmer
Screen Gems
Colorvision International Inc.
TV III
P. Roebeck Co.

As the study of available programming continued, and as it became evident that such programming supplemented by potential local offerings was less than desirable for competitive operation against established network-affiliated V stations in each market, OCC began to explore the possibilities of the exchange of taped shows between OCC and other independent stations. These studies devel-

oped in 1966 into an investigation of the possibilities of a network, controlled by Mr. Overmyer, which would originate programs for national distribution to OCC and other stations. That proposal was pursued under a separate network organization during the last half of 1966 and in early 1967, Mr. Overmyer transferred his interest (initially 80% and later the balance) to another group which changed the name to United Network.

(7) *Other related activities.*—Many other activities have been carried on in preparing to put the Stations on the air—such as advertising and public relations, and sales.

(a) Advertising and public relations.

OCC undertook to promote and advertise not only their own activities, but UHF generally, in all media and on all possible occasions, nationally as well as in each market where a Station was located. For these purposes, OCC used both a consultant and Overmyer personnel. The latter were called on, almost daily for advice, assistance, preparation of releases, instructing station personnel, preparing local or national campaigns, handling ceremonies, interviews, meetings with media representatives, etc. from 1965 on.

(b) Commercial activity of the stations.

Beginning in each 1965 a concentrated effort was directed toward planning the commercial aspect of the several stations. Many conferences were held with the leading national station representative firms; consideration was given to the wisdom of one firm to represent all stations in contrast to using a number of firms; discussions were had with leading advertising agencies to solicit their thinking and advice. Finally, National Television Sales was selected to represent all OCC stations, and a formal representation contract was consummated in November of 1965.

Local commercial potential was similarly examined in depth in each market. The value of regional representation was considered, and proposals were received and analyzed. Careful scrutiny was given to the commercial practices and rate cards of the other stations in the several markets; informal discussions were held with local advertisers and agencies; and commercial formats were outlined to mesh with the proposed programming concepts of each station. For those stations with the most imminent air dates, proposed rate cards were prepared, sales contract forms were drafted, and initial sales visits were made by headquarters personnel and local general managers to both national and local agencies and advertisers. In addition, basic sales policies were formulated which were to have essentially uniform application to all stations. In all their activities, OCC called on the personnel and resources of other Overmyer Companies and their general contractor not only for assistance in areas where expert advice was available—such as accounting, financial, construction, real estate—but for the performance of housekeeping, service and other functions which could be better performed by them—such as purchasing of supplies, auditing, banking and payroll, legal, taxes and insurance, personnel, public relations, etc. The President (and his office) of the Overmyer Companies was actively and continuously engaged at every stage of development.

FIGURE 1c

	TARGET	ASSIGNED	COMPL'D	STATUS AS OF
<u>BUSINESS AFFAIRS (CON'T)</u>				
CONTRACT FORMS DIST.				
REPORT FORMS DIST.				
INSURANCE COVERAGE				
SALES RATE CARD				
MARKET DATA				
STA. BOOK & Mkt.				
<u>PROGRAMMING</u>				
PROG. SCHEDULE				
FILM INVENTORY				
MUSIC LIC. CIRCT.				
NEWS SVS. CONTRACT				
<u>ADV. & PROMO</u>				
ADV. PLANS				
ADV. DISPLAY				
CIVIC PROMO.				
AIR PROMO. INV.				
OTHER PROMO SUPPLY				

Submitted _____
Date _____

ATTACHMENT II-B

MEMO TO COMMISSIONER LEE ON PROGRESS OF D. H. OVERMYER BROADCAST STATIONS

(From Robert Adams, December 1965)

INITIATION AND DEVELOPMENT OF INTEREST IN UHF

In late 1962, D. H. Overmyer, engaged in providing a national warehouse service, concluded that the forthcoming all-channel law plus a need for a third TV service would provide a reasonable chance for a third tv station in his home city of Toledo, Ohio. In April 1963, he filed for Channel 79 there, the only available assignment at that time.

In the course of presenting this application and studying the television industry, Mr. Overmyer concluded that the establishment and operation of UHF stations in other markets provided a good business opportunity.

I was employed in June 1964 to head up these communications operations as Executive Vice-President of each proposed licensee. I won't bother to detail my experience in the broadcast field, since you're generally familiar with it. We undertook a review of markets showing a need for and capability for supporting a new UHF tv service. It was finally decided to seek authorizations in Atlanta, Newport-Cincinnati, Stamford, Pittsburgh, San Francisco, Rosenberg-Houston and Dallas-Fort Worth.

Negotiations for acquisition of c.p.'s on dark UHF authorizations in Atlanta, Newport, San Francisco and Pittsburgh were carried on, and applications were filed for Commission consent to the assignment of the construction permits for these cities, during the period August 1964-February 1965. Applications for construction permits were also prepared and filed for Dallas-Fort Worth and Rosenberg in late 1964 and early 1965. An application for Stamford was filed on October 14, 1964; it was dismissed in May, 1965, after it became likely that the Commission's proposed new allocation table would not assign a channel to Stamford and the Commission denied a request for waiver of Rule 73.636.

It is a cardinal principle, basic to our planning for an effective, competitive and successful UHF operation, that each station have the maximum power and height available.

Personnel

As soon as I was hired, I opened headquarter offices in New York City. I spent most of the next eight months and some of the following four months reviewing markets, making economic studies, selecting and obtaining sites, making surveys of community program needs, consulting with engineering (Paul Godley) and legal (Peter Shuebruk) advisers, studying equipment needs and conferring with manufacturers, conducting negotiations for acquisitions of permits, arranging for loans and equipment credit, preparing applications, setting up each Corporation, talking to "reps", network station relation people, film distributors, interviewing job applicants, etc., etc.

In the Spring of 1965, shortly after the first of the authorizations sought was granted, I began to fill out the complement of key headquarters' personnel needed to construct and operate the expected multiple stations. After an extensive search and review of over 40 candidates for the position of Director of Engineering, the Chief Engineer of the educational tv station in Kansas City was selected; he reported to New York on June 21, 1965. Shortly after he took up his duties (selecting new sites for some of the cities, choosing transmission and other equipment, fixing the specifications for studios, etc.) he, unfortunately, became seriously ill and had to return to Kansas City. Immediately, an engineering firm (Rodney D. Chipp), expert in tv equipment and station construction—in addition to our regular consulting engineering advisers—was hired to serve as equipment and construction consultants.¹

In addition, the following have been employed to serve in the New York headquarters: Arthur M. Dorfner, Vice-President of Finance, formerly business manager at WABC-TV for 15 years; Harold Schumacher, as Director of Engineering, formerly chief engineer of RKO-General's UHF station in Hartford. There have also been employed: Edward R. Eadeh, Research and Sales Development Director and John C. Bechtel, Administrative Assistant.

A Program Director and Sales Manager will be hired as soon as capable broadcast people can be located.

Substantial additional help has been available to and extensively used by us (OCC-Overmyer Communications Companies). The Overmyer warehousing operations maintain a staff of approximately 200 people in New York and a sizable staff in all of the cities where tv stations will be operated (Atlanta, Cincinnati, Toledo, Pittsburgh, Houston and San Francisco). Real estate, financial, personnel, administrative and other employees in these operations have been called on to render many services in connection with various tv stations' needs.

Equipment, programming, sales, buildings

As stated above, Rodney Chipp has been employed to advise OCC in various engineering matters, including equipment. Over the last several months, he and other members of his organization and OCC personnel have spent hundreds of man hours reviewing requirements, fixing specifications, thoroughly analyzing and comparing competing equipment and negotiating purchases. Mr. Chipp was sent to London for five days to study Marconi equipment at first hand. This intensive work has been consummated by what is probably one of the largest single transmitter orders in broadcasting history: a contract with General Electric for over \$1,000,000 for five complete transmitter plants, including test and measuring equipment, with options to purchase up to nine more. The equipment has full color capability and a peak power of 30 kw capable of providing 1,000,000

¹ Mr. Lowell Wright has been employed as a consultant on FAA matters in connection with the many site problems encountered.

watts of effective radiated power. The contract provides for a possible total of 14 transmission plants, because (1) Overmyer had pending applications in Dallas and San Francisco (the latter had not been granted when the contract was signed); and (2) in time it is the plan to operate two 30 (or 50) kw transmitters in parallel, in order to increase effective radiated power and to provide a safety back up if one transmitter fails.

The headquarters staff, assisted by Messers. Godley, Chipp, together with the Green and White Construction Company and General Electric, has also been reviewing the requirements and making plans for antenna and transmitter and studio buildings.

Weeks of man hours have been spent in ascertaining program needs, in reviewing program plans and procedures, searching out program sources, meeting with suppliers and discussing possible cooperation with other TV stations. A considerable amount of time has also been spent in planning the commercial side of the UHF broadcast operation. After evaluating most of the national representative firms over the past 12 months, a final selection of National Television Sales (headed by Oliver Treyz) has been made and a contract entered into.

Sites

Construction permits were acquired from others in Atlanta, Newport, Pittsburgh and San Francisco which had either no or inadequate sites. Accordingly, it has been necessary to obtain new sites in each of these cities. As stated above, a cardinal and perhaps the most basic policy of OCC is to obtain the maximum antenna height available; without maximum height (and power), a UHF station cannot provide effective competition for already established VHF stations in each of the markets and cannot hope to succeed.

Obtaining the correct and acceptable sites in some of the above markets has proved to be the most difficult of all problems connected with establishing the new stations. The site must be close enough to the center of population to provide the required and a desirable signal; it must be at a location where FAA will permit acceptable height and appropriate zoning exists or is available; it must be available for purchase—in adequate size, and at a price which is not prohibitive.

An endless number of man hours have been spent on obtaining sites—more than on any other aspect of the proposed stations—including careful study of better than 66 potential sites, many trips by headquarters personnel to the various cities, searches by local Overmyer personnel, and evaluation by Paul Godley & Co. and Lowell Wright. Final selection, acquisition and zoning and FAA clearance have not yet been possible in some of the cities. (See details below). Accordingly, the filing of the applications for approval by the Commission of these sites and the associated engineering proposals has been delayed longer than was intended or expected. However, it is believed that the site searches are in their final stages for most of the cities and that appropriate applications can be filed at a very early date. Moreover, the unexpected delay in being able to file these applications will not materially postpone the on-the-air date (assuming prompt FCC approval of the necessary engineering modifications can be obtained), since the planning and preparation for the rest of the station operation is proceeding.

Investment to date

To date, Overmyer and his Companies have spent or incurred liability (apart from equipment) for almost \$800,000 in acquiring construction permits, for salaries, legal, engineering and other services, travel, land acquisitions, operation of the headquarters' office, etc., all directly for the purpose of establishing the UHF TV stations.

Individual stations

Toledo.—The Construction permit was granted March 10, 1965. As part of the settlements pursuant to which the other conflicting applicants dismissed their proposals, Mr. Overmyer agreed in June 1964 to purchase (for \$31,750) the site of one of the other applicants. The closing was set for April 19, 1965. However, under the purchase agreement, the Seller was to maintain the conformity of the proposed station with the local zoning requirements, and it was belatedly discovered that the zoning had since June 1964 been altered so that the ordinances had to be changed. By urgent coordinated efforts of the Seller and Over-

myer, this zoning change was effected on August 26, and the closing on the site took place on September 13, 1965.

At the time Mr. Overmyer applied in 1963 for Channel 79, he requested the Commission to substitute a lower channel. And this request was later supplemented prior to receipt of the final grant on 79. As a result, on May 12, 1965, the Commission substituted Channel 24 for 79, and issued a show cause order to Mr. Overmyer. He filed the necessary engineering for the new channel on May 25, 1965, and a modified permit specifying the new channel was granted on August 6, 1965. This same order fixed the completion date as February 6, 1966.

The scheduled air date for Toledo is April 1, 1966. However, only seven weeks ago it was discovered that FAA might authorize an additional 428 feet—an HAAT of 1372 feet; and request for FAA clearance has been filed. FAA approval of the increased height is expected at an early date. Moreover, it has been recently decided that a waste of signal over Canada is to be avoided and that a directional antenna should be used to serve the underserved area south of Toledo. Appropriate applications will be filed for these improvements in facilities within a matter of days.

Construction and ordering of equipment is not being held up by the above proposed changes. Ground for the tower and transmitter building was broken in October. The transmitter building has been designed and contracted for, and will be erected very shortly. A building for the studio in downtown Toledo has been located, optioned and negotiations are under way for its acquisition and modification for studio use. The tower (Stainless) antenna (G.E.) and transmission line (G.E.) have been ordered and are presently being manufactured. The prospective increase in tower height and the necessity for Commission approval are not holding up construction. At increased cost, the tower is being manufactured to accommodate the greater height, so that if the added height is granted, no significant delay in getting on the air will result. If it is not granted, the station will go on the air with present approved height. In the case of the directional antenna, G.E. is proceeding with manufacture of an antenna; it needs to know by January 15th whether the antenna will be directional or not in order not to delay completion. It is hoped the application for the change in facilities can be approved before that date.

Newport

The assignment of the permit to OCC was consented to by the Commission on March 10, 1965. The closing took place on April 19, 1965. The application for extension of the construction completion date, pending at the time of transfer, was amended to substitute OCC as the applicant shortly after the closing permit was then specified as November 28, 1965.

Part of the assets acquired from the Assignor included a transmitter site of six and one-half acres of land.

OCC promptly (June 21, 1965) undertook to file an application (BMPCT-6120) for an improvement in facilities, as set forth in the application for Commission consent to the Assignment. An increase in radiated power from 17.4 to 1,000 kw was proposed. Although the site acquired from the Assignor was specified, it was too near an airport to get FAA approval for any increase in height beyond the 509 feet HAAT previously authorized. This height limitation is substantially less than the approximately 1000 feet HAAT enjoyed by the highest VHF station serving the area and prevents the proposed station from competing successfully with and rendering a service comparable to the existing stations in the market. Accordingly, on filing the application for increased power, OCC stated it was seeking a new site to enable it to get the greater coverage provided by increased antenna height.

The site possibilities in the area are severely limited. OCC's engineering consultants strongly recommended that because of terrain considerations and FAA restrictions, the site ought to be kept within three miles of the center of population—Fountain Square in Cincinnati. Zoning restrictions and cost considerations greatly magnified the difficulties.

Two local real estate companies, local D. H. Overmyer Warehouse Company land experts and OCC executives have been searching for, studying and negotiating for a desirable site, and discussions have been held with a view to using existing or planned towers or buildings. Altogether, beginning even prior to the time the above application for increased power was filed, over 15 separate sites have been considered in substantial detail. Several trips to the Cincinnati area have been made by OCC officers in connection with these site possibilities. At present, negotiation for a desirable site is in the final stages and a favorable

conclusion depends only on OCC and the Seller being able to agree on the location of guy wires on land to be retained by the Seller.

OCC has already ordered its transmitter and associated gear from General Electric; the equipment is presently scheduled for delivery on May 15, 1966. It cannot order its antenna until the channel to be used is settled. OCC has had pending for a considerable time a request for a lower channel than its present 74 and hopes it will be possible to act on it at an early date, since a change in channel (an antenna) after construction is completed will cost in excess of \$100,000.

If the new site could have been found and application for change in facilities file as originally contemplated by late June, and it had been granted, say by August, the completion date given in the application for Commission consent to the assignment would have been August 1966. That the above-described difficulties in selecting a site will not delay the on-the-air date is shown by the fact that this date is scheduled for the Summer of 1966.

The assignment of the permit to OCC was consented to by the Commission on May 12, 1965. The closing took place on June 21, 1965. The application for extension of construction completion date, pending at the time of the transfer, was amended to substitute OCC as the applicant shortly after the closing and was granted on July 27, 1965. The permit expiration date was specified as January 27, 1966.

The permit acquired was without a site, and it thus has been necessary to acquire a site. Even before the Commission granted consent to the assignment of the permit to OCC, it commenced its search for a site. The problem of finding a suitable site is an extremely difficult one in Atlanta, as in some other areas. The four airports circling Atlanta, the population growth and zoning problems have created a serious scarcity of acceptable sites. Cost considerations not only of land but of permissible towers (high self supporting towers are roughly five times as costly as guyed towers) complicate the problem. OCC has had ten local real estate firms, as well as the local real estate personnel of the Overmyer Warehouse Company searching out sites for review by OCC, and its engineering and FAA consultants. Out of at least 30 possible sites, at least 9 have been reviewed in detail and given serious consideration. Discussions have been held with local educators, the owners of new tall buildings under construction, other applicants and existing VHF operators (with the hope of using an existing tower) in the search for a suitable site. Several trips have been made by three OCC executives to Atlanta in connection with site selection efforts. Although the locating and acquisition of a site and the filing of the appropriate application specifying the modified engineering proposal have been delayed longer than OCC expected, it now has several alternative sites under study. As soon as a site is selected and acquired, the appropriate application will be filed.

OCC does not anticipate that this difficulty in resolving the site matter will delay its getting on the air. The transmitter has already been ordered. If the application for approval of the site and the engineering proposal had been filed within the period originally contemplated (namely by late September) and granted say, by October, the on-the-air date indicated in the application for consent to assignment (BAPCT-351) would be October 1966. In fact, the scheduled on-the-air date planned by OCC is late Summer 1966.

Pittsburgh

The Commission granted its consent to the assignment permit for a station on channel 53 to OCC on July 28, 1965 (BAPCT-364). It specified, in accord with OCC's representations that construction should be completed within six months after grant of the contemplated application for a new site and greatly expanded facilities. Also it was stated by the Commission that OCC was expected to file its request for modified facilities within 60 days after Commission consent to the transfer was granted (The Closing was held on September 2, 1965).

OCC began its study of the site and related requirements and its efforts to locate a suitable site even before the Commission granted its consent to the assignment. The Pittsburgh area is one of the most critical in the country from the point of view of coverage by UHF, and accordingly, a suitable location and optimum HAAT are vital. An intensive search for sites by realtors, Overmyer Warehouse personnel and OCC executives (who have made several trips to Pittsburgh in this connection) uncovered a number of sites, of which at least 12 have been studied in detail. An excellent site was fortunately found relatively quickly, FAA clearance for the 2049 feet above MSL enjoyed by the area's VHF stations was obtained, and the negotiations for the site were so far advanced

by early October, that it was expected an application for modification of facilities could be filed within a matter of days, and one was actually prepared on that assumption. However, at the last moment, the owner of the site, an elderly woman raised questions about the tax consequences of the sale as it related to the agreed-upon price; and although OCC made intensive efforts to resolve the problems and even agreed to pay a substantial additional amount for the site, the owner decided not to sell. At the same time, however, OCC, guarding against possible failure of that transaction, continued its search for other suitable locations. Another apparently suitable site has now been found, and negotiations for its acquisition are far advanced. If this transaction is completed as expected, OCC will immediately file for modification of its permit and expects to be on the air by June 1966 in compliance with its representation to the Commission.

Because of the critical nature of propagation factors in the Pittsburgh area, OCC filed a request on September 20, 1965 for assignment of channel 39 in place of its presently authorized channel 53. In view of the difficulty and huge costs in changing antennas, explained above with respect to Newport, it is hoped the Commission will find it possible to grant this request for a lower channel just as soon as possible.

ATTACHMENT II-C

The original contract to purchase the Cincinnati (Newport) station was executed on July 31, 1964. This agreement contemplated a deposit by the buyer (Overmyer) of \$10,000 in escrow and payment of \$90,000 in cash at the closing (which would be, of course, after FCC approval of the transfer).

For this reason, \$100,000 was advanced by the Warehouse Company to the Communications Company on July 29, 1964. However, it was soon realized that there was no sound reason for leaving so large an amount in the Communications Company, since it would be virtually useless there until FCC approval of the transfer was forthcoming.

Consequently, \$89,000 was returned to the Warehouse Company where it could be put to immediate use, subject to being loaned anew upon the closing.

Subsequently, \$10,000 was placed in escrow, per the terms of the original purchase and escrow agreements.

The wisdom of this can readily be seen when, in fact, the closing did not take place until April 19, 1965. There would have been little point in leaving \$90,000 in a relatively inactive, non-interest-bearing account, for nearly nine months.

In the meantime, an amendment to the original purchase agreement was executed on April 13, 1965 which revised the payment terms and called for \$25,000 at closing (including the \$10,000 held in escrow) and the balance in five equal annual payments. Hence, there was no immediate necessity of again transferring the \$90,000 from the Warehouse Company to the Communications Company.

ATTACHMENT II-D

It is a matter of record that San Francisco began commercial operations in early 1968 (soon after the transfer of ownership from Mr. Overmyer to AVC) and that Cincinnati (Newport) was on the air in the summer of 1968.

Any contrast of the expenditures by station for equipment, of total assets, and of pre-operating expenses does not provide valid comparative criteria by which the construction status of the stations can be determined; rather, it indicates that Mr. Overmyer expended far greater sums in a genuine effort to put Atlanta and Pittsburgh on the air, than were necessary for Cincinnati or San Francisco.

The explanation for the variations is relatively simple. For example, in San Francisco the tower, studio, and transmitter sites are all leased and improvements are being financed by the lessor.

Transmitter sites were more easily located in San Francisco (there are only two sites meriting serious consideration) and in Cincinnati (this was the first site after Toledo secured for the FCC group); whereas an inordinate amount of time and money was expended in trying to locate a suitable location in Atlanta with its many airports and in Pittsburgh with its many mine shafts.

ATTACHMENT II-E

In his overall television effort, Overmyer was committed, through both cash outlay and debt incurred for Ten Million, Six Hundred Thousand Dollars:

	<i>Approximate</i>
Overmyer network.....	\$400,000
Stations transferred to AVC.....	1,300,000
WDHO Toledo.....	1,500,000
Total.....	3,200,000
Less Toledo bank loan.....	600,000
Net cash.....	2,600,000
Contractual debt incurred, equipment and programing.....	8,000,000
Total.....	10,600,000

ITEM 34(d)

ATTACHMENT III—CIRCUMSTANCES RELATING TO THE APPLICATIONS FOR TRANSFER OF CONTROL

A. The sum received by Overmyer for 80% of his stock in the five Communications Companies was less than 80% of the actual out-of-pocket expenses incurred.

1. The formula used to compute out-of-pocket expenses was proper and logical in view of the circumstances. The basis for the computation, and the formula used, was submitted to the FCC with the application and is annexed hereto for convenience. (See attachment III-A)

(a) The base period used for the computation was proper.

i. Completed or separable figures for other periods or for an addition of time to the period employed, were not available at the time the computations had to be made, (transcript page 120) (attachment III-B).

ii. The period used was the one for which the most complete information was available, (transcript page #120) (attachment III-B).

iii. The period used was not the one with the highest expenses (attachment III-C).

(b) While no construction permits were obtained in 1964, the allocation of expenses for that year was proper since extensive services were required in the preparation and processing of applications for construction permits filed in that year.

2. Allocations of expenses by department was a proper procedure.

(a) The basis for the computation was the work effort, personnel required, and the functions involved, not specific individuals. The Overmyer Company payroll included all of its employees, including employees whose sole duties related to Overmyer affiliates other than the Communication Company. However, no charge was made in the allocation to the Communications Company for personnel whose jobs and duties were limited to other corporate affiliates, and who performed no services for the Communications Company.

i. Services performed by the department (and allocated to the Communications Companies) were required since the Communications Companies did not have the necessary staff to perform such functions. Since the efforts were not directed toward one station, it is evident that the services were not performed on a purely "sequential" basis. At any one time during this period efforts were being made in virtually every phase of station construction by virtue of the fact that the company was, essentially, planning for and building six stations at a time. Moreover, the varying percentages which were used in allocating expenses for the various periods of time involved, were arrived at after considering this element, among other criteria.

(b) Virtually without exception the functions of the various departments were distinct (attachment III-D).

(c) The allocations deducted for Toledo, Dallas and the network were adequate.

i. Services performed for Toledo were substantially diminished or virtually eliminated when the station became fully staffed and thus self-sufficient.

ii. Since Dallas never progressed beyond the application stage it did not require the scope of services necessary for companies with actual construction permits.

iii. Since the network acquired its own staff shortly after formation it thus required limited services from the Overmyer group.

(d) Allocations to the Communications Companies for services performed by the various departments were justified.

i. Illustrative of general misunderstanding concerning this matter was the reference to an alleged "17 out of 18" ex-employees contacted by the staff as a result of which they allegedly denied having performed any services for the benefit of the Communications Companies, (attachment III-E).

1. A serious question can be raised whether employees no longer with the company and whose motives in replying to inquiries would be subject to some question are necessarily more "objective and reliable" than employees still in employ of the corporation.

2. The letter of inquiry requested information concerning work performed for "construction permits". None of the employees contacted had worked directly upon the FCC applications for "construction permits". Hence, the replies received to the inquiry were negative.

3. Subsequent inquiries directed to executives in this group elicited responses disclosing that the use of the term "construction permits" had not been fully understood.

4. Replies to an inquiry as to activities performed for the Communications Companies were positive and disclosed services rendered by virtually each of the persons contacted. Further inquiries from supervisors disclosed that all 18 of the individuals performed services for the Communications Companies.

(e) Questions have been raised concerning expenses included in the Overmyer Company on its maintenance of a pleasure boat. The resulting indirect allocation to the Communications Companies of these expenses is fully justified, (attachment III-F).

(f) The Leasing Company allocation was proper, (attachment III-G).

3. Lack of familiarity with the departmental and functional formation of The Overmyer Company led to questions raised as to the justification of individual department allocations.

(a) The function and the services performed by given departments is annexed, (see attachment III-D).

(b) Several mechanical errors were discovered in the computation. The sum total resulted in a small overstatement of expenses that were more than compensated for by the failure to include items resulting in an understatement of expenses, (attachment III-H).

4. Allocation of expenses on the basis of time was proper (Attachment III-I).

5. Expenses included in the base expenses were proper.

(a) For example, the charges for the services of Mr. Treyz were valid, (Attachment III-J).

B. The Commission was kept properly advised of significant developments and no filing requirements of the Commission's rules were violated (Attachment III-K).

C. The transaction with AVC was proper.

1. The price paid to Overmyer for his stock in the Communications Companies was less than 80% of the funds invested in said Companies by Overmyer. The total price for the stock was \$1,000,000.00.

2. Simultaneously, loans were agreed to be made by AVC which loans were proper and fully collateralized.

(a) The loans were secured by recorded mortgages on real estate equity with the equity value pledged totaling twice the amount of the loan.

(b) The loans bear interest payable annually at a rate in excess of the current prime rate at the time of the contract.

(c) The values of the equity were appraised by individual MAI's. AVC was given the choice of collateral from among a number of parcels of real estate. The value of the collateral has been fully justified by the sale of a number of parcels for which similar properties were substituted. (See Attachment III-L).

(d) The loans were further secured by Overmyer corporate guarantees and Overmyer personal guarantees.

(e) The loans were further secured by the pledge of the retained interest in the Communications Companies.

3. The option granted to AVC was proper.

(a) It was granted at the insistence of AVC and against the initial objections of Overmyer.

(b) It runs only to the buyer and cannot be exercised by the sellers.

(c) Unless the property attains a value in excess of the option price, prudent business judgment indicates that the option will not be exercised by the buyer.

i. The formula on the option price requires a favorable development of UHF in order to reach a value warranting the exercise of the option.

ii. If the option is not exercised the loans to Overmyer must be re-paid.

ATTACHMENT III-A

COUNTY OF NEW YORK

Thomas J. Byrnes, being duly sworn, deposes and says:

This statement is being submitted to detail and explain the investment of Daniel H. Overmyer in the five companies of which he is transferring control to A.V.C. Corporation.

I have been employed by Overmyer since August 1964 in various capacities in the companies which he owns and controls. My original appointment was as Treasurer and Controller of all of the Overmyer companies. I served in one or both of those capacities until March 1966 when I was elected Executive Vice President of the Various Overmyer companies (except the Communications Companies, of which I am Vice President). I am also a Director of all of the companies controlled by Mr. Overmyer.

The Overmyer companies have been set up as follows: three operating company groups—warehousing, communications and leasing—and a management staff organization to provide services for the operating groups. Since September 1, 1966, the management staff functions have been housed in a separate corporation, The Overmyer Company, Inc. The "staff" personnel assigned to this corporation are broken down into the following departments:

President's Office	Personnel Dept.
Treasurer's Office	Corp. Relations Dept.
Legal Dept.	Taxes & Insurance Dept.
Advertising & Public Relations Dept.	Auditing Dept.
Finance & Development Dept.	Human Relations Dept.
Controller's Dept.	Data Processing Dept.
Purchasing & Office Services	Acquisition Dept.

The operating companies look to the staff of The Overmyer Company, Inc. for the performance of services of the nature indicated by the titles of these departments, and the staff of these departments exists solely to serve the needs of the operating companies.

Before September 1, 1966 these staff functions were largely concentrated in the Overmyer Warehouse Company (Ohio). At that time they were separated out and concentrated in a new corporation with its separate personnel and accounting, in order to limit the salary and other costs of each operating company to its respective "line" employees and the day-to-day operations of its particular activities.

The Overmyer Warehouse Company group operates warehouses, and has 60 regional and branch offices throughout the country. The Overmyer Leasing Co. rents equipment to various customers, including affiliated Overmyer companies. The Overmyer Communications group includes an operating UHF station in Toledo and an applicant for Dallas, Texas as well as the five companies which are involved in the present transfer and are engaged in developing stations in Pittsburgh, San Francisco, Newport (Kentucky), Atlanta and Rosenberg (Texas).

Since joining the Overmyer Companies in 1964, I have been closely connected with the operating companies and with the performance of the staff functions for them and am familiar in reasonable detail with the activities in both areas.

As Treasurer and Controller of the Overmyer Companies, I assumed certain duties which were formalized upon my becoming Executive Vice President. These duties included a "line" relationship with the chief executives of each of our

operating companies, including the Communications group. Matters of corporate policies, financial budgeting and forward planning were all discussed in depth by the Communications executives and myself. Meetings of this type would be held on an average of two or three times a week during or after business hours Monday thru Saturday and usually lasted from one to two hours each. At least once a week, the Communications group executives, other Overmyer personnel and I would have a general meeting with Mr. Overmyer on communications matters which were currently under discussion. These meetings would last anywhere from one to three hours.

While I normally was not involved in day-to-day recruiting outside of the staff area, I did, at Mr. Overmyer's direction, take a very active part in the recruiting and interviewing of several key executives in the Communications operating group. In addition, since the acquisition department of our company reported directly to me, all potential TV acquisitions were discussed with and cleared through me.

During the last few years, we have constantly "shopped" the equipment market using leasing Company personnel as well as Overmyer "staff" purchasing personnel. Many discussions and negotiations with equipment manufacturers have taken place. I often participated in both our preliminary Company discussions and meetings with manufacturers.

One of my duties as Treasurer and Executive Vice President has been visiting frequently with the principal officers of various financial institutions with which Overmyer Companies do or hope to do business. This includes commercial banks, investment and financial brokers and the major insurance companies throughout the country. I discuss with them in detail our activities, and our financial needs, plans and prospects, in the communications field as well as other areas.

Since all "staff" department heads have reported through me to Mr. Overmyer, I have been involved on a day-to-day basis in all of their workings, including their activities on behalf of the Communications group. In conjunction with Mr. Overmyer, I arrange for funds needed by the Communications companies to be made available to them. Whenever any question of policy or problem would arise between the Communications group and "staff" department heads or personnel, I would take part in settling the situation. At Mr. Overmyer's direction, I saw to it that "staff" departments such as public relations, personnel, finance, real estate, advertising, etc. made themselves available for any assistance required by the Communications people on a regular or special basis. I also arranged for other departments, such as data processing, to explore with the Communications people and discuss potential utilization of data processing; and for human relations to explain policy and advise on suggested wage rates or benefit programs for the Communications group. I have, therefore, in my capacity described above been intimately familiar with the many details of the development of the TV properties and investment of money and time in such development.

The investment of Mr. Overmyer in the five companies involved in the present transfer is of two kinds: (1) money spent directly by or for the five companies, which is represented by capital or property and equipment bought by other companies wholly owned by Mr. Overmyer and being donated to the five companies, or debts for advances by other Overmyer companies which are being cancelled; (2) the cost of services rendered and facilities provided by other Overmyer companies, in particular the "staff" departments and personnel described above, which has not been reimbursed by the five companies.

This investment is in excess of \$1,300,000. It is summarized in the attached Schedule A. In the first category are items totalling \$665,386 as follows:

(a) *Net Worth*.—The paid in capital for the issued common stock of the five corporations as shown on the attached individual and combined balance sheets of the five companies (marked "Schedule B")—\$53,500.

(b) *Cancellation of Intercompany Accounts*.—It is our custom with all new companies in their development stage, to have funds they need supplied by another Overmyer company, usually through the Treasurer's or Controller's offices of the "staff" company. Funds needed to cover expenses or purchases of the new company will be advanced to the latter or paid directly by the "staff" or other Overmyer companies. In either event, the "borrowing" company (in this case the five TV companies) is appropriately entered on its books and those of the disbursing company. For example, funds needed for payroll or for payments on film purchases are advanced to the new company until it is able to generate its own cash resources and begin repaying the disbursing company. A summary of

the major items of expense (salaries, film rights, etc.) is attached and marked "Schedule C". On March 31, 1967, the date of the balance sheets attached hereto (Schedule B), the net result of these money transactions resulted in a debt of the five Communications companies to the other Overmyer disbursing companies of \$253,046. This debt will be forgiven as part of the Agreement with A.V.C. The cancellation of this debt, which will not be repaid now to Mr. Overmyer's other companies has created in effect an additional capital investment on his part of—\$253,046.

(c) *Assets Donated.*—In addition, certain assets of the Overmyer Leasing Company which are used by the five Communications Companies will be donated to these five companies without recompense to the Leasing Company, again resulting in an additional investment by Mr. Overmyer in the TV companies. These include a transmitter site acquired in the Cincinnati area at a cost of \$58,688 and TV equipment on which the Leasing Company has made payments or deposits of \$300,152 making an additional capital investment on Mr. Overmyer's part of \$358,840. A detailed schedule of the assets involved, by location, is attached and marked "Schedule D".

The second category of the investments by Mr. Overmyer in the five TV companies involved in the present transfer includes the unreimbursed services performed and facilities provided for them by other Overmyer Companies, especially the "staff" departments and personnel of The Overmyer Company, Inc. since September 1966 and of the Overmyer Warehouse Company (Ohio) before that. As indicated above, these services and facilities embraced all those within the purview of the staff departments listed above (Page 1), ranging from providing space, messenger and accounting services, assistance in recruiting personnel, preparing payroll, looking for sites and negotiating loans to overall executive review and direction by the President's Office.

The cost of the "staff" services was never separated out when they were rendered by the Warehouse and other companies prior to September 1966. Such costs, especially the non-personnel costs of the various functions, were buried within the total expenses of the Company involved.

The concentration of the "staff" services in the separate corporation. The Overmyer Company, Inc. in September 1966, however, enabled the non-personnel as well as the personnel costs of the separate "staff" departments involved to be pinpointed and determined with substantial accuracy. Accordingly, when in the early part of this year it became necessary to explore a transfer of the TV stations, four months (September–December 1966) of the personnel and other costs of each department were available to determine proper allocation of costs to the communications' operations.

In making the allocation of "staff" costs to Communications, the following steps were taken:

(a) It was determined that an allocation of the *total expense* for each "staff" department to communications work could be fairly and properly based on an allocation to communications work of the *salaries* of the personnel in that department, because of personnel costs amounted to the great majority of all costs; overall, salaries amounted to approximately 60% of the total expenses of the several departments; and other personnel costs (taxes, benefits, insurance and the like) increased total personnel costs of all departments to about 70% of all expenses of the "staff" Company.

(b) Persons familiar with the work of each "staff" department for the Communications operation, in most cases a "staff" department head of The Overmyer Company, Inc., was asked (1) to review the work of such department which has been devoted to communications matters from July 1964 through March 1967, and (2) for the four-month period September–December, 1966 (for which precise departmental costs are available) to allocate to Communications the portion, if any, of the salary of each employee in such department proportionate to his work for Communications during that period. The affidavits of Messrs. Connery, Silcox, Lake, Guinan, Dorfner, Murray and Overmyer, on the basis of such an allocation, fix the per cent of total salaries for each such department fairly and properly chargeable to the Communications Companies for the four-month period. The affidavits are attached as an Appendix.

(c) The percentage of salaries thus determined for each department as allocable to communications was then applied to the total expense of the department during that period. (See Schedule E attached.)

(d) The amounts thus arrived at for the several departments were then added together to determine the total amount of the cost of "staff" services and facili-

ties allocable to communications for that four-month period. This amount was \$121,325. The percentage of total departmental expense allocated to communications—11.1% was then applied to additional non-departmental Company expenses of \$71,038 to compute the total "staff" Company expense chargeable to the Communications Companies for the four-month period, namely \$129,281. (See Schedule E attached.)

(e) After a review by the undersigned and those listed in subparagraph (b) above of the work performed by the "staff" departments for the Communications group during other periods than the base period from mid-1964 to the end of March 1967 (the approximate date of the contract with A.V.C.), it was concluded that the assignment of the costs for such work should properly be made according to the level of activity by such department on communications matters during the several periods as follows:

For 1966, other than base period—at the same level as the base period.

For 1965—at 75% of the 1966 level.

For the last half of 1964—10% of 1966.

For the first three months of 1967—at 75% of the level of 1966; this is equivalent to 18 $\frac{3}{4}$ % of the 1966 amount.

The resulting total amount chargeable to Communications for the entire period is \$790,230 (See Schedule F).

(f) From these total unreimbursed costs of other Overmyer Companies allocable to Communications, an appropriate deduction for Toledo, Dallas and the network was determined to be 20%, or \$158,046, leaving a balance of \$632,184 (see Schedule F).

(g) To the foregoing balance of unreimbursed costs in the amount of \$632,184 was added the amount of \$34,330 representing the costs of the Overmyer Leasing Company over the period from June 1965 through March 1967 attributable to the five TV Companies involved here. (See affidavit of Robert Radar, President of the Overmyer Leasing Company in the Attachment hereto). This amount of \$34,330 is appropriately included in Mr. Overmyer's investment in these five companies, since the assets acquired by the Leasing Company and leased to them are being donated by him to them upon consummation of the present transfer, and the Leasing Company will forego the profit to be expected from the transactions.

The net amount of \$666,514 is, in my judgment, a conservative estimate of Mr. Overmyer's investment in the five TV Companies contributed through unreimbursed services and facilities by the other Overmyer companies named above.

It should be noted that no allocation of costs of certain departments in the "staff" company—Data Processing, Corporate Relations, Human Relations and Acquisitions has been made to Communications although their personnel rendered significant services to that group at various times. For example, Mr. Dale Hardin, who headed up our Washington, D.C. office (Corporate Relations) and his secretary gave significant time to communications, but no part of the cost of his office has been allocated to the five TV Companies. Also many "line" employees in the Warehouse Company regional and branch offices have rendered assistance to the Communications people from time to time in their various cities, but no part of the costs of these offices has been allocated to the Communications Group.

Further, in view of the assumption by Overmyer Companies of liabilities of Green & White Construction Co., the cost of services by it for the Communications group to an amount of over \$50,000 could properly be added to Mr. Overmyer's investment in the TV Companies (see affidavit of Robert Sant Angelo, President of Green & White, in the Attachment hereto). That amount has not been included in the total set out here, however.

Moreover, certain of the physical assets to be transferred have increased in value, and it would be entirely proper for Mr. Overmyer to be paid the amount of these increases. For example, the market value of the equipment being included in the transfer has increased substantially over its cost (See Schedule D and affidavit of Robert Rader in the Attachment hereto). Also, we believe our film inventory to have increased in value.

Finally, much of the incentive in attempting to develop a new network grew out of the need for programming for the six TV stations. A goodly portion, therefore, of the monies invested and lost in the Overmyer Network could properly be taken into account in determining Mr. Overmyer's investment in the TV stations.

I personally have reviewed the statements of Messrs. Lake and Murray with respect to the services by the Treasurer's and Controller's Offices on communications matters, and it is my judgment that the percentage of salaries in those offices properly allocable to communications matters is at least as great as those given.

I have also reviewed the activity of the employees attached to the President's Office, including myself, on communications matters for the base period September to December 1966 inclusive, and for the period July 1964 to March 31, 1967 and am satisfied that the salaries and expense of that office which are allocated to communications in Attachments E and F are conservatively allocated, and, indeed, for 1964 and 1965 are substantially understated.

THOMAS J. BYRNES.

Subscribed and sworn to before me this 16th day of June, 1967.

RICHARD F. LEIBCH,
Notary Public.

ATTACHMENT III-B

It has been alleged that the base period used, namely September 1, 1966 thru December 31, 1966 was "improper" since expenses were allegedly available from January 1, 1966. This statement is an incorrect assumption based on a misunderstanding of a footnote made on our corporate consolidated Federal Income Tax Return for the fiscal year 1966 and a further misunderstanding of certain expenses shown on that tax return as being applicable to The Overmyer Company. First, the footnote on our tax return indicated that the expenses of certain of the companies included in the consolidation were included from January 1, 1966. This statement is true, *where the companies in fact had any such expenses*. One of the companies involved was The Overmyer Company and the others were certain state warehouse companies being consolidated for the first time. Since these warehouse companies had had their own tax returns ending December 31st prior to the consolidation, their expenses were included from January 1st. The Overmyer Company came into being during the period between January 1st and the end of the fiscal year, August 31st; therefore, the statement is also true of The Overmyer Company. However, the Overmyer Company was not incorporated until March of 1966. The first full fiscal year of operations of The Overmyer Company actually began September 1, 1966.

In the meantime, however, in an attempt to be ready to have a full set of books for The Overmyer Company at the beginning of the new fiscal year, namely September 1, 1966, certain elements of payroll were transferred to The Overmyer Company effective July 1, 1966. This was done because July 1st is the beginning date of a Federal payroll tax quarter and if we had waited until another quarter went by, The Overmyer Company would not have had its own payroll on its books until October 1st, which would have been one month after the beginning of the next fiscal year. The assumption made by the Committee staff was that the expenses seen on the 1966 tax return for The Overmyer Company represented many months of expenses, either from January 1st forward or April 1st forward. The expenses shown actually covered expenses as noted above only from July 1st and therefore represented no more than two months payroll. The statement which has been made several times, therefore, that the base period beginning September 1, 1966 was the first full fiscal period in which all of the staff expenses were put into one set of books still is correct. It has further been remarked that expenses for The Overmyer Company were available for a period after December 31, 1966. This statement was true when it was made in June of 1968 but it was not true in the Spring of 1967 when the figures had to be prepared for submission to the FCC for the transfer.

ATTACHMENT III-C

It has been said that the base period used was the time of highest expenses for the staff group. This is not true. The payroll of The Overmyer Company for the last quarter of 1966 (October 1st thru December 31st) was \$500,009. The payroll for the immediately preceding period, (July 1st thru September 30th) was \$655,463. This earlier period was therefore 30% higher than the subsequent

period and two-thirds of said period were prior to the base period. These payroll figures are from the quarterly payroll tax returns filed with the Internal Revenue Service.

ATTACHMENT III-D

SYNOPSIS OF FUNCTIONS PERFORMED BY STAFF DEPARTMENTS

A. Finance and Development

(i) The most important function performed by this department for the Communications Companies and to the other companies was developing financial sources.

(a) All personnel explored the availability of financing to cover all Overmyer projects including the Communications Companies.

(b) Employees specified as having performed services for the Communications Companies did, in fact, perform such services.

(ii) The second most important function of the Finance and Development Department was investigation and securing real estate for Overmyer corporations.

(a) Real estate functions were performed for the Communications Companies. Because of the restrictions in television a significantly larger number of parcels have to be investigated as compared to the warehouse construction.

(b) Most sites specified in the original construction permits were not eventually used because of requirements for optimum operation.

(iii) The services of the department did not duplicate in any great measure the Treasurer's Department.

(a) It is the primary responsibility of the Financial Development Department to:

(1) Seek and obtain adequate real estate locations for the various Overmyer operating companies.

(2) Visit with financial institutions of all types to educate such institutions as to the makeup and plans of the various Overmyer companies. This is a follow-up to our public relations and advertising campaign to make the Overmyer name known to the financial community. The financial development personnel advise the particular company being visited of the current operations and future development plans of the warehouse company, communications company, leasing company, etc. and explore the possibility of the lender being interested in advancing funds to any or all of the Overmyer companies under various types of loan agreements.

(3) When a financial contact has been developed to the point where it appears that monies are available for real estate mortgage purposes, the Financial Department regional managers would then come in to actually negotiate and close the transaction.

(4) If the contact develops in a manner that will allow the availability of funds for one of the other companies such as the communications company or leasing company, an officer of that company would then visit the financial institution accompanied by a member of the Treasurer's Department to negotiate and consummate the loan.

(5) In either of the above cases, however, the Financial Development people would continue to call on these accounts periodically to continue to keep them informed of corporate progress.

(b) The Treasurer's Department has as its basic functions:

(1) The maintenance of all corporate bank accounts and the disposition and transfer of funds within such accounts for the most efficient use of corporate funds.

(2) Negotiations with banks or other financial institutions for obtaining of non-mortgage funds for the various Overmyer companies.

(3) The servicing of consummated loans mentioned in #2 above. This would include calculating interest payments, maintenance of compensating balances in accounts, correspondence and meetings with bank officials concerning the conduct of the loan and possible renewals and/or payments.

(c) It should be obvious from the above that while there is some overlap in the functions of the two departments, this overlap is not material in that the duties of the departments are unrelated in general. Since there appears to have been some

misconception in the handling of the warehouse mortgage loans, it should be noted that once a mortgage loan is consummated by the Financial Development Department and the building is completed, the servicing of the mortgage loan is reduced to a mere clerical activity of processing monthly mortgage payments which is done by the Accounting Department, not by the Treasurer's Department.

B. Treasurer's Department—the Treasurer's Department did not duplicate Finance and Development.

(i) The principal function of the department was to process non real estate loans.

(a) Of the number of non real estate loans serviced, approximately 18% were Communications Company; and of the total value of the loans, approximately 29% were Communications Company.

(ii) Servicing of real estate loans after they were obtained was a function of the Accounting Department.

C. Advertising and Public Relations—the principal function of the advertising and public relations department was to publicize all Overmyer enterprises on an institutional basis in order to facilitate the development of each. Total advertising and public relations expenditures during the years involved exceeded \$900,000.00.

D. Taxes and Insurance

(i) The department performed tax services for the Communications Company including the preparation of 22 Federal Tax returns. It was assisted by Arthur Young & Company. Certified Public Accountants, who signed 12 such returns. A portion of the work required in connection with each return was performed by Overmyer personnel.

(ii) In excess of 42 insurance claims were processed for the Communications Company.

E. President's Office—Allocations were proper.

(i) Typographical errors occurred with respect to Tom Nicholson where 50% instead of the proper 5% of his time was inserted. The sum total of the error resulted in an overstatement of \$1800. Similarly because of a payroll error, McGhee's salary was overstated resulting in a \$350 error over the period covered by the application for the transfer of control.

ATTACHMENT III-E

STATE OF NEW YORK

County of New York, ss:

I, G. R. Silcox, being duly sworn state:

I am Vice President-Finance of The Overmyer Company and a Vice President of all of the Overmyer companies. In connection with the application for the transfer of control of the five construction permits held by various Overmyer companies, I submitted an affidavit detailing my computation of expenses properly allocable to my department for services rendered to The Overmyer Communications Companies.

The basis and procedures used in my computations are set forth in an attachment to Exhibit III submitted with the application and annexed hereto for convenience.

I have reviewed the transcript of the hearings before the Subcommittee on investigations and the staff memoranda made part of the record. I have carefully reviewed the allegation that 17 out of 18 former employees in my department who had been contacted by mail by the staff "to indicate the approximate percentage of time devoted to the Communications Companies activities" (paragraph #2 of Committee Staff memorandum dated June 19, 1968), stated that they had spent "no time on such activities".

A review of the letter sent by the staff to the employees in question reveals that the inquiry was directed to the time devoted to "television construction permits", (see annexed letter, attachment A), and not to "time devoted to Communications Companies activities" indicated by the memorandum.

It was evident to me that few of the employees had ever been directly involved with the acquisition of "construction permits". In view of the possibility, or in fact the probability that the inquiry of the staff had been misunderstood, I sent

a copy of the annexed letter (see attachment B) to 9 of the 10 executive employees of the 17 who had replied to the staff letter. The letter was not sent to the remaining 7 employees since they were secretarial or clerical employees performing such functions for the executive personnel.

Six responses were received to the nine letters. These responses are annexed hereto as Attachment C and demonstrate the recipients did in fact misconstrue the inquiry in the staff letter. All six indicated that they had performed services for the Communications Companies, and several outlined their specific duties.

In view of the limited time available, I contacted the supervisor of the three employees who had not answered my inquiry. As demonstrated by Attachment D which constitutes letters from Mr. Cain who was the Regional Vice President and the immediate supervisor of Messrs. Alcorn and Smith; and Mr. Whitman who was the immediate supervisor of Mr. McCoy, all three of the employees had performed services for the Communications Companies.

The tenth executive employee, Mr. Bastone, was reached by telephone since he resides in the New York area and since he maintained some continuing contacts with present Overmyer employees. Although Mr. Bastone stated that he didn't recollect any legal services performed by him directly for the Communications Companies, several of our present employees distinctly recollect his participation in meetings and projects in the New York Office, relating to television antenna sites. This has been further confirmed by Mr. Sant'Angelo, a former Vice President-Real Estate, but no longer in our employ. (See attachment E.)

In view of the results of our inquiry to the executive personnel involved, no effort was made to contact the purely clerical personnel since their services were automatically encompassed by the areas of efforts of their supervisors.

To place the whole matter in proper perspective, it should be noted that Messrs. Flower and Grant, employees in my department for whom credit was *not* claimed on the application for services to the Communications Companies, stated that such services were in fact performed (see attachment F).

Moreover although Mr. Newsome, the 18th employee answering the staff letter states that a "considerable amount of time was spent" on Communications projects, such a reply is referred to as "negligible" (page #55, staff report), see attachment G.

I have also noted that although the staff report at page #52 refers to my description of the specific services performed for the Communications Companies by employees in my department, such description was utilized in the letter of inquiry sent to the employees.

One further area of the staff report deserves mention. The 85 employees listed for my department are held to be an unreasonable number to be "involved in acquiring real estate necessary for five stations". The use of these figures is quite misleading. As a matter of fact only 13 of the 85 were actually directly involved in selecting real estate for transmitter and studio sites; 25 were directly responsible for searching for financing; 15 were involved in both real estate and financing; and 32 were supporting clerical and secretarial personnel. Accordingly, the use of the figure of 85 is not only misleading but fails to properly reflect the actual efforts of the personnel in my department.

Moreover, the selection of sites for television use is an infinitely more difficult task than the selection of warehouse sites. There are greater zoning and easement problems; the flexibility in selection is limited because of air space, engineering and FAA considerations; negotiations are more complex since sellers and lessors feel they have a better bargaining advantage because of the above mentioned considerations. Extensive time had to be devoted and orient site selectors for their tasks.

The statement at page #54 of the staff report states. ". . . at Cincinnati, and possibly other sites, Overmyer took over the sites selected by the previous permit holder and therefore services of employees of this department would not be required or, at best, be minimal" is inaccurate. While the property in Cincinnati was included in the purchase of the construction permit, a different antenna site was selected to better meet the service objectives for the station. None of the other sites selected by the previous permit holders were used and new antenna and studio sites had to be obtained.

G. R. SILCOX.

Subscribed and sworn to before me this 13th day of September 1968.

[SEAL]

GERALD N. GOLDBERG,
Notary Public.

STATE OF NEW YORK
County of New York, ss:

G. R. Silcox, being duly sworn, deposes and says:

1. I am now and since September 1966 have been Vice-President of Finance and Development of the Overmyer Company, Inc. From 1963 to September 1966 I held the corresponding position in the D. H. Overmyer Warehouse Company (Ohio), when the functions of that Department were included in that Warehouse Company.

2. The Finance and Development Department maintains a home office staff in New York and presently has five regional offices in Atlanta, San Francisco, New York City, Dallas and Chicago, and formerly had two additional regional offices in Detroit and Denver. Its functions are principally to search out, negotiate for and acquire real estate required for the various Overmyer enterprises including real estate for warehouses and offices, and short and long-term financing for various Overmyer enterprises.

3. The Finance and Development Department has served the communications group primarily in two ways:

(a) locating, evaluating, negotiating for and acquiring real estate for antenna sites and studios and for office space for the TV stations and handling problems related thereto. Personnel in my Department—both home office and regional—have spent a very great deal of time in searching out acceptable TV antenna and studio office sites in Atlanta, San Francisco, Pittsburgh, Newport-Cincinnati and Rosenberg-Houston. Not just one, but many, alternatives were investigated, studied and evaluated in most markets over very extended periods. All possible staff resources were used. Because of our experience in real estate matters, and knowledge of and ability to work with local realtors, we undoubtedly have been able to make available to the TV Companies a much greater selection of sites and space than if such Companies had been left on their own. Nevertheless, because of the technical problems involved, the zoning and public relations problems, and a variety of other difficulties, coupled with the inexperience of our personnel in the TV field, the amount of time required to locate and check out each potential site has been inordinate.

Attorneys in my Department also handled the negotiating and drafting of contracts and leases, title searches, closings, etc. for about a year commencing in March 1966.

(b) searching out, negotiating for, arranging for and servicing short-and-long-term loans and other financing arrangements. The personnel of my Department have scoured the country—both in the markets where the TV stations are located and elsewhere—for sources of credit for the TV stations and other Overmyer enterprises. Sources which may not be opened up immediately frequently make credit available at a later date or at a later stage of the development of an enterprise. Accordingly, bankers, insurance companies and other similar financial institutions were visited repeatedly; Overmyer operations and credit needs were explained and reviewed in detail.

In addition to seeking general credit and loans, the personnel of my department also explored fully the possibilities of mortgages and sale-lease-back financing for TV sites and studio and transmitter buildings.

4. I have carefully reviewed the list of personnel in my Department, their TV work and their payroll for the period of September-December 1966 for the purpose of determining the percent and amount of the total salaries for that period which should properly be allocated to the TV companies. Based on this review, I have allocated to the TV companies during this four month period \$18,004 or 13.4% of the sum of \$134,025 representing the total salaries paid home-office personnel, and \$18,011 or 14.2% of the sum of \$126,396 representing the total salaries of personnel of the regional offices.

5. I have reviewed the application of the base-period figures to other periods in Attachment F of Exhibit III. It is my judgment that the level of TV activity in my Department during most of 1966 was on the order of 10% 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.

Subscribed and sworn to before me this 16th day of June, 1967.

[SEAL]

G. R. SILCOX.

Notary Public.

ATTACHMENT "A"

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. JAMES FLOWERS,
Dallas, Tex.

DEAR MR. FLOWERS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburgh; WJDO, Houston; and KEMO, San Francisco), Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965----- 1966-----	1 percent-----		Employed July 1965 to August 1966. Located and negotiated land purchases for warehouses, spent minimum time seeking antenna and studio locations for TV.

ATTACHMENT "B"

THE OVERMYER COMPANY, INC.,
August 8, 1968.

Mr. ALEXANDER DILTS,
Los Alamitos, Calif.

DEAR ALEX: You will recall that sometime ago you received a letter from a Mr. Druhan who was a staff consultant for the Special Subcommittee of the Committee on Interstate and Foreign Commerce.

I am wondering whether you understood that the question relating to "television construction permits" was intended to determine how much of your time, if any, was devoted to efforts on behalf of our television stations within your general corporate area of responsibility.

In other words, did you do any work for the benefit of our television stations?

If you did, I should appreciate receiving a brief letter from you advising us of the facts.

Very truly yours,

G. R. SILCOX,
Vice President—Finance.

ATTACHMENT "C"

MANUFACTURERS HANOVER TRUST COMPANY,
New York, N.Y., September 9, 1968.

Mr. G. R. SILCOX,
Vice President—Finance, The Overmyer Co., Inc.,
New York, N.Y.

DEAR GARY: In regards to your letter dated September 9, 1968, I want to clarify some things for you pertaining to the information I originally sent to William T. Druhan, Consultant to the Subcommittee on Investigations of the Committee on Interstate and Foreign Commerce of the Congress.

The letter asked me to approximate a percentage of my time on television construction permit activities. I have in front of me a copy of the answer I relayed to Mr. Druhan and I can see that it doesn't answer the question, due to the fact that I didn't understand it in the first place. It is certainly confusing and I did not know what he meant by construction permit activities.

Furthermore, I wish to make something clear regarding the answer I wrote approximating the percentage of time spent on Overmyer network activities. This again was a misleading question and I should like to explain. The television stations and franchises owned by The Overmyer Company were an integral part of the whole Overmyer machinery and were certainly a topic talked about by ourselves as representatives of Overmyer and by the lenders, such as banks and insurance companies, who certainly wanted to know what the status of these various enterprises were. The various television stations were naturally discussed with these people since the banks and insurance companies had to determine the extent of Overmyer's commitments in these fields and as a natural matter of interest and curiosity on their own behalf, since a fair amount of publicity on behalf of the Overmyer communications enterprises was involved. As I mentioned in my reply to Druhan, these activities on our part had also constituted a portion of our training. I certainly did not wish to be misleading in my reply to Druhan and I shall certainly be glad to state that a portion of my time in working for Overmyer involved the communications company. I can painfully recall the several weekends I spent sitting on a chair at the Hotel Commodore or Tudor Hotel listening to lectures by Art Dorfner, being introduced to Ollie Treyz or even listening to Dan Overmyer himself. These sessions were meant to acquaint us with the communications activities and certainly constituted a portion of my time. As to assigning an exact percentage too, I would be unable to guess, and being in ignorance of Druhan's purpose in writing to me and being confused by his questions and the purpose thereof I simply put -0- in both columns.

Hopefully this reply satisfies your requirements. Let me know if I can assist in any other way.

With best regards,
Sincerely,

ARMIN J. BUCHTER,
Assistant Secretary.

AUGUST 22, 1968.

Mr. G. R. SILCOX,
Vice President-Finance,
The Overmyer Co., Inc.,
New York, N.Y.

DEAR GARY: Thank you for your letter of August 8. Yes, I dimly recall Mr. Druhan's letter concerning an apportionment of my work for D. H. Overmyer Company on sight locations for the television stations. The way the questions were worded did not allow for clear interpretation. Worded as above, my answer was none!

When you consider, however, that an important part of my duties for the D. H. Overmyer Company was to research and generate specific geographic, demographic, and economic data regarding the commercial pattern of major U.S. cities, the answer must be that, of the data I produced, a material amount was used to benefit the establishment of The Overmyer Communications Company.

The television group had a research man (I forget his name) who concerned himself with measuring audience spread and character. He used to come to my office periodically and would xerox some of my data to be support material for his presentation.

I cannot remember, but I believe I wrote Mr. Druhan about the "Pittsburgh" warehouse/office/complex. This work on my part was tied to the station sight on the hill opposite. One could say that a good third of this project time was applicable to the Communications Company.

I hope this answers your question.
Very truly yours,

ALEXANDER R. DILTS,
Market Analyst.

AUGUST 21, 1968.

Mr. G. R. SILCOX,
Vice President, Finance,
The Overmyer Co., Inc.,
New York, N.Y.

DEAR GARY: As you are aware, the "Druhan letter" requested information on participation which employees of The Overmyer Company had specifically in relation to television construction permits. I therefore answered the letter (within that narrow frame of reference) to the effect that none of my time was spent specifically on such activity.

During the heady days of 1966, the employees of the Finance and Real Estate Department participated to some degree, either minor or major, in weekly management discussions regarding the company's involvement in diverse fields, including of course, the Overmyer Communication Company San Francisco television station. To that extent then, it may be fairly said that some minor element of my time with the company was spent in such discussions.

I trust that this information will satisfactorily answer your letter of August 8, 1968.

Sincerely,

R. W. JACOBS.

NORWALK, CONN., August 10, 1968.

Mr. G. R. SILCOX,
Vice President,
The Overmyer Co., Inc.,
New York, N.Y.

DEAR GARY: I refer to your letter of August 8, 1968 and my prior correspondence with Mr. Druhan of the Special Subcommittee of the Committee on Interstate and Foreign Commerce.

I am sure you agree that my responsibilities to the Overmyer organization did not include obtaining construction permits for television stations and that my answer to Mr. Druhan's question was accurate. If his question had been as you state it; namely, did I do any work for the benefit of the television stations and, if so, how much of my time was devoted to that work, I would have answered as follows:

1. I attended one company-wide and several division meeting at which the structure and plans of the Overmyer Communication Companies were presented.
2. As part of my presentation to prospective lenders, the primary objective of which was to obtain financing for proposed warehouses, I mentioned the television stations and plans for their development. If the lender expressed a particular interest in the subject, I advised the Overmyer people directly responsible for communications development to contact him.
3. In talking with lenders with whom we had existing relationships, I spent some time answering questions arising from the publicity the Overmyer Network received in The Wall Street Journal and other publications.
4. All in all, the activities outlined above occupied some relatively small portion of my time.

Please advise if you require anything further.

Sincerely yours,

HENRY C. BURBANK.

AUGUST 14, 1968.

Mr. G. R. SILCOX,
The Overmyer Co., Inc.,
New York, N.Y.

DEAR GARY: In response to your letter of August 8th, I do recall the letter-questionnaire from Mr. Druhan of the Committee on Interstate and Foreign Commerce.

Upon receipt of your letter I am now wondering whether I did understand his question relating to "television construction permits".

A reasonable amount of my time including several corporate meetings plus private consultation in matters of real estate was spent with regards to the proposed San Francisco Television Station.

Cordially,

GEORGE D. ROUSSEAU.

AUGUST 22, 1968.

Mr. G. R. SILCOX,
Vice President, Finance,
The Overmyer Co., Inc.,
New York, N.Y.

DEAR GARY: Forgive my delay in replying to your August 8th letter but I have been out of town most of the time.

Gary, as you know, when I called on the banks in behalf of Overmyer I presented an overall picture of our organization. Certainly, I talked about the TV stations and their projected impact upon the company.

How much of my time was devoted to the communication companies in discussions with potential lenders it is not possible for me to estimate as this was incorporated in a general presentation which I made to most potential lenders.

I trust that this will assist you in a clarification of my reply to Mr. Druhan's letter.

Very truly yours,

R. E. MANN.

ATTACHMENT "D"

UNIVERSAL WARREN CO.,
August 23, 1968.

Mr. G. R. SILCOX,
Vice President, Finance,
The Overmyer Co., Inc.,
New York, N.Y.

DEAR GARY: In response to your inquiry of August 12, 1968, relative to the job responsibilities and activities of former Overmyer Company employees, H. Alcorn and R. E. Smith, please be advised:

1. That as Assistant Vice-President's of Real Estate, their primary function was to solicit, select, and secure appropriate industrial sites;
2. Secondary functions included solicitation and, or investigation for other Overmyer activities, i.e. Communications Company and Leasing Company.

In the Mid-Central Region, in which the aforementioned individuals were employed, the major secondary effort was spent assisting the Communications Company in that three TV sites, i.e. Toledo, Pittsburg, and Cincinnati, were located within the regions of responsibility. During their brief periods of employment, it would be appropriate to estimate that Messrs. Alcorn and Smith spent perhaps as much as 10% of their time working on activities of the Communications Company.

I trust this information will be of assistance to you.

Sincerely,

RICHARD E. CAIN, *President.*

AUGUST 23, 1968.

Mr. GARY R. SILCOX,
Vice President-Finance,
The Overmyer Co., Inc.,
New York, N.Y.

DEAR GARY: I received your letter of August 21st. In answer to your questions regarding Armin Buchter and Bruce McCoy, both were responsible for contacting financial institutions to include commercial banks, insurance companies, savings banks, etc. on behalf of all of the Overmyer companies and interests. They were instructed at various meetings by myself and the corporate staff to discuss and acquire funds for the warehouse companies, leasing companies and communications companies and by my direct supervision I saw that this was accomplished. It is somewhat hard to estimate an exact amount of time which they spent on behalf of the Overmyer communications companies but I would say a substantial portion of their time was spent in this area.

I hope that this answers the questions raised in your letter.

Very truly yours,

RALPH E. WHITMAN.

ATTACHMENT "E"

NEW HYDE PARK, N.Y.
September 10, 1968.

Attention: Mr. Gary Silcox,
THE OVERMYER COMPANY, INC.,
New York, N.Y.

DEAR GARY: As you know at the time I functioned as Divisional Vice President of Real Estate I was directly involved in site location for the UHF Television Stations. We had at that time, in order to coordinate our activities with the Construction and Communication Companies, arranged to hold weekly meetings.

We had at these meetings representatives from the various companies and although I am attempting to recall events that transpired some time ago to the best of my knowledge Louis Bastone did attend several of these meetings.

Yours truly,

ROBERT SANT'ANGELO.

ATTACHMENT "F"

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 29, 1968.

Mr. JAMES FLOWERS,
Dallas, Tex.

DEAR MR. FLOWERS: We are presently conducting a review of the D. H. Overmyer Company activities pertaining to television construction permits (WBMO, Atlanta; WSCO, Newport; WECO, Pittsburg; WJDO, Houston; and KEMO, San Francisco). Records of the D. H. Overmyer Company show that you were an employee of the company at least partially during the period these construction permits were held by the company.

It would be appreciated if you would indicate below the approximate percentage of time you expended on duties related to (1) television construction permits and (2) the Overmyer Network. Also would you please briefly describe the duties performed. Any further comments you wish to make would be appreciated.

A postage-free return envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

It is essential that a response be received as soon as possible.

Sincerely,

WILLIAM T. DRUHAN,
Special Consultant.

	Approximate percentage of time spent on TV construction permit activities	Approximate percentage of time spent on Overmyer network activities	Description of duties
1965.....	} percent.....	}	Employed July 1965 to August 1966. Located and negotiated land purchases for warehouses, spent minimum time seeking antenna and studio locations for TV.
1966.....			

PERINI LAND & DEVELOPMENT Co.,
Ajax, Ontario, Canada, May 3, 1968.

Mr. WILLIAM T. DRUHAN,
*Special Consultant, Congress of the United States, House of Representatives,
Rayburn House Office Building, Washington, D.C.*

DEAR MR. DRUHAN: I wish to acknowledge receipt of your letter dated April 29, 1968, regarding the D. H. Overmyer Company activities pertaining to television construction permits.

Please be advised that I was employed by the D. H. Overmyer Company as Assistant Vice-President Real Estate, North-East Region, from approximately November 15, 1965 to September 30, 1966. My duties in this capacity primarily involved the location of and obtaining of options for sites suitable for the con-

struction of "Overmyer Warehouses". The territory covered by me stretched from Norfolk, Virginia to Buffalo, New York and Boston, Massachusetts.

With specific reference to any duties pertaining to television construction permits or the Overmyer Network, please be advised that less than 5% of my time, for the entire period of my employment, was in connection with this phase of the Overmyer organization.

Trusting this is the information you require,
I remain,

Respectfully yours,

DANA W. GRANT,
Managing Director.

ATTACHMENT "G"

GEORGIA INSTITUTE OF TECHNOLOGY,
Albany, Ga., May 13, 1968.

Mr. WILLIAM T. DRUHAN,
Special Subcommittee on Investigations,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. DRUHAN: I worked for the Overmyer Company or companies from about August 1965 until about August 1966. During this period some of us were appraised from time to time of the progress being made concerning the Overmyer television franchises and the proposed Overmyer Network.

The only work of any consequence that I remember concerning these ventures was in trying to locate a television antenna site in Atlanta and locate suitable housing for the television studios, also in Atlanta. I am unable to give you any percentage of effort put forth on these projects, however, I believe considerable time was spent during the spring and summer of 1966 on these projects.

There were several of us in the Atlanta office working on this project from time to time including some people from communications who were working full time.

I hope this information is suitable for your needs.
Very truly yours,

ERIC A. NEWSOM, Jr.

ATTACHMENT III-F

In 1965 and 1966 the Company did in fact own a motor cruiser used primarily for business entertainment. Since the question was raised, an investigation reveals that the largest single users of the boat for business entertainment purposes were the Communications group.

One of the Communications officials made a practice of using the boat a number of times each month during his period of employment to entertain advertising personnel of various potential sponsors and of various advertising agencies in the hope of obtaining business from them for the television stations. A review of our procedure indicates that had the boat been charged for as a separate item, a much greater portion of the cost would have been properly allocable to the Communications Company than resulted from its inclusion as an expense of the Overmyer Company.

ATTACHMENT III-G

Leasing Company: Any contention that the out-of-pocket expenses of the Leasing Company would have been recovered from the rental profits billed to the Communications Company during this period is not valid. The charges to the Communications Companies from Leasing were made at cost plus 1%, later increased to 1½%. Charges for rentals to other affiliates and to outside companies, however, were made with profit margins of 20% to 40%. Accordingly, the Communications Companies were given very favorable rates which did not cover actual costs, and under circumstances which did not envisage the transfer of said companies to a non-Overmyer Company. In view of the foregoing, allocation of those Leasing Company expenses which were included in the out-of-pocket expense schedule submitted to the FCC, was proper.

ATTACHMENT III-H

Several clerical errors occurred and are listed on page 60 of the staff report of April 30. These actual errors were:

1. Green & White employment agency fees mischarged.....	\$1,422.00
2. Salary expenses.....	1,602.00
Total	\$3,024.00

Another error of this type is reported on page 6 of the same report. However, in this case the error is an understatement of the out-of-pocket expenses of.....

75,005.00	
Net Understatement.....	\$71,981.00

ATTACHMENT III-I

A suggestion was made that in allocating overhead some ratio of expenses rather than time should have been used. The entire nature of The Overmyer Company is one of personnel services. The company manufactures no product and exists only to provide other companies with the specific services of its personnel who have various skills not found or required in the operating companies. The largest expense category which The Overmyer Company has is the payroll cost of its people. Therefore, the most logical way of calculating the value of service performed by The Overmyer Company for other companies is on the basis of time spent by its personnel. Any other system, such as using expenses, would be grossly inaccurate since it would be possible for an individual company to expend large sums of money on expenses which relate only to its own internal operation and which would have no relationship at all with a need for staff services from The Overmyer Company.

ATTACHMENT III-J

A question was raised as to the allocation of the fees paid to Mr. Treyz as a consultant in the early part of 1966, which fees were charged directly to the Communications Company. Mr. Treyz was ultimately to head the Network effort, but since he had been previously associated with National Television Sales, a company which was the National Representative for the Overmyer television stations, he had been fully involved in the sales development effort for the stations. In addition, the television station group reported directly to Mr. Treyz starting in the Fall of 1966 and at that time he was given responsibility for television station operations. Accordingly, for the period in question, Mr. Treyz not only acted as a sales consultant to the television stations, but was active as an executive of the television station group. The charges to the Communications Company by Mr. Treyz are, therefore, clearly offset by services directly rendered by him to the Company. The total sum in question is, in any event, less than \$20,000 and more than offset by the failure to include other expenses (See Attachment III-H).

ATTACHMENT III-K

A question has been raised whether Overmyer violated the provisions of Sections 1.613, 1.615 and 1.65 of the Commission's Rules.

The short answer to any alleged violations of Sections 1.613 and 1.615, which require the filing of certain contracts by permittees and licensees within thirty days of execution is that such contracts were in fact timely filed within 30 days of execution. The letter which accompanied the filing was referred to at page 495 of the transcript and, for convenience, a copy is annexed hereto (Attachment K-1).

A question has also been raised as to whether the Commission was apprised in timely fashion of the arrangements entered into between the Overmyer interests and AVC during the period between the date that the contract was signed (March 28, 1967) and the date (April 28, 1967) that such contract was timely filed, and within the thirty day period specified by Section 1.615 of the Commission's Rules. This question also involves possible non-compliance by Overmyer with the provisions of Section 1.65 of the Commission's Rules, which in substance require information in pending applications to be kept "substantially accurate and complete" in "significant aspects."

Applications for extension of time within which to construct (Form 701) which were filed immediately after negotiation with AVC, but prior to the filing of the assignment of the application for transfer of control, contained the reference "Applicant has found need for outside funds and has just concluded arrangements which will result in additional financial resources being made available. An appropriate application will be filed." (See Forms 701, already a part of the record.)

As was developed in the hearings (transcript page 361-364), a reference of this type in a "701" resulted in having such applications placed on a deferred status pending the filing of the application referred to in the "701". The mentioned reference was generally understood by Commission personnel as being the precursor of an application for an assignment of license or transfer of control. This practice of the Commission was known to practitioners before the Commission, including counsel for Overmyer. Accordingly, Overmyer properly assumed that the Commission had been apprised that there were developments which would result in a filing of a later application and thus that there was compliance with the requirements of 1.65 of the Commission's Rules.

After the contract was executed, and within the period specified by 1.615 of the Commission's Rules, the contract itself was filed. Accordingly in the intervening period between the filing of such contract (April 28, 1967) and the filing of the applications for transfer of control (June 30, 1967) Overmyer had specifically advised the Commission of the type of arrangement entered into by the Overmyer interests and thus there was no violation of Section 1.65 of the Commission's Rules.

At the time that the applications for extension of time within which to construct were actually considered by the Commission, that body had before it all of the pertinent information, including the full text of the agreement between Overmyer and AVC (transcript page 505).

Under the above circumstances, it is crystal clear that the three Commission Rules referred to have not been violated either in fact or in spirit and that the Commission had been kept properly advised of development.

An inference was raised that perhaps Overmyer should have advised the Commission prior to the time that the application for extension of time within which to construct and the applications for transfer of control were filed, that certain Overmyer companies were in financial difficulties.

As set forth in detail in Exhibit I to the application for consent of control (Attachment K-2), while the Overmyer organization became aware in the latter part of 1966 that some financial problems might exist in connection with the Green & White Construction Company and thus might affect Overmyer companies, the magnitude of these problems and the specific effect, if any, on television construction and other plans and projects were not known until early 1967. At such time steps were immediately undertaken to solve the problem by securing outside financial assistance, including obtaining either partners or associates for the television ventures or, as turned out to be the case in connection with five construction permits, a purchaser for a majority interest in such permits. As noted above, the Commission was advised of the possible need for funds and of the fact that an application would be filed indicating a change in financing.

It is, therefore, evident that the Overmyer interests kept the Commission advised of those developments of which it was in full possession of the facts and that it met requirements imposed upon permittees and applicants with respect to applications being kept "substantially accurate and complete" in "significant respects".

NEW YORK, N.Y., April 26, 1967.

Re WECO-TV, Pittsburgh, Pa.; WSCO-TV, Newport, Ky.; WBMO-TV, Atlanta, Ga.; KJDO-TV, Rosenberg, Tex.; and KEMO-TV, San Francisco, Calif.

Mr. BEN F. WAPLE,
Federal Communications Commission,
Washington, D.C.

DEAR MR. WAPLE: Herewith for filing in connection with the above permittees is a copy each of the following documents, each dated March 28, 1967.

1. Stock Purchase Agreement between A.V.C. Corporation and D. H. Overmyer (Minus Exhibit A referred to therein);
2. Stock Pledge and Escrow Agreement between D. H. Overmyer, A.V.C. Corporation and Girard Trust Bank;
3. Loan Agreement between A.V.C. Corporation, D. H. Overmyer and other parties.

Also enclosed, in connection with item #2 above, is a copy of the Assignment from D. H. Overmyer to A.V.C. Corporation of the option to acquire the 20% stock interest in the permittee of KEMO-TV, of Sherrill Corwin.

Please send a copy of any communications regarding the above matter to the undersigned at the *New York office of this firm—30 Rockefeller Plaza, New York, New York 10020*. Also kindly call the undersigned "Collect" at CI 7-3040 in New York City in the event that telephonic communication is appropriate.

Very truly yours,

PETER SHUEBRUK.

ATTACHMENT III-K(2)

EXHIBIT I—(JUNE 1967)

REASONS FOR PROPOSED TRANSFER

D. H. Overmyer commenced his warehousing business with rented space for one warehouse in Toledo in 1947. Within about seven years he began projecting a national warehousing and distribution system for large national manufacturing enterprises which need warehousing and distribution space and services in the many major consumer markets throughout the country.

Such a national warehousing service with its standardized procedures, simplified handling and lower costs was warmly accepted by many large companies looking for ways to distribute their goods faster and cheaper to the country's major markets.

Although Overmyer initially used rented facilities in expanding to other cities, in the middle 1950's he began to buy choice sites and to have new buildings constructed which he owned. The real estate values inherent in these properties and the prospects of assured revenues from the national concerns using the warehouse facilities produced a ready supply of long-term credit for purposes of constructing the new warehouse facilities. Over approximately the last ten years the Overmyer Warehouse companies have generated first mortgage loans substantially in excess of \$100,000,000 for construction of over 16,000,000 square feet of warehouse facilities in 55 major consumer markets in the United States and Canada.

One of the better contractors used by Overmyer to construct the buildings during the initial part of the expansion program was a W. J. Nixon, who later organized Nixon Construction Company. When Overmyer began to implement his program for a national system, the Green & White Construction Co. was formed and became Overmyer's principal contractor. Nixon Company became a subsidiary of Green & White. (Overmyer has an option to buy Green & White's stock). Green & White has operated since in close association with the Overmyer companies. It set up a field organization and had the construction done principally by local subcontractors. Large-scale building began in 1963, and between January 1965 and August 1966, Overmyer increased its warehouse space from approximately 2,000,000 to 8,000,000 square feet with an additional 3,000,000 square feet under construction.

In the Summer of 1966, however, complaints began to reach the Overmyer Warehouse Company that Green & White was unduly slow in paying its subcontractors on Overmyer jobs. The initial inquiry indicated that the general restriction of credit usually available to subcontractors accounted for pressure on Green & White for accelerated payment. But further investigation showed that Green & White, probably due in large part to the great inflation in construction costs in 1966 and to the extensive scope of its undertakings, lost money on many of its projects, had a large deficit and owed millions of dollars to subcontractors. Overmyer's warehousing operations were soon seriously hampered, because completion of buildings was delayed and commitments to serve customers could not be met, and because the liens placed on its buildings by subcontractors prevented expected loans from being consummated.

The Overmyer Warehouse Company had no alternative under the circumstances to assuming and endeavoring to pay the liabilities of Green & White. This presented Overmyer with a critical two-pronged problem: (1) payment of the debts required cash of many millions of dollars which the Warehouse Company did not have; and (2) the construction and—it had become increasingly evident—anticipated large early operating deficits of Overmyer's six UHF stations already faced Overmyer with demands upon most of the cash the warehousing operations could be expected to generate over the next few years.

Study of these financial problems made it clear that there was but one solution. It did not appear that Overmyer, with the first mortgages on its principal assets, had the resources to produce the cash needed to meet both Green & White debts and the requirements of the UHF stations. Trying to preserve the UHF enterprises alone was futile because they depended on the cash which the warehousing operations and assets alone could produce. Unless the warehousing operation could be preserved, everything would be lost. Hence, Overmyer was forced to adopt the alternative of paying the Green & White debts in order to keep the warehousing operations viable and of trying to get relieved of the substantial present and prospective cash drain caused by the UHF stations.

Accordingly, during the latter part of 1966 and early 1967, Overmyer explored the double approach of (1) extending payment of Green & White debts and putting payment of them on an orderly schedule over a period of two-three years, and of trying to realize some present cash from the warehousing properties by means of sale-leasebacks, and (2) trying to find a partner, preferably a minority stockholder, in the UHF stations which would provide the financing necessary to carry them. Considerable progress has been made in making arrangements for the orderly liquidation of the Green & White debts and in generating cash through sale-leasebacks. The attempt to find a minority stockholder for the UHF operations was unsuccessful; accordingly, the present arrangement was worked out with A.V.C. Corporation, the proposed transferee, under which Overmyer would be able to (1) get back part of his overall investment in UHF, (2) retain a significant interest (20%) in the UHF operations, the future financing of which will be largely the obligation of the proposed transferee, and (3) realize through loans from A.V.C. cash needed to meet the early maturing Green & White obligations.

It was originally thought that it would be necessary for Overmyer also to sell his Toledo UHF station, which is still operating at a deficit. But with the success of the other measures described above, it is the present intention to keep WDHO-TV and to bring it to a profitable status.

Mr. Overmyer entered UHF broadcasting with the full expectation of not only placing all the stations on the air, but of financing the early deficits through loans and by warehousing profits. Not only has WDHO-TV been on the air over a year, but as shown in Exhibit II hereto, plans were proceeding according to schedule to put all or most of the other five stations on the air during 1966 when the rug was pulled out during the latter part of 1966 by the unexpectedly large deficit of the company constructing the warehouses. If the efforts to realize cash through sale-leasebacks of the warehouses continue successfully, and if the present transaction with A.V.C. is consummated, it is expected that the Green & White debts can be paid off over the next two-three years and that the warehouse operations can be preserved.

An indication of the validity of the valuation placed upon properties by MAI and of the value of the second mortgages given to AVC as security for the loan is the fact that the total sales price of those AVC properties sold exceed the appraised valuation.

This not only establishes that the security pledged is legitimate and accurate, but that the appraised valuation which appeared in the balance sheets submitted to the Commission and published was reasonable and conservative.

In connection with the value of the security pledged, the value increases as time elapses through the replacement of the first mortgage which precedes the second mortgage given.

ITEM 35

FCC STAFF MEMORANDUMS DATED NOVEMBER 8 AND 15, 1967, RECOMMENDING APPROVAL OF AVC TRANSFER

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., October 27, 1967.

INTEROFFICE MEMORANDUM 6738

Item No. 2, A.L. & T.C. agenda, Commission action, November 8, 1967
For: A.L. & T.C. Agenda
To: The Commission
From: Chief, Broadcast Bureau
Subject:

(1) Voluntary transfer of control of permittees of Stations KEMO-TV, San Francisco, California (BTC-5376), WECO-TV, Pittsburgh, Pennsylvania (BTC-5377), WSCO-TV, Newport, Kentucky (BTC-5378), WBMO-TV, Atlanta, Georgia (BTC-5379), KJDO-TV, Rosenberg, Texas (BTC-5380), from D. H. Overmyer to U.S. Communications Corporation;

(2) Voluntary assignment of license of Station WPHL-TV, Philadelphia, Pennsylvania, from Philadelphia Television Broadcasting Company to U.S. Communications Corporation (BALCT-327);

(3) Voluntary assignment of license of Station WPHL-TV, Philadelphia, Pennsylvania, from U.S. Communications Corporation to its wholly-owned subsidiary, PTBC, Inc. (BALCT-328).

Recommendation: Waive the Top Fifty Interim Policy and grant the applications.

SUMMARY

D. H. Overmyer proposes to transfer 80% of his stock ownership in the permittees listed above. The transferee is U.S. Communications Corporation, a subsidiary of A.V.C. Corporation. (A.V.C., formerly American Viscose, is now a diversified investment company.) Under contingent assignment applications (BALCT-327 and 328), U.S. Communications Corporation then proposes to acquire a sixth UHF outlet (WPHL-TV, Philadelphia), and to merge with the WPHL-TV licensee. Following this merger, the WPHL-TV license will be assigned to a wholly-owned subsidiary of U.S. Communications Corporation.

The transfer is dictated by reverses in Overmyer's warehouse operations, which makes it impossible to construct the stations through warehouse profits. Consideration for the 80% stock interest (which represents 80% of Overmyer's out-of-pocket expenses) is \$1,000,000. Additionally, A.V.C. has lent Overmyer funds on his warehouse properties, will make a further loan on closing, and obtains an option to purchase Overmyer's remaining 20% interest. 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.

The applications are further subject to the Top Fifty Interim Policy. In the Bureau's view, a waiver of the Top Fifty policy has been justified by the applicants. The WPHL-TV application presents no substantial problems. The reasons for the merger are to enhance financial strength through economies possible under multiple ownership. The applicants are financially and legally qualified, and neither proposed programming nor commercial practices present any problems.

A grant of the applications is recommended.

1. Since the applications here hinge on Commission approval of the Overmyer transfers, the Overmyer package will be considered first. Under this proposal, Overmyer would sell 80% of his stock interest in five permittees (all in the top twenty-five markets) to U.S. Communications Corporation. The moving force behind the various financial arrangements here is A.V.C. Corporation (AVC), which presently owns 100% of U.S. Communications Corporation's stock. AVC's sole ownership of the U.S. Communications Corporation's stock would later be reduced to 70% on merger of U.S. Communications Corporation and the WPHL-TV licensee.

2. AVC is a diversified investment company whose stock is traded on the American Stock Exchange. Both AVC and USCC are legally qualified, and neither company has any other significant broadcast interests.¹ The financial ability of USCC to construct the five stations and to put the sixth operating station (WPHL-TV) on a profitable basis is considered below, in connection with the "WPHL Package". AVC management and USCC have no broadcast background. But as stated in the Overmyer applications, the "... applicant is interested in entering the field of broadcasting." And as further noted in BALCT-327, the applicant intends to "... utilize the expertise possessed by the principals of WPHL-TV [who will be hired as consultants] in effectuating programs which will serve the public interest not only of Philadelphia, but of the other stations in which the applicant is acquiring an interest." The applicant has conducted a survey to appraise program needs of the communities it proposes to serve. The survey consisted of interviews with civic, religious, business, educational, 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.

3. The background of Overmyer's entry into UHF broadcasting is familiar to the Commission. Overmyer's interest in broadcasting began with passage of the all-channel receiver legislation. In 1963, he applied for his first UHF station, in Toledo. His application was granted in 1965, and the station (WDHO-TV) went on the air in 1966. Following this initial venture, Overmyer applied for six additional UHF stations, some of which involved proposals for purchase of silent UHF stations. These six stations were to serve the Atlanta, Pittsburgh, San Francisco, Newport-Cincinnati, Rosenberg-Houston, and Fort Worth-Dallas markets.² Overmyer has permits for all stations except the Dallas facility, and all permits have been modified with a view to carrying a signal of maximum quality and intensity which Overmyer considers indispensable to the success of UHF.

4. Overmyer's decision to sell an 80% interest in the five permits stems from financial reverses suffered in his principal business, warehousing. Over the years, this warehousing business has been expanded on a nationwide scale. And in 1965—simultaneously with his entry into broadcasting—Overmyer began a warehouse expansion program which boosted capacity from 2,000,000 to 8,000,000 square feet, with an additional 8,000,000 square feet under construction. Overmyer's expectation was that warehousing profits could be used to support broadcast operations until the UHF stations could become self-sufficient. But the 1966 credit crunch blasted these expectations. Because of tight money and inflated construction costs, Overmyer's principal contractor, Green & White Construction Company, fell behind in payments to subcontractors on the warehouse projects. Subcontractor's liens on the warehouse projects made it impossible to obtain loans needed to complete the warehouses. This, in turn, thwarted Overmyer's plans to use warehouse profits to finance the stations.

5. In Overmyer's view, without the warehouses everything would be lost. Accordingly, the solution to his financial problems lay in liquidating the Green & White debts so as to put the warehouses on a profitable basis, and in trying to

¹ Surveys conducted by AVC to determine the extent of foreign ownership of its stock indicate that no significant problems exist under Section 310(a) of the Communications Act. Presently, AVC's only other broadcast interest is an indirect one, stemming from its ownership of 6,000 shares (less than 1/100 of one percent) of Westinghouse Electric Corporation, the parent of Westinghouse Broadcasting. AVC states that as an investment company, it may from time to time acquire stock in broadcast-connected companies. The merger of WPHL-TV's licensee and USCC will bring in certain minor broadcast interests, none of which are controlling, and none of which involve problems of overlap.

² The Fort Worth-Dallas application (BPCT-3643) has been dismissed at Overmyer's request.

find a partner (preferably one willing to take a minority stock position) who could finance construction of the UHF stations. Progress has been made in working out an orderly schedule for liquidation of the Green & White debts. But Overmyer claims he was unable to find anyone willing to finance the UHF operations on the basis of a minority stockholder position. It was for this reason that Overmyer turned to AVC. Under the arrangements with AVC, Overmyer believes he can (1) recoup part of his overall UHF investment—said to be in excess of \$1,800,000; (2) retain a significant (20%) minority interest in the stations, whose "... future financing will be largely the obligation of [USCC]"; and (3) realize through AVC loans the funds needed to meet early-maturing Green & White obligations.

6. The financial arrangements involve several related documents: a Stock Purchase Agreement whereby AVC acquires an 80% interest in the TV companies³; a Stock Pledge and Escrow Agreement among Overmyer, AVC, and Girard Trust whereby Overmyer has pledged 100% of his interest in the TV companies to secure a refund of AVC loans and (if Commission approval is not obtained) to secure a refund of AVC's \$1,000,000 down payment; a loan Agreement and Supplemental Loan Agreement for AVC loans to be used in Overmyer's warehouse operations, which agreements also give AVC an option to purchase Overmyer's remaining 20% interest in the TV companies; and an Agreement among AVC, Philadelphia Television Broadcasting Company (PTBC), and its stockholders governing the contingent USCC-PTBC merger and acquisition of WPHL-TV.

7. The Stock Purchase Agreement calls for a down payment of \$1,000,000 (subject to downward revision if the Commission disallows certain expenses) for Overmyer's 80% stock interest in the five permittees. This \$1,000,000 down payment was paid to Overmyer on March 28, 1967, at the time the Stock Purchase Agreement was signed.

8. The Loan Agreements call for First and Second Loans, in the amount of \$1,500,000 each to D. H. Overmyer Co., Inc., and its warehouse subsidiaries. Under Article VIII(2) (a) of the Stock Purchase Agreement, the making of these loans is an express condition precedent to Overmyer's obligations to close the agreement. The loans are to be secured by mortgages on warehouse properties and are to be evidenced by notes. The notes do not call for periodic payments of principal, but bear interest at the highest prevailing prime rate in Philadelphia, plus an additional 1/4 of 1% charge.⁴

A First Loan of \$1,500,000 was made by AVC to D. H. Overmyer Co. on May 3, 1967. A second Loan of \$1,500,000 is to be made by AVC on closing of the Stock Purchase Agreement. Under Article V, in the event certain contingencies occur (e.g., non-approval of the transfers, termination of the agreement), the principal of the First Loan is payable ninety days after occurrence of the contingency. Otherwise, Overmyer's obligation to repay the \$3,000,000 principal amount of the First and Second loans is deferred until AVC decides if it wishes to acquire Overmyer's remaining 20% stock interest. Under Article VII of the Loan Agreement, AVC obtains an option to acquire this minority interest, which option is exercisable for a one-year period⁵ beginning three years after closing under the Stock Purchase Agreement. The purchase price for this stock depends on a rather complex formula,⁶ but there is a price ceiling because Article VII(C) (3) provides the purchase price "... shall not in any event exceed \$3,000,000." In the event AVC decides not to pick up Overmyer's minority stock interest, then the principal (\$3,000,000) of the First and Second loans becomes due and payable ninety days after the option expires. If AVC decides to buy Overmyer out, the principal on the loans becomes payable at closing under the option agreement

³ This agreement was assigned to USCC, the transferee, on June 6, 1967.

⁴ The precise interest charge is based on interest at the highest prevailing prime rate charged by Philadelphia-headquartered banks on loans exceeding a million and repayable after three years, plus an additional charge of 1/4 of 1% per year. The "prevailing" prime rate is determined at the time the First and Second Loans are made.

⁵ In effect, this one-year period can be cut down by Overmyer, who has under Article VII(A) a reciprocal "option" to notify AVC to exercise its option to purchase his minority interest. If, after notice from Overmyer, AVC fails to buy him out, AVC's option expires within thirty days.

⁶ Valuation is set at 20% (the extent of Overmyer's minority interest) of five times the gross receipts of the TV companies for the 12 months immediately preceding exercise of the option, with further adjustments for cash on hand and liabilities at the time the option is exercised. A different percentage figure and base for calculating gross revenues applies if a particular station has not been on the air at least 12 hours per week for 18 months preceding exercise of the option.

(Article V). At such closing, AVC can elect to set off the purchase price for Overmyer's 20% stock interest against any principal and interest still due under the First and Second Loans (article XIII).

9. The first question is whether Overmyer has clearly established that certain out-of-pocket expenses were incurred. Overmyer's investment in the five permittees falls into two categories: (1) money spent directly by or for the five permittees, e.g., down payments on equipment, property donations, etc., and (2) the cost of services rendered to the permittees by other Overmyer companies, including Overmyer Leasing and Overmyer Warehouses.⁷ In a personal affidavit filed with the applications (Exhibit III, Schedule F, D. H. Overmyer attachment, BTC-5379), Overmyer estimates that his investment in the five permittees is in the neighborhood of \$1,500,000. However, the total investment actually claimed in Schedule F sets Overmyer's investment at \$1,331,900.

10. Slightly less than half (\$665,386) of this total investment falls into the first category of sums spent directly by or for the five permittees. This sum includes \$53,500 for the paid-in capital of the permittees; \$358,840 for assets (e.g., a Cincinnati transmitter site and down payments on equipment made by Overmyer Leasing Co.) to be donated by Overmyer Leasing to the permittees without recompense; and \$253,046 for cancellation of inter-company indebtedness. (On this latter point, Thomas Byrnes, former Treasurer and Controller of all the Overmyer companies and now executive Vice President, explains that it is Overmyer's custom to have new companies borrow necessary funds from other Overmyer companies, until such time as the borrowing company becomes self-sustaining.) Expenses in this first category of investments are documented by attachments to Mr. Byrnes' affidavit.

11. Expenses in the second category (which total \$666,514) are for unreimbursed staff services furnished the permittees by other Overmyer companies. These include legal, accounting, payroll, personnel, messenger, public relations services, etc. Prior to September 1, 1966, staff services were provided mainly by the Overmyer Warehouse Company (Ohio). But after that date, staff functions were taken from the three operating groups—Warehouses, Leasing, and Communications—and placed under a central company, The Overmyer Company, Inc.

12. The \$665,514 for unreimbursed services covers the period from July 1964 through March 1967. The method for determining this total is explained at considerable length in Mr. Byrnes' affidavit. Before September 1, 1966, the cost of staff services rendered to the permittees were not "separated out"; rather, they were buried in the total expenses of the various staff bureaus. However, centralization of staff services in the headquarter's company has provided accurate cost data which serves as a base index for pinpointing the cost of services to the permittees.

13. The steps in allocating staff costs to the permittees are as follows: (a) First, it was concluded that salaries provided the best index for determining what percentage of total expenses of a particular department was fairly chargeable to Communications. (b) Next, staff department heads were asked to review their work to determine how much time had been devoted to communications for the periods July, 1964 to March, 1967, and for the base period, September 1, 1966 to December 31, 1966. (c) The percentage of salaries thus determined was then applied against the total expenses of each department for the base period. (d) These amounts were then added to determine the total cost of staff services for the base period allocable to Communications. The total for the base period (\$121,325) represents 11.1% of total expenses for that same period. This total was then adjusted by adding \$71,038 to reflect the Communications group's share of non-departmental expenses. (e) Next, following review by Byrnes and department heads of work performed during periods other than the base period, it was concluded that the allocation of costs for such work should be properly be made on the basis of the extent to which particular departments had engaged in Communications matters during the periods concerned. Under this formula, the level of activity for all of 1966 (which includes the base period) was determined to be at the same level as the base period. For 1965, it was determined the level of activity was 75% of the 1966 level, and for the last half of 1964, 10% of the 1966

⁷ The affidavits covering Overmyer's reason for the transfer and his financial investment in the five stations are filed in BTC-5379, but apply equally to the other four transfer applications. In computing his investment here, Overmyer has excluded costs attributable to acquiring, constructing and operating his Toledo station, and costs attributable to prosecuting the Dallas application. The \$1,000,000 downpayment made to Overmyer when the contract was signed represents slightly less than 80% of Overmyer's claimed investment in the five permittees.

level. The level for the first three months of 1967 was set at 75% of the 1966 level, or (on a whole year basis), 18¾% of the 1966 level. The resulting amount chargeable for Communications activities for the entire 9 period (July, 1964 to March 30, 1967) was determined to be \$790,320. (f) It was then determined that a 20% deduction, representing costs attributable to the Toledo station, prosecution of the Dallas application, and network activities, should be made. Subtracting this 20% deduction (\$158,046) from total unreimbursed costs (\$790,230) leaves a balance of \$632,184. (g) To this balance has been added \$34,330, representing the costs of Overmyer Leasing over the period from June, 1965 through March, 1967 attributable to the five permittees.⁸ Adding the net of (f) and (g) gives \$666,514, the figure at which Overmyer sets his unreimbursed investment in the five permittees.

14. In Overmyer's opinion, this figure represents a conservative estimate of his unreimbursed investment in the permittees. Several points are made in justification of this figure. Overmyer first notes that although certain departments (Data Processing, Corporate Relations, etc.) contributed significantly to the permittees, staff costs for their services have not been charged. Nor has Communications been charged for services rendered by various branch and regional personnel of the Warehouse subsidiaries. Moreover, Overmyer notes that certain physical assets to be transferred (e.g., equipment and film inventory) have increased in value, but this increase is not reflected in the price charged the permittees. And finally, Overmyer feels it would be proper to take into account money invested and lost in his unsuccessful network venture, although no charge for such losses has been made.

15. 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. The Bureau believes that in the particular circumstances here, reimbursement for expenses in this category should be allowed. Considering the enthusiasm of Overmyer's commitment to entering UHF, there is no question that substantial expenses were incurred in attempting to get the station on the air. The extent of Overmyer's efforts here (which include putting the San Francisco and Newport stations in a position where they are almost ready to go on the air) is made clear by supporting exhibits. And the supporting affidavits of the various department heads (General Counsel, etc.) who rendered staff services to the permittees reveal, on close readings, that every effort has been made to be completely fair and objective in appraising the value of departmental contributions to the permittees. In view of this, the fact that expenses were incurred (a) under a former organizational setup which did not maintain complete cost records, and (b) were incurred at a time when transfer of the permits was the last thing in Overmyer's mind, should not bar recovery here.

16. A further aspect of the "Overmyer Package" which deserves mention is the loan agreement, discussed in detail in Paragraph 8, *supra*. As noted there, AVC has lent Overmyer money on the Warehouse properties, and is obligated to make a further loan on the Warehouses on closing of the Stock Purchase Agreement. Given the financial predicament of the Warehouse group, the loans are vital to Overmyer because they are needed to put liquidation of early maturing Green & White Construction debts (assumed by Overmyer) on an orderly basis. And as Overmyer notes, without the Warehouse properties, nothing would be left.

17. 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 Warehouse properties; they bear interest at the prevailing market (Philadelphia) rate plus a quarter of a percentage point premium; interest is payable currently⁹; and principal is repayable in three years. These considerations justify the conclusion that the loans are *bona fide* transactions involving the Warehouse

⁸ It appears from the department heads' affidavits that amounts considered in steps (a) through (f) involved the Warehouse subsidiaries, and not Overmyer Leasing. It is apparently for this reason that reimbursement of the Leasing group is handled on a separate basis.

⁹ Assuming that the Second Loan is made and that the prevailing rate plus premiums is 6%, this means Overmyer would be paying in the neighborhood of \$180,000 in interest per annum for the loans. Over a three-year period, interest charges would be over a half million, at this 6% rate.

properties, and are designed to permit Overmyer to save the Warehouse group. Beyond these strictly legal considerations, there are—in the particular factual setting here—certain equities which weigh in Overmyer's favor. We have in mind here his dedication to UHF and losses suffered in efforts to establish a fourth network. The genuineness of this dedication to UHF is unquestioned, and there is nothing to suggest the permits were acquired as mere paper speculations, with no intention of building. Moreover, the intervening circumstances which have made it impossible for Overmyer to go forward with construction—the 1966 credit crunch and Green & White's non-payment of Warehouse subcontractors—involve forces largely unforeseeable and beyond Overmyer's control.

18. A final aspect of the "Overmyer Package" (which applies equally to the WPHL Package) involves applicability of the Commission's Top Fifty Interim Policy, 5 RR2d 271. All of the permits being transferred here are for stations in the Top Fifty Television markets, as is also the sixth station to be acquired by USCC (WPHL-TV, Philadelphia). The call letters and market ranking (based on 1967 ARB figures set forth in Television Factbook) are as follows:

Call letters	Location	Ranking
WPHL-TV.....	Philadelphia, Pa.....	4
KEMO-TV.....	San Francisco, Calif.....	7
WECO-TV.....	Pittsburgh, Pa.....	9
WSCO-TV.....	Newport, Ky (Cincinnati market).....	16
WBMO-TV.....	Atlanta, Ga.....	19
KJDO-TV.....	Rosenberg, Tex. (Houston market).....	25

As part of the "compelling affirmative showing" required by the Top Fifty Interim Policy, the applicants point out that each of the UHF stations is in a market where there is substantial competition. And each market is served by three VHF network-affiliated stations. Existing and proposed competition to the stations involved is as follows:

Philadelphia.—Three UHF, three VHF, application for one UHF.

San Francisco.—Four VHF, one UHF, one VHF educational, CP for additional UHF.

Pittsburgh.—Three VHF, two educational (one VHF, one UHF), CP for additional UHF.

Newport.—Three VHF, one educational UHF, CP for additional commercial UHF.

Atlanta.—Three VHF, one educational UHF, CP for additional commercial UHF.

Rosenberg.—Three VHF, one UHF, one educational UHF, CP for additional commercial UHF.

Ownership of the competing stations in virtually every case is in the hands of an important multiple owner such as Cox Broadcasting, Westinghouse, ABC, NBC, CBS, Kaiser, United Artists, Storer, Hearst, AVCO, Scripps-Howard, Taft, Capital Cities, the *Houston Post*, *San Francisco Chronicle*, Triangle and (potentially) Metromedia.

19. Essentially, the position of the applicants is that given the array of competition which the permittees here will face once they go on the air (and which WPHL-TV now faces), transfer of the permits to individual buyers is impractical, and the resources of a financially strong owner are needed to meet competition. Further in support of their position, the applicants point out that UHF penetration of these VHF-dominated markets is at levels ranging from 34% for Atlanta to 62% for Philadelphia) which compel the need for strong financial resources if first-class stations with competitively attractive programming are to be put on the air.

20. The Commission is familiar with the policy considerations behind the Top Fifty Interim Policy. In the Bureau's view, the "compelling affirmative showing" made here rises to the level of other showings which have been considered adequate to justify a grant without hearing. In view of this and other matters discussed earlier, the Bureau recommends the Top Fifty Interim Policy be waived.

THE "WPHL-TV PACKAGE"

21. Under BALCT-327, Philadelphia Television Broadcasting Co., the licensee of UHF Station WPHL-TV, proposes to assign the license for WPHL-TV to U.S. Communications Corporation, and to merge with USCC, with USCC to be the

surviving corporation. Under BALCT-328, USCC then proposes to assign the WPHL-TV license to its wholly-owned subsidiary, PTBC, Inc., a new corporation. The net effect of these proposals will be to give USCC controlling interests in six UHF stations. The purpose behind these two sets of applications—which are contingent on approval of the "Overmyer Package"—is "to obtain benefits of large resources of assignor for UHF development as well as benefits of economies possible through common ownership of 5 other UHF stations." (BALCT-327, *Applic.*, p. 1)

22. A discussion of financial plans has been deferred to this point to permit consideration of financing on an overall basis. The financial arrangements here go to USCC's ability to (1) construct under the Overmyer permits, and (2) acquire WPHL-TV, effectuate the proposed merger, and put this Philadelphia station on a profitable basis. Financing construction under the Overmyer permits will be considered first. USCC's intentions here are to get the San Francisco and Newport (Cincinnati) stations on the air first, since construction has advanced farthest on these stations. USCC states that "... assuming prompt Commission action of these applications, it may be possible to light up these facilities before the end of the year." (Exhibit J, p. 2, BTC-5376). And while USCC is unable to give any timetable for construction of the remaining three stations, it represents construction will be carried forward as expeditiously as possible. (Exhibit J, p. 3). Funds for construction and initial operation of the stations will be provided through AVC, which has obtained a \$6,500,000 bank loan on behalf of USCC. No principal payments are due on the loan for three years, and apparently current interest payable on the loan will be met by AVC. AVC has also negotiated equipment contracts with Ampex, RCA, and GE, which call for a 10% down payment with no further payments in the first year. USCC estimates it would take approximately \$2,363,819 to complete the San Francisco and Newport stations and operate them for one year without revenues. These expenses would leave USCC with \$4,136,181 in cash for construction and initial operation of the other stations. Further, to demonstrate its financial ability to meet its commitments under the permits, USCC has prepared a first year "Cash Flow" chart, which is based on assumptions of simultaneous construction under all five permits, a 10% down payments on equipment, no incoming revenues, total first-year operating costs of \$5,016,000, and total miscellaneous costs of \$747,000. After deducting total costs from the \$6,500,000 available in loans and \$300,000 in equipment which Overmyer is obligated to provide, USCC would still have left at the first-year's end a cash surplus of \$592,000.

23. The proposal to acquire WPHL-TV and merge with the "over-all" licensee entails no significant cash demands. This is because the WPHL-TV stockholders will exchange their present securities for stock in USCC. On completion of the merger, AVC will hold approximately 70% of USCC's stock, with the remainder of the stock being held by WPHL-TV stockholders and other minority interest holders. The only real need for cash in connection with this acquisition is to eliminate WPHL-TV's cash deficit of \$419,000. To remove this deficit, USCC notes it will have a surplus of \$592,000 after constructing under the Overmyer permits, to which will be added an additional loan of \$500,000, negotiated on USCC's behalf by AVC. These assets would leave the merged corporation with a cash surplus of \$573,000 after construction of the stations and after eliminating WPHL-TV's deficit.

24. A further point involves AVC's commitments here. Essentially, AVC is the moving force behind these applications and has guaranteed the total of \$7,000,000 in loans called for here. AVC's balance sheet suggests its ability to carry out its commitments. Because of the nature of its principal business—diversified investments—AVC's cash position is fairly low (less than half a million). But it has substantial net assets (approximately \$21,000,000) in the form of commercial paper and corporate securities. Unquestionably, AVC's substantial net worth lies behind its ability to negotiate the \$7,000,000 in loans. In view of AVC's financial plans and supporting financial statement, USCC is financially qualified to acquire the permits and to acquire WPHL-TV.¹⁰

25. The WPHL-TV acquisition presents no substantial problems. Certain WPHL-TV stockholders already have other minor broadcast interests, and after the merger, will continue to have the same interests. But these interests are not disqualifying and since they involve AM and FM stations, do not raise questions

¹⁰ The proposal to assign the WPHL-TV license to a wholly owned subsidiary of USCC (BALCT-328) raises no financial questions, since this assignment is pro forma.

of overlap. USCC will reply, in the Philadelphia area, on the services of three WPHL-TV officials, who have been retained by AVC under 3-year employment contracts. These officials, presently with the station, are familiar with community programming needs. Proposed commercial practices present no problems.

26. In view of the foregoing considerations, it is recommended that the above-captioned applications be granted.

GEORGE S. SMITH,
Chief, Broadcast Bureau.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., November 13, 1967.

INTEROFFICE MEMORANDA 8082

To be associated with item 2, A.L. & T.C. agenda

Commission action, November 15, 1967

For A.L. & T.C. agenda

To: The Commission

From: Chief, Broadcast Bureau

Subject: Supplemental information on A.V.C. Corporation, parent of U.S. Communications Corp., transferee in Overmyer applications.

1. The following information regarding A.V.C. Corporation (AVC) is being furnished in response to Commission instructions.

2. AVC is the former American Viscose Corporation. It is no longer engaged in manufacturing. Rather, it is a diversified investment company, listed in the current issue of Standard & Poors Stock Guide as having 1,044,000 common shares, which are traded on the American Stock Exchange. Attached hereto as an exhibit is AVC's Schedule of Investments submitted with the transfer application.

3. The application discloses that only 3 persons own more than 3% of AVC's outstanding stock. These are Mrs. Antonie Lilienfeld (22,700 shares, or 8.69%); Committee of Property of Marguerite H. Wallach, Incompetent (22,643 shares, or 8.67%); and Frank H. Reichel, Jr. (9,506 shares of 3.64%). Mrs. Lilienfeld is a 91 year old woman who takes no active part in AVC's affairs. The committee for Marguerite Wallach acts as a guardian. Neither Mrs. Lilienfeld nor the Committee has any representation on the Board of Directors.

4. It is apparent that *de facto* control of AVC is exercised by Dr. Reichel, who is President and Treasurer of AVC. The holdings of the Reichel family constitute approximately 8% of AVC's stock. Their holdings, together with management's holdings, give Reichel, his family and associates control of AVC.

5. The officers and directors of AVC, and their principal other business interests, are as follows:

George S. Hills, Chairman of the Board and Director. Owns 0.07% of AVC's stock. Lawyer and partner in the firm of Rogers, Hoge and Hills, New York City. Is a director of 5 other corporations.

Frank H. Reichel, Jr., President and Treasurer and Director. Owns 3.64% of AVC's stock. Has other interests in a research management company and a Jamaica land company.

Albert H. Hammon, Secretary and Director. No stock ownership. Has an interest in and is retired Assistant Secretary of FMC Corporation, a conglomerate headquartered in California.

Walter T. Falkner, Assistant Secretary and Director. No stock ownership. Lawyer and partner in Rogers, Hoge and Hills. Officer and secretary of two other corporations.

C. Kenneth Baxter, Director. 0.03% stock ownership in AVC. Principal occupation is President of Virginia Industries, Inc. President and Director of the Donner Corp., Philadelphia investment advisers. A director of eight other corporations.

Gerald S. Tompkins, Director. 0.5% stock ownership in AVC. Principal occupation is retired President, American Viscose Corp.

Willis J. Winn, Director. No stock ownership. Dean of the Wharton School of Finance and Commerce, University of Pennsylvania.

Harry L. Dalton, Director. 0.38% stock ownership in AVC. Emeritus of Wachovia Bank & Trust Co., Charlotte, N.C. Board member of 14 other corporations (finance, investment, manufacturing, etc.).

Howard Butcher II, Director. No stock ownership in AVC. Partner in the Philadelphia investment firm of Butcher & Sherrerd. Director and Chairman of General Waterworks Corp. and International Utilities Corp., both of Philadelphia. Director of twenty-three other corporations, including Jerrold Corporation and Continental Telephone Corporation. Butcher and Sherrerd presently holds securities in the licensee of WPHL-TV, Philadelphia. On approval of the merger between U.S. Communications and the licensee of WPHL-TV (BALCT-327), Butcher and Sherrerd will receive for their present holdings in the WPHL-TV licensee common stock of U.S.C.C. Following the merger, Butcher and Sherrerd will hold 7,937 (1.5%) of USCC's outstanding common.

6. As indicated in the memorandum regarding the transfer applications, neither AVC nor its officers or directors has any broadcast interests, except to the extent Butcher's directorship in Jerrold can be considered a broadcast interest, and except for AVC's portfolio holdings of 6,000 shares of Westinghouse Electric (less than 1 one-hundredth of Westinghouse's stock), the parent of Westinghouse Broadcasting.

AVC states that it "may from time to time acquire stock of broadcast-connected corporations" as investments. The stockholders of the licensee of WPHL-TV, on approval of the merger, will hold approximately 30% of USCC's outstanding common.

7. As further indicated in the covering memorandum, neither AVC nor its officers has any broadcast experience. USCC will hire three officers of the WPHL-TV licensee as consultants under three-year contracts.

GEORGE S. SMITH,
Chief, Broadcast Bureau.

Attachment.

A.V.C. CORP.—SCHEDULE OF INVESTMENTS, MAR. 31, 1967

Company	Face amount or number of shares	Market value
Convertible securities:		
Aluminum Co. of America 5¼ percent, 1991	\$240,000	\$290,400
Ampex Corp. 5¼ percent, 1991	200,000	259,500
Cenco Instruments Corp. 5¼ percent, 1986	57,000	79,800
Cluett, Peabody & Co., Inc. 4¼ percent, 1984	100,000	99,500
Foxboro Co. 5¼ percent, 1986	78,000	106,080
Larson Industries, Inc. 7 percent, 1957	500,000	1,500,000
Occidental Petroleum Corp. 5¼ percent, 1991	200,000	249,000
Preferred stocks:		
A. C. Forr Corp.	2,100	1210,000
U.S. Plywood—Champion Papers, Inc.	6,000	197,250
Common stocks:		
Utilities:		
Arizona Public Service Co.	7,500	203,438
Coastal States Gas Producing Co.	6,500	221,000
General Waterworks Corp.	10,300	406,850
Idaho Power Co.	10,100	335,825
New York State Electric & Gas Corp.	5,000	213,125
Oklahoma Gas & Electric Co.	8,000	228,000
Potomac Electric Power Co.	10,000	205,000
Southern California Edison Co.	10,000	398,750
Tucson Gas & Electric Co.	12,000	180,000
Wisconsin Public Service Corp.	11,000	209,000
Finance:		
American Credit Corp.	30,000	438,750
Imperial Corp. of America	12,000	99,000
Reliance Insurance Co.	10,000	376,250
United States Finance Co., Inc.	20,000	500,000
Wesco Financial Corp.	10,000	223,750
Transportation:		
Continental Air Lines, Inc.	3,000	283,500
New York Central Railroad Co.	7,000	509,250
Pan American World Airways, Inc.	6,000	399,750
Industrial:		
American Radiator & Standard Sanitary Corp.	5,000	108,750
Burndy Corp.	8,000	319,000
Cone Mills Corp.	20,000	470,000
Crown Cork & Seal Co., Inc.	8,000	436,000
Crown Zellerbach Corp.	3,000	145,500
A. C. Forr Corp. ²	35,000	135,000
General Cable Corp.	8,000	382,000
General Telephone & Electronics Corp.	4,000	205,500
Georgia-Pacific Corp.	2,525	142,662
I-T-E Circuit Breaker Co.	7,200	358,400
Mack Trucks, Inc.	12,000	576,000

See footnotes at end of table, p. 898.

Company	Face amount or number of shares	Market value
Magnetic Windings, Inc. ¹	\$1,400	\$209,346
Masonite Corp.	4,500	112,812
Monsanto Co.	16,090	730,084
Morse Shoe, Inc.	12,000	294,000
Pan American Sulphur Co.	10,000	208,750
Penn Engineering & Manufacturing Corp.	30,000	626,250
Pullman, Inc.	6,000	315,750
Quaker State Oil Refining Corp.	6,236	252,558
Singer Co.	6,000	348,000
St. Regis Paper Co.	12,240	361,080
Schlumberger, Ltd.	12,000	628,500
Sunray DX Oil Co.	20,000	630,000
Twentieth Century-Fox Film Corp.	5,100	233,962
Union Camp Corp.	6,000	246,750
U.S. Plywood—Champion Papers, Inc.	2,400	138,000
Westinghouse Electric Corp.	6,000	324,750
Total		16,260,172

¹ At fair value as determined by the board of directors.

² Investments representing 5 percent or more of the outstanding voting securities of such companies.

ITEM 36

FLY, SHUEBRUK, BLUME & GAGUINE,
Washington, D.C., November 21, 1967.

MR. BEN F. WAPLE,
Secretary, Federal Communications Commission,
Washington, D.C.

DEAR MR. WAPLE: Since certain questions appear to have been raised with respect to two facets of the agreement involving the proposed assignment of an 80 percent interest in five construction permits (File Nos. BTC-5376-5380) in corporations controlled by Daniel H. Overmyer (hereinafter "Overmyer") to the United States Communications Corporation (hereinafter "AVC"), the following clarifying statement is respectfully submitted. It is requested that it be associated with the pending applications:

A—loan—As the Commission was advised, AVC has agreed to lend \$3,000,000 to various corporations controlled by Overmyer.

(a) *Interest.* The interest rate on the loan is one-half of one percent in excess of the prime rate. It is therefore evident the rate not only is equitable, but is the result of arm's length negotiations between the parties.

(b) *Security.* The loan is amply secured in four ways.

(1) Various *non-broadcast* properties owned by Overmyer were appraised as to sale or market value by an independent appraisal furnished by a registered MAI appraiser. The "appraisal equity," *i.e.*, the difference remaining after subtracting the unamortized balance of the outstanding liens (including the first mortgage) from the appraised valuation, was established.

AVC was then given the choice of properties with the objective of selecting a total appraisal equity in excess of \$6,000,000, or two dollars of such a security for each dollar of debt. As a result, second mortgages were executed and placed on record in connection with 23 individual pieces of real estate having a fair market value in excess of \$20,000,000 and an appraisal equity in excess of \$6,000,000. Assuming no change in the fair market value, the appraised equity will increase as the first mortgage is amortized.

(2) Daniel H. Overmyer Company, Inc. (Ohio), the parent company, and each of the subsidiary companies guarantee the loan.

(3) Daniel H. Overmyer personally guarantees the loan.

(4) The stock held by Overmyer in the five communications companies is pledged and placed in escrow.

From the foregoing, it is clear that the loan is so secured by assets and guarantees outside of the communications interests of Overmyer as to make its collectability unquestionable and to establish the fact it is a bona fide loan.

B—Option—AVC has the option to purchase the 20 percent interest retained by Overmyer for a sum *not to exceed* \$3,000,000. The option is exercisable some

four years from the date of closing. It should be noted that the exercise of the option rests wholly within the control of AVC and not of Overmyer. Moreover, as will be shown below, the option can only be properly construed as being advantageous to AVC and disadvantageous to Overmyer.

For example, since AVC is not *required* to exercise the option, it need not do so unless its business judgment so demands and unless the exercise of the option is advantageous as to price. If the option is not exercised, Overmyer remains the owner of the 20 percent stock interest, and must repay the \$3,000,000 loan. The loan, as noted above, is amply secured by non-broadcast properties, as well as by the personal guarantee of Overmyer and there is therefore no question as to its collectability. Under the option, the price payable by AVC *may be substantially less* than \$3,000,000 but *in no event can exceed such sum*. In the event a price of less than \$3,000,000 is paid, Overmyer must repay the difference, and as noted above, ample security has been posted for such repayment. On the other hand, if the value of the stock is in excess of \$3,000,000 (*i.e.*, if the corporation should be valued at more than \$15,000,000), and since the option price ceiling of \$3,000,000, Overmyer is thus limited by the option and is required to sell the stock for a sum *lower* than its real value.

Accordingly, it is respectfully submitted that the option cannot be considered as an advantage to, or an enrichment of, Overmyer, but rather as an element which is essentially disadvantageous to Overmyer and obviously for the benefit of AVC alone.

This presentation is being submitted to the Commission in this manner in order that there be no possible misunderstanding as to these elements of the transaction. The applications fully support the facts here presented.

It is urged that the retention by Overmyer of a 20 percent interest in the stations is clear evidence of his continuing interest in the field of UHF television and in the development of those stations in which he has already invested such a large amount. This interest is further borne out by Overmyer's continuation of the operation of the UHF station in Toledo, Ohio, for which a construction permit has been obtained, construction completed, and which station has been in operation for a period in excess of one and one-half years.

Should the Commission have any further questions concerning these phases of the transaction, Overmyer will be pleased to submit whatever additional information may be requested.

For the reasons herein before advanced, it is respectfully requested that the applications be granted.

Very truly yours

BENITO GAGUINE.

ITEM 37

PROJECTED INCOME AND EXPENSES FOR CINCINNATI, ATLANTA, PITTSBURGH, HOUSTON, SAN FRANCISCO AND PHILADELPHIA STATIONS—PRICE WATERHOUSE STUDY FOR AVC CORPORATION DATED MARCH 22, 1967

A.V.C. CORP.,
Wilmington, Del., March 15, 1968.

MR. JAMES P. KELLY,
Chief Investigator, Special Subcommittee on Investigations,
Committee on Interstate & Foreign Commerce,
2323 Rayburn House Office Building, Washington, D.C.

DEAR MR. KELLY: As requested, we are enclosing with this letter one copy of a report entitled, "Financial Data and Projections—Proposed Philadelphia Communications Company," dated March 1967.

Very truly yours,

F. H. REICHEL, JR., *President.*

PRICE WATERHOUSE & CO.,
Philadelphia, Pa., March 22, 1967.

DR. FRANK H. REICHEL, JR.,
President, A.V.C. Corp.,
Wilmington, Del.

DEAR DR. REICHEL: As requested, we have reviewed certain limited financial information relating to D. H. Overmyer Communications Co., Inc., as at December 31, 1966, the annual report of Philadelphia Television Broadcast Company (Channel 17) for the year ended August 31, 1966 (as audited by Stein, Goldberg & Company), the projected statements of income and cash flow for the first five years of operations of the several proposed Overmyer television stations and the

seven-year projected statements of income for Channel 17. The work, which was performed in conjunction with a representative of Butcher & Sherrerd, included discussions with Overmyer officials (Mr. D. H. Overmyer and Mr. Arthur M. Dorfner, Executive Vice President of D. H. Overmyer Communications Co., Inc.) and officials of Philadelphia Television Broadcasting Company (Mr. Aaron Katz, President and Mr. Leonard Stevens, Executive Vice President). In our discussions with Messrs. Katz and Stevens we reviewed the financial information and projections received from the Overmyer group to determine the reasonableness thereof in light of their experience at Channel 17 in Philadelphia.

The attached financial statements and projections, which are based on information supplied to us by officials of the respective companies and on discussions with Messrs. Katz and Stevens, comprise the following:

- Summary of projected income (loss) and cash required (available), Exhibit I.
- Five-year projected statements of income and cash flow:
 - Philadelphia (WPHL-Channel 17), Exhibit II.
 - San Francisco (KBAY-Channel 20), Exhibit III.
 - Pittsburgh (WECO-Channel 53), Exhibit IV.
 - Atlanta (WMBO-Channel 36), Exhibit V.
 - Cincinnati (WSCO-Channel 19), Exhibit VI.
 - Houston (KJDO-Channel 58), Exhibit VII.

Balance Sheet of Philadelphia Television Broadcasting Company at August 31, 1966, Exhibit VIII.

Balance Sheets of Several Overmyer Companies at December 31, 1966, Exhibit IX.

As we discussed, Overmyer's Toledo station and New York head office operation have not been included in the attached financial data nor has the Dallas station been included in the income and cash flow projections, since the Construction Permit has not yet been granted. The underlying data used to prepare the attached statements and various assumptions made (as a result of discussions with officials of the respective companies) are outlined below.

Summary of projected income (loss) and cash required (available)

The summary was prepared from the projected amounts reflected in Exhibits II through VII. In summarizing the amounts it was assumed that all Overmyer stations except Houston would commence broadcasting on January 1, 1968 and that Houston would commence broadcasting on January 1, 1969.

Five-year projected statements of income and cash flow

Based on our discussions with officials of Channel 17 and the Overmyer group, review of the results of operations of Channel 17 for the year ended August 31, 1966, and review of the projections prepared for the several companies by their respective managements, we have prepared the attached projected five-year statements of income and cash flow. These projections were made in accordance with the various assumptions outlined by company officials with certain adjustments to reflect the results of our discussions with management of Channel 17, as outlined below.

1. Projected net operating revenues are based on the assumptions that the available market time sales for each station will continue to grow at the rate experienced during the five-year period 1961 through 1965, as reported in the 1965 Edition of the Television Fact Book, published by Television Digest, Inc., Washington, D.C., and that the independent broadcaster's share of each market will not exceed 30%. UHF penetration in Philadelphia and San Francisco has been estimated at 60% in 1967, 75% in 1968, 90% in 1969 and 95% thereafter, and in the other locations at 55% in 1967, 70% in 1968, 85% in 1969 and 95% thereafter. Discounts and commissions have been projected at 30% for national advertising and 15% for local advertising in accordance with Channel 17's experience. Projected percentages of net estimated market time sales used are as follows, by station:

	1967	1968	1969	1970	1971	1972
Philadelphia.....	2.8	3.8	4.6	5.4	5.9	6.3
San Francisco.....		2.2	3.1	4.2	4.7	5.0
Pittsburgh.....		3.9	5.6	6.6	7.9	8.9
Atlanta.....		2.0	7.2	8.8	9.2	10.0
Cincinnati.....		4.6	7.8	8.6	10.0	10.3
Houston.....			4.7	7.6	9.6	10.4

The higher percentages of the markets for Atlanta, Cincinnati and Houston are based on the fewer number of stations in those market areas.

2. Building and equipment leases, as projected by the Overmyer group, were used in the attached projections on the assumption that the estimated annual lease payments would probably exceed depreciation and interest expense, should the items be purchased. The amounts estimated by the Overmyer group apparently do not include visual color cameras which, if leased, would increase each station's estimated costs by about \$50,000 a year. No adjustment was made to the amounts projected by the Overmyer group on the assumption that the elimination of the leasing company's profit would offset the additional cost.

3. Technical costs for the Overmyer stations have been projected using Channel 17's experience.

4. Projected programming costs for the Overmyer group of stations are based on the assumptions that the programming to a group of stations will be available at better prices than experienced by Channel 17 to date and that "live" programming will be considerably less than at Channel 17, particularly in the first several years of broadcasting. Channel 17's projected costs are based on experience to date with an adjustment for lower prices in the future to reflect economies to the group. It is further assumed that any increases in programming costs will be offset by increased revenues.

5. Selling, generally and administrative expenses for all stations have been projected on the basis of Channel 17's experience and anticipated increases. A portion of the advertising expense originally projected by the Overmyer group has not been included in the attached projected amounts, as these amounts appeared high in relation to Channel 17.

6. Interest expense has been projected on the assumption that initial operating losses will be financed.

7. Organization expenses (as reflected on Exhibit IX) are being amortized over five years.

Areas where potential increased profits might be realized or cost savings effected in the amounts reflected in the attached projections are as follows:

1. Development of a national sales organization for the combined group instead of using a National Sales Representative who is paid a 15% commission.
2. Adoption of a policy of centralized programming for all stations and limited "live" programming for certain stations.
3. Coordination and direction of selling and promotion activities in central head office to effect economies.
4. Centralization of management and administrative activities in central head office to effect economies.

Balance sheet of Philadelphia Television Broadcasting Co. at August 31, 1966 and several Overmyer companies at December 31, 1966

As mentioned previously, the attached balance sheet of Channel 17 has been prepared from the report of Stein, Goldberg & Company. The balance sheets of the several Overmyer companies have been prepared from preliminary statements (unaudited) supplied to us by company officials.

For your information we have attached copies of Channel 17's projections for the period 1967 through 1973 and the Overmyer group's original projections, as Exhibits XI through XVI. We have summarized the projected income (loss) and cash flow from these projections on Exhibit X for comparison to Exhibit I. Inasmuch as the projected cash flow information was not supplied to us for Channel 17 or for the Atlantic and Houston stations, these amounts were estimated from the available information. The projected amounts have been placed in comparable years on Exhibit X for comparison to Exhibit I.

The projected cash flow presented on Exhibit I indicates that roundly \$800,000 will be required for the combined operation during 1967 to finance Channel 17 and provide working capital for the other stations, and that a maximum of approximately \$3.1 million will be required in 1969 if the stations commence broadcasting as indicated and the results of these operations approximate the projections. By 1972 the group will have generated a cumulative cash flow of \$3.7 million which could be applied against the purchase price of the stations. This cash flow anticipates, of course, repaying the several bank obligations of the Overmyer stations which were outstanding at December 31, 1966 and the bank obligations of Channel 17. It further anticipates that the initial losses of the respective companies will be financed and subsequently repaid. No pro-

vision has been made in the projections for arrangements to assume the Overmyer group's position with respect to the buildings and equipment. Based on existing information, it appears that additional deposits of about \$1.1 million are required.

As mentioned previously, the attached financial data and projections have been prepared from estimates and information supplied us by officials of the respective companies and are based to a great extent on information accumulated in discussions with officials of Channel 17. Inasmuch as we did not make an examination of the financial statements in accordance with generally accepted auditing standards, and since we have made no attempt to verify the accuracy of all of the data, we take no responsibility for the accuracy thereof, nor do we express an opinion on the fairness of the presentation of the attached financial statements and projections.

We shall be pleased to discuss these matters further with you or supply such additional information as you may desire.

Yours very truly,

PRICE WATERHOUSE & Co.

EXHIBIT I

PHILADELPHIA COMMUNICATIONS CO.
Summary of Projected Income (Loss) and Cash Required (Available)

[In thousands of dollars]

	1967	1968	1969	1970	1971	1972 ¹
Projected income (loss):						
Philadelphia (WPHL-17).....	(233)	394	725	760	1,015	1,400
San Francisco (KBAY-20).....	(380)	190	535	720	1,000	
Pittsburgh (WECO-53).....	(365)	(55)	225	360	475	
Atlanta (WBMO-36).....	(400)	(210)	40	70	255	
Cincinnati (WSCO-19).....	(400)	(5)	90	235	200	
Houston (KJDO-58).....			(445)	(70)	200	325
Total projected income (loss).....	(233)	(1,151)	200	1,580	2,600	3,655
Projected cash required (available), cumulative:						
Philadelphia (WPHL-17).....	419	222	(55)	(1,210)	(1,667)	(2,995)
San Francisco (KBAY-20).....	100	555	490	(45)	(630)	(1,420)
Pittsburgh (WECO-53).....	100	527	694	571	153	(635)
Atlanta (WBMO-36).....	100	528	791	829	837	660
Cincinnati (WSCO-19).....	100	550	605	585	425	200
Houston (KJDO-58).....		100	605	760	670	450
Total projected cash required (available).....	819	2,482	3,130	1,490	(212)	(3,740)

¹ Projected income and cash flow for Philadelphia are based on amounts presented on exhibit XI.

EXHIBIT II

PHILADELPHIA COMMUNICATIONS CO., PHILADELPHIA (WPHL—CHANNEL 17)

Projected Statement of Income and Cash Flow

[In thousands of dollars]

	2d year	3d year	4th year	5th year	6th year
Operating revenues:					
National.....	720	1,190	1,550	2,068	2,600
Local.....	970	1,390	1,750	2,120	2,520
Other.....	35	40	50	60	80
Subtotal.....	1,725	2,620	3,350	4,248	5,200
Less discounts and commissions.....	373	576	726	938	1,158
Net operating revenues.....	1,352	2,044	2,624	3,310	4,042
Operating expenses:					
Technical.....	200	200	225	225	250
Program.....	840	900	950	1,000	1,150
Selling.....	175	200	225	225	250
General and administrative.....	250	250	275	300	350
Subtotal.....	1,465	1,550	1,675	1,750	2,000
Net operating income (loss).....	(113)	494	949	1,560	2,042
Other expenses:					
Interest.....	100	80	60	20	12
Amortization—organization expenses.....	20	20	20	20	
Subtotal.....	120	100	80	40	12
Net income (loss) for year, before taxes on income.....	(233)	394	869	1,520	2,030
Estimated taxes on income.....			144	760	1,015
Net income (loss) for year.....	(233)	394	725	760	1,015
Cash flow:					
Net income (loss) for year.....	(233)	394	725	760	1,015
Noncash expenses:					
Amortization of organization expense.....	20	20	20	20	
Depreciation.....	160	160	160	160	160
Broadcast rights—difference—payment versus expense.....	(184)	(185)	(200)	(175)	(175)
Adjustment for payment of taxes.....			144	572	(361)
Changes in assets and liabilities.....	(40)	(50)	(40)	(40)	(40)
Payment of equipment obligations.....	(142)	(142)	(142)	(142)	(142)
Debt payments.....			(390)		
Increase (decrease) cash.....	(419)	197	277	1,155	457
Cash required (available)¹.....	419	222	(55)	(1,210)	(1,667)

¹ \$390,000,000 borrowed at yearend.

EXHIBIT III

PHILADELPHIA COMMUNICATIONS CO., SAN FRANCISCO (KBAY—CHANNEL 20)

Projected Statement of Income and Cash Flow

[In thousands of dollars]

	1st year	2d year	3d year	4th year	5th year
Operating revenues:					
National.....	650	1,300	2,000	2,600	3,000
Local.....	700	900	1,400	1,800	2,200
Total.....	1,350	2,200	3,400	4,400	5,200
Less discounts and commissions.....	300	525	810	1,050	1,230
Net operating revenues.....	1,050	1,675	2,590	3,350	3,970
Operating expenses:					
Building and equipment leases.....	224	210	215	210	200
Technical.....	200	210	225	275	300
Program.....	500	520	650	800	850
Selling.....	220	250	320	355	350
General and administrative.....	206	220	230	240	250
Total.....	1,350	1,640	1,640	1,880	1,950
Net operating income (loss).....	(300)	265	950	1,470	2,020
Other expenses:					
Interest.....	55	50	40	10	25
Amortization—organization expenses.....	25	25	25	25	25
Total.....	80	75	65	35	25
Net income (loss) for year, before taxes on income.....	(380)	190	885	1,435	1,995
Estimated taxes on income.....			350	715	995
Net income (loss) for year.....	(380)	190	535	720	1,000
Cash flow:					
Net income (loss) for year.....	(380)	190	535	720	1,000
Noncash expenses: Amortization of organization expense.....	25	25	25	25	25
Broadcast rights (difference payment versus expense).....	(100)	(100)	(100)	(100)	(100)
Adjustment for payment of taxes.....			350	115	(85)
Changes in assets and liabilities.....		(50)	(75)	(75)	(50)
Debt payments.....			(200)	(100)	
Increase (decrease) cash.....	(455)	65	535	585	790
Cash required (available) (working capital \$100,000).....	555	490	(45)	(630)	(1,420)

‡\$300,000 borrowed at yearend.

EXHIBIT IV

PHILADELPHIA COMMUNICATIONS CO., PITTSBURGH (WECO—CHANNEL 53)

Projected Statement of Income and Cash Flow

[In thousands of dollars]

	1st year	2d year	3d year	4th year	5th year
Operating revenues:					
National.....	650	900	1,300	1,600	1,900
Local.....	550	900	1,100	1,400	1,700
Subtotal.....	1,200	1,800	2,400	3,000	3,600
Less discounts and commissions.....	270	405	555	690	825
Net operating revenues.....	930	1,395	1,845	2,310	2,775
Operating expenses:					
Building and equipment leases.....	220	215	220	220	215
Technical.....	200	210	225	225	235
Program.....	445	520	650	775	800
Selling.....	200	250	250	275	275
General and administrative.....	150	175	200	225	250
Subtotal.....	1,215	1,370	1,545	1,720	1,775
Net operating income (loss).....	(285)	25	300	590	1,000
Other expenses:					
Interest.....	42	42	37	32	12
Amortization—organization expenses.....	38	38	38	38	38
Subtotal.....	80	80	75	70	50
Net income (loss) for year, before taxes on income.....	(365)	(55)	225	520	950
Estimated taxes on income.....				160	475
Net income (loss) for year.....	(365)	(55)	225	370	475
Cash flow:					
Net income (loss) for year.....	(365)	(55)	225	360	475
Noncash expenses: Amortization of organization expense.....	38	38	38	38	38
Broadcast rights—difference—payment versus expense.....	(100)	(100)	(100)	(100)	(100)
Adjustment for payment of taxes.....				160	415
Changes in assets and liabilities.....		(50)	(40)	(40)	(40)
Increase (decrease)—cash.....	(427)	(167)	123	418	788
Cash required (available) (working capital, \$100,000).....	527	694	571	153	(635)

EXHIBIT V

PHILADELPHIA COMMUNICATIONS CO., ATLANTA (WBMO—CHANNEL 36)

Projected Statement of Income and Cash Flow

[In thousands of dollars]

	1st year	2d year	3d year	4th year	5th year
Operating revenues:					
National.....	400	700	950	1,100	1,300
Local.....	400	600	750	900	1,100
Total.....	800	1,300	1,700	2,000	2,400
Less discounts and commissions.....	180	300	395	465	555
Net operating revenues.....	620	1,000	1,305	1,535	1,845
Operating expenses:					
Building and equipment leases.....	150	150	150	150	150
Technical.....	175	200	225	250	280
Program.....	300	400	400	525	600
Selling.....	150	175	200	225	250
General and administrative.....	150	175	175	200	200
Total.....	925	1,100	1,150	1,350	1,480
Net operating income (loss).....	(305)	(100)	155	185	365
Other expenses:					
Interest.....	48	63	68	68	63
Amortization—organization expenses.....	47	47	47	47	47
Total.....	95	110	115	115	110
Net income (loss) for year, before taxes on income.....	(400)	(210)	40	70	255
Net income (loss) for year.....	(400)	(210)	40	70	255
Cash flow:					
Net income (loss) for year.....	(400)	(210)	40	70	255
Noncash expenses: Amortization of organization expense.....	47	47	47	47	47
Broadcast rights (difference payment versus expense).....	(75)	(75)	(100)	(100)	(100)
Changes in assets and liabilities.....		(25)	(25)	(25)	(25)
Increase (decrease), cash.....	(428)	(263)	(38)	(8)	177
Cash required (available) (working capital \$100,000¹).....	528	791	829	887	660

¹ \$250,000 borrowed at yearend.

EXHIBIT VI

PHILADELPHIA COMMUNICATIONS CO., CINCINNATI (WSCO—CHANNEL 19)

Projected Statement of Income and Cash Flow

[In thousands of dollars]

	1st year	2d year	3d year	4th year	5th year
Operating revenues:					
National.....	400	800	950	1,100	1,300
Local.....	400	700	850	1,000	1,100
Subtotal.....	800	1,500	1,800	2,100	2,400
Less discounts and commissions.....	180	350	420	480	560
Net operating revenues.....	620	1,150	1,380	1,620	1,840
Operating expenses:					
Building and equipment leases.....	150	150	150	150	150
Technical.....	175	200	225	225	250
Program.....	350	400	450	500	600
Selling.....	150	175	200	225	250
General and administrative.....	145	175	200	225	225
Subtotal.....	970	1,100	1,225	1,325	1,475
Net operating income (loss).....	(350)	50	155	295	365
Other expenses:					
Interest.....	25	30	40	35	20
Amortization—organization expenses.....	25	25	25	25	25
Subtotal.....	50	55	65	60	45
Net income (loss) for year, before taxes on income.....	(400)	(5)	90	235	320
Estimated taxes on income.....					120
Net income (loss) for year.....	(400)	(5)	90	235	200
Cash flow:					
Net income (loss) for year.....	(400)	(5)	90	235	200
Noncash expenses: Amortization of organization expense.....	25	25	25	25	25
Broadcast rights—difference—payment versus expense.....	(75)	(75)	(75)	(75)	(100)
Adjustment for payment of taxes.....				(20)	120
Changes in assets and liabilities.....				(25)	(20)
Increase (decrease) cash.....	(450)	(55)	20	160	225
Cash required (available) (working capital \$100,000¹).....	550	605	585	425	200

¹ \$60,000,000 borrowed at yearend.

EXHIBIT VII
PHILADELPHIA COMMUNICATIONS CO., HOUSTON (KJDO—CHANNEL 58)

Projected Statement of Income and Cash Flow

[In thousands of dollars]

	1st year	2d year	3d year	4th year	5th year
Operating revenues:					
National.....	400	800	1,100	1,400	1,700
Local.....	500	800	1,100	1,200	1,300
Total.....	900	1,600	2,200	2,600	3,000
Less discounts and commissions.....	200	360	500	600	700
Net operating revenues.....	700	1,240	1,700	2,000	2,300
Operating expenses:					
Building and equipment leases.....	225	220	225	220	220
Technical.....	175	190	225	250	280
Program.....	400	500	600	700	800
Selling.....	150	175	200	225	250
General and administrative.....	150	175	200	225	250
Total.....	1,100	1,260	1,450	1,620	1,800
Net operating income (loss).....	(400)	(20)	250	380	500
Other expenses:					
Interest.....	30	35	35	30	20
Amortization-organization expenses.....	15	15	15	15	15
Total.....	45	50	50	45	35
Net income (loss) for year, before taxes on income.....	(445)	(70)	200	335	465
Estimated taxes on income.....				10	230
Net income (loss) for year.....	(445)	(70)	200	325	235
Cash flow:					
Net income (loss) for year.....	(445)	(70)	200	325	235
Noncash expenses (amortization of organization expense).....	15	15	15	15	15
Broadcast rights (difference payment versus expense).....	(75)	(75)	(100)	(100)	(100)
Adjustment for payment of taxes.....				10	230
Changes in assets and liabilities.....		(25)	(25)	(30)	(30)
Increase (decrease), cash.....	(505)	(155)	90	220	350
Cash required (available) (working capital \$100,000).....	605	760	670	450	100

EXHIBIT VIII

PHILADELPHIA TELEVISION BROADCASTING CO. (WPHL, CHANNEL 17)

Balance Sheet at August 31, 1966

[Dollars in thousands]

ASSETS	
Current:	
Cash.....	\$4
Accounts receivable.....	121
Broadcast rights.....	553
Inventories and deferred charges.....	44
Other receivables and exchanges.....	2
Total current.....	724
Fixed assets:	
Transmitting and studio equipment.....	1,391
Leasehold improvements.....	85
Office furniture and equipment.....	15
Mobile units.....	6
Total.....	1,407
Less depreciation and amortization.....	(117)
Total.....	1,380
Broadcast rights, net of amortization and current portion.....	1,032
Organization expense, net of amortization.....	81
Deposits.....	8
Total assets.....	3,225
LIABILITIES AND STOCKHOLDERS' EQUITY	
Current liabilities:	
Notes payable, banks.....	390
Notes payable, equipment.....	143
Notes payable, other.....	50
Broadcast rights payable.....	552
Accounts payable and accrued expenses.....	187
Deferred income.....	10
Total current liabilities.....	1,332
Notes payable, equipment.....	842
Broadcast rights payable.....	1,003
Debentures payable, stockholders.....	300
Loans payable, officers.....	24
Accounts payable, noncurrent.....	31
Total liabilities.....	3,532
Stockholders' equity:	
Capital stock.....	440
Accumulated deficit.....	(747)
Total.....	(307)
Total liabilities and stockholders' equity.....	3,225

EXHIBIT IX
D. H. OVERMYER COMMUNICATIONS COMPANIES

Balance Sheets at December 31, 1966 (Unaudited)

[In thousands of dollars]

	San Francisco (KBAY)	Pittsburgh (WECO)	Atlanta (WBMO)	Cincinnati (WSCO)	Houston (WJDO)	Dallas	Combined
ASSETS							
Cash	23	2	45	1		1	
Accounts receivable	1						
Prepaid expenses	2						
Broadcast rights	500	586	716	482	268		
Deposits	2	2	2	2			
Land and improvements				90			
Organization expenses	121	190	236	164	57	63	
Total, assets	649	780	999	739	325	64	
LIABILITIES AND STOCKHOLDERS' EQUITY							
Liabilities:							
Accounts payable—trade	11	7	8	16	2	5	
Accounts payable—other	3		4	5			
Notes payable	300		256	60			
Broadcast rights payable	458	566	696	464	245		
Payable to Overmyer communications companies (intra)	(174)	206	29	169	78	58	
Payable to Overmyer—outside communications companies (inter)	1		5	24	(1)		
Total, liabilities	599	779	998	738	324	63	
Stockholders' equity capital stock	50	1	1	1	1	1	
Total, liabilities and stockholders' equity	649	780	999	739	325	64	

Note.—Combined statement does not include Overmyer Communications Co.—New York (home office company) or Toledo.

EXHIBIT X

CHANNEL 17 AND OVERMYER GROUP
Summary of Original Projections of Income (Loss) and Cash Required (Available)

[In thousands of dollars]

	1967	1968	1969	1970	1971	1972
Projected income (loss):						
Philadelphia (WPHL-17)		(148)	544	674	754	1,402
San Francisco (KBAY-20)			(88)	19	261	463
Pittsburgh (WECO-53)			(13)	42	314	679
Atlanta (WBMO-36)			(186)	(179)	53	398
Cincinnati (WSCO-19)			(56)	98	260	497
Houston (KJDO-58)				(201)	(63)	272
Total projected income (loss)	(148)	201	453	1,579	3,387	5,241
Projected cash required (available), cumulative:						
Philadelphia (WPHL-17)		335	(95)	(1,020)	(2,220)	(3,310)
San Francisco (KBAY-20)			296	430	237	18
Pittsburgh (WECO-53)			248	308	(650)	(1,976)
Atlanta (WBMO-36)			290	545	600	(1,050)
Cincinnati (WSCO-19)			290	413	157	(213)
Houston (KJDO-58)				325	485	335
Total projected cash required (available)	335	1,124	1,926	459	(2,530)	(8,249)

EXHIBIT XI
PRO FORMA STATEMENT OF PROFIT AND LOSS, WPHL-TV—PHILADELPHIA TELEVISION BROADCASTING CO., INC.

Account	Alternate "A," 1967	Alternate "B," 1967	1968	1969	1970	1971	1972	1973
Revenues:								
National	\$720,000	\$957,000	\$1,190,000	\$1,550,000	\$668,000	\$2,608,400	\$3,208,400	\$3,808,400
Local	970,000	1,090,000	1,390,000	1,750,000	120,000	2,520,000	2,850,000	3,400,000
Production	35,000	43,000	40,000	50,000	60,000	75,000	90,000	110,000
Total	1,725,000	2,083,000	2,620,000	3,350,000	1,240,800	5,103,400	6,148,400	7,278,400
Expenses: Direct	373,000	451,000	576,000	726,000	919,776	1,106,248	1,328,054	1,572,134
Net revenue	1,352,000	1,632,000	2,044,000	2,624,000	321,024	3,997,152	4,820,346	5,706,266
Expenses: Operating	1,400,000	1,400,000	1,420,000	1,540,000	1,710,000	1,730,000	1,900,000	1,900,000
Gross operating profit	(48,000)	232,000	624,000	1,084,000	1,611,024	2,267,152	2,920,346	3,806,266
Expenses: Interest	100,000	100,000	8,000	60,000	40,000	20,000	0	0
Total	(148,000)	132,000	544,000	1,024,000	1,571,024	2,247,152	2,920,346	3,806,266
Taxes	0	0	0	349,960	816,932	1,168,519	1,518,579	1,979,288
Net operating profit	(148,000)	132,000	544,000	674,000	754,092	1,078,633	1,401,767	1,827,008
Preferred shares outstanding at Aug. 31, 1966								
Common shares outstanding at Aug. 31, 1966								
Total shares outstanding at Aug. 31, 1966	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
Earnings per share, common	(493)	440	1,813	1,075	2,510	3,595	4,673	6,090
Earnings per share, total	(296)	264	1,088	1,645	1,508	2,157	2,804	3,654
With addition of 10,000 shares common:								
Preferred shares outstanding								
Common shares outstanding	20,000	330	1,360	810	1,880	2,697	3,504	4,568
Total shares outstanding	20,000	220	907	537	1,257	1,798	2,336	3,045
With addition of 5,000 shares common:								
Preferred shares outstanding								
Common shares outstanding	20,000	377	1,555	925	2,150	3,082	4,005	5,220
Total	(269)	240	990	589	1,370	1,961	2,549	3,322

EXHIBIT XII

D. H. OVERMYER COMMUNICATIONS CO. ESTIMATED STATEMENT OF INCOME AND CASH FLOW,

KBAY-TV, SAN FRANCISCO, CALIF.

[For years ending Sept. 30, 1967, through Sept. 30, 1971]

	1966-67	1967-68	1968-69	1969-70	1970-71
Operating revenues:					
Local time sales.....	\$280,000	\$432,580	\$636,299	\$858,393	\$1,063,872
National time sales.....	420,000	705,789	1,181,699	1,824,085	2,482,367
Other broadcast revenue.....					
Total revenues.....	700,000	1,138,369	1,817,998	2,682,478	3,546,239
Operating expenses:					
Administration.....	65,000	70,000	80,000	90,000	95,000
Sales expense.....	120,000	180,000	270,000	480,000	575,000
Technical.....	140,000	150,000	200,000	225,000	275,000
Advertising.....	30,000	40,000	50,000	100,000	125,000
Programming.....	305,000	400,000	520,000	650,000	800,000
Total, broadcast operating expenses.....	660,000	840,000	1,120,000	1,545,000	1,870,000
Equipment leases.....	50,000	184,000	170,000	176,000	167,000
Building leases.....	40,000	40,000	40,000	40,000	40,000
Total.....	90,000	224,000	210,000	216,000	207,000
Gross operating profit.....	(50,000)	74,369	487,999	921,478	1,469,239
Other expense, interest on loans.....	38,300	55,000	50,000	31,500	20,000
Net profit before taxes.....	(88,300)	19,369	437,999	889,978	1,449,239
Provision for Federal income tax.....	0	0	177,159	427,188	695,639
Net profit after taxes.....	(88,300)	19,369	260,840	462,790	753,600
Add depreciation and amortization.....	10,000	10,000	10,000	10,000	10,000
Cash flow.....	(78,300)	29,369	270,840	472,790	763,600

PROJECTED STATEMENT OF QUARTERLY CASH FLOW, KBAY-TV

	Projected, 1st year P/L	Cash flow Oct. 1, 1966, to Sept. 30, 1967				Cumulative cash flow, 1st year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$280,000	\$25,000	\$84,000	\$76,000	\$56,000	\$241,000
National time sales.....	420,000	38,000	126,000	113,000	84,000	361,000
Other broadcast revenue.....						
Total.....	700,000	63,000	210,000	189,000	140,000	602,000
Operating expense:						
Salaries and wages.....	230,000	55,000	55,000	60,000	60,000	230,000
Sales commissions.....	80,000	17,000	25,000	20,000	15,000	70,000
Office expense.....	10,000	2,500	2,500	2,500	2,500	10,000
Research materials.....	3,500	1,500	1,500	250	250	3,500
Program and news expense.....	32,000	7,000	7,600	9,000	8,400	32,000
Repairs and maintenance.....	9,000	600	1,500	3,000	3,900	9,000
Other expenses.....	35,000	8,500	8,500	9,000	9,000	35,000
Direct program expense.....	180,000	80,000	80,000	73,000	70,000	303,000
Overhead allocation.....	40,500	10,100	10,100	10,150	10,150	40,500
Building lease.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	50,000	12,500	12,500	12,500	12,500	50,000
Advertising expenses.....	30,000	15,000	7,000	5,000	3,000	30,000
Depreciation, transmitter site.....	10,000	2,500	2,500	2,500	2,500	10,000
Total.....	750,000	222,200	223,700	216,900	207,200	870,000
Cash flow from operations.....	(50,000)	(159,200)	(13,700)	(27,900)	(67,200)	(268,000)
Nonoperating expense, interest on loans.....	38,300	8,000	8,800	10,000	11,500	38,300
Provision for tax.....						
Add depreciation and amortization.....	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	(78,300)	(164,700)	(20,000)	(35,400)	(76,200)	(296,300)
Cumulative cash gain or (loss).....	(78,300)	(164,700)	(184,700)	(220,100)	(296,300)	(296,300)

PROJECTED STATEMENT OF QUARTERLY CASH FLOW, KBAY-TV—Continued

	Projected, 2d year P/L	Cash flow Oct. 1, 1967, to Sept. 30, 1968				Cumulative cash flow 2d year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$432,600	\$78,000	\$129,500	\$117,000	\$86,000	\$410,500
National time sales.....	705,800	122,500	212,000	190,000	141,500	666,000
Other broadcasting revenue.....						
Total.....	1,138,400	200,500	341,500	307,000	227,500	1,076,500
Operating expense:						
Salaries and wages.....	260,000	63,000	63,000	67,000	67,000	260,000
Sales commissions.....	135,000	35,000	40,000	32,000	25,000	132,000
Office expense.....	10,500	3,000	2,500	2,500	2,500	10,500
Research materials.....	4,000	1,500	1,500	500	500	4,000
Program and news expense.....	55,000	15,000	20,000	10,000	10,000	55,000
Repairs and maintenance.....	9,000	600	1,500	3,000	3,900	9,000
Other expenses.....	37,000	9,000	9,000	9,500	9,500	37,000
Direct program expense.....	240,000	90,000	90,000	85,000	79,000	344,000
Overhead allocation.....	40,500	10,100	10,100	10,150	10,150	40,500
Building lease.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	183,000	45,000	45,000	45,000	48,000	183,000
Advertising expenses.....	40,000	15,000	15,000	7,000	3,000	40,000
Depreciation, transmitter site.....	10,000	2,500	2,500	2,500	2,500	10,000
Total.....	1,064,000	299,700	310,100	284,150	271,050	1,165,000
Cash flow from operations.....	74,400	(99,200)	31,400	22,850	(43,550)	(88,500)
Nonoperating expense, interest on loans.....	55,000	13,300	13,300	13,400	15,000	55,000
Provision for tax.....						
Add depreciation and amortization.....	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	29,400	(110,000)	20,600	11,950	(56,050)	(133,500)
Cumulative cash gain or (loss).....	(78,300)	(406,300)	(385,700)	(373,750)	(429,800)	(429,800)

	Projected, 3d year P/L	Cash flow Oct. 1, 1968, to Sept. 30, 1969				Cumulative cash flow, 3d year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$636,000	\$118,000	\$190,500	\$172,000	\$127,000	\$607,500
National time sales.....	1,182,000	205,000	355,000	319,000	236,000	1,115,000
Other broadcasting revenue.....						
Total.....	1,818,000	323,000	545,500	491,000	363,000	1,722,500
Operating expense:						
Salaries and wages.....	290,000	70,000	70,000	75,000	75,000	290,000
Sales commissions.....	220,000	43,000	52,000	58,000	47,000	200,000
Office expense.....	15,000	3,500	3,500	4,000	4,000	15,000
Research materials.....	8,000	3,500	2,500	1,000	1,000	8,000
Program and news expense.....	80,000	22,000	22,000	18,000	18,000	80,000
Repairs and maintenance.....	12,000	2,000	4,000	3,000	3,000	12,000
Other expenses.....	55,000	14,000	14,000	14,000	13,000	55,000
Direct program expense.....	325,000	140,000	140,000	120,000	105,000	505,000
Overhead allocation.....	45,000	11,000	11,000	11,500	11,500	45,000
Building lease.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	180,000	45,000	45,000	45,000	45,000	180,000
Advertising expense.....	50,000	20,000	20,000	7,000	3,000	50,000
Depreciation, transmitter site.....	10,000	2,500	2,500	2,500	2,500	10,000
Total.....	1,330,000	386,500	396,500	369,000	318,000	1,410,000
Cash flow from operations.....	488,000	(63,500)	149,000	122,000	75,000	(88,500)
Nonoperating expense, interest on loans.....	50,000	14,000	13,000	12,000	11,000	50,000
Provision for tax.....	177,160					177,160
Add depreciation and amortization.....	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	270,840	(75,000)	138,500	111,500	100,500	185,340
Cumulative cash gain or (loss).....	(78,300)	(504,800)	(366,300)	(254,800)	(154,300)	(154,300)

Projected Statement of Quarterly Cash Flow, KBAY-TV—Continued

	Projected, 4th year P/L	Cash flow Oct. 1, 1969, to Sept. 30, 1970				Cumulative cash flow, 4th year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales	\$858,000	\$171,000	\$253,000	\$231,000	\$172,000	\$827,000
National time sales	1,824,000	345,000	532,000	493,000	365,000	1,735,000
Other broadcast revenue						
Total	2,682,000	516,000	785,000	724,000	537,000	2,562,000
Operating expense:						
Salaries and wages	350,000	85,000	85,000	90,000	90,000	350,000
Sales commissions	335,000	68,000	78,000	85,000	79,000	310,000
Office expense	30,000	8,000	8,000	7,000	7,000	30,000
Research materials	15,000	5,000	5,000	2,500	2,500	15,000
Program and news expense	110,000	30,000	30,000	25,000	25,000	110,000
Repairs and maintenance	20,000	4,000	4,000	6,000	6,000	20,000
Other expenses	70,000	17,500	17,500	17,500	17,500	70,000
Direct program expense	450,000	130,000	130,000	125,000	140,000	525,000
Overhead allocation	55,000	13,500	13,500	14,000	14,000	55,000
Building lease	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases	176,000	44,000	44,000	44,000	44,000	176,000
Advertising expenses	100,000	40,000	40,000	10,000	10,000	100,000
Depreciation, transmitter site	10,000	2,500	2,500	2,500	2,500	10,000
Total	1,761,000	457,500	467,500	438,500	447,500	1,811,000
Cash flow from operations	921,000	58,500	317,500	285,500	89,500	751,000
Nonoperating expenses, interest on loans	31,500	9,000	8,250	7,500	6,750	31,500
Provision for tax	427,188	100,000	180,000	180,000	50,000	510,000
Add depreciation & amortization	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period	472,312	(48,000)	131,750	100,500	35,250	219,500
Cumulative cash gain or (loss)		(285,300)	(153,550)	(53,050)	(17,800)	

	Projected 5th year P/L	Cash flow Oct. 1, 1970, to Sept. 30, 1971				Cumulative cash flow, 5th year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales	\$1,064,000	\$215,000	\$320,000	\$287,000	\$213,000	\$1,035,000
National time sales	2,482,400	478,500	745,000	670,000	496,000	2,389,500
Other broadcasting revenue						
Total	3,546,400	693,500	1,065,000	957,000	709,000	3,424,500
Operating expense:						
Salaries and wages	400,000	95,000	95,000	105,000	105,000	400,000
Sales commissions	425,000	85,000	110,000	103,000	87,000	385,000
Office expense	40,000	10,000	10,000	10,000	10,000	40,000
Research materials	20,000	7,000	7,000	3,000	3,000	20,000
Program and news expense	150,000	40,000	40,000	35,000	35,000	150,000
Repairs and maintenance	30,000	6,000	6,000	9,000	9,000	30,000
Other expenses	90,000	22,500	22,500	22,500	22,500	90,000
Direct program expenses	515,000	150,000	160,000	120,000	122,000	542,000
Overhead allocation	65,000	16,000	16,000	16,500	16,500	65,000
Building lease	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases	167,000	42,000	42,000	41,500	41,500	167,000
Advertising, expenditures	125,000	50,000	50,000	12,500	12,500	125,000
Depreciation, transmitter site	10,000	2,500	2,500	2,500	2,500	10,000
Total	2,077,000	536,000	571,000	490,500	466,500	2,064,000
Cash flow from operations	1,469,400	157,500	494,000	466,500	242,500	1,360,500
Nonoperating expenses, interest on loans	20,000	6,000	5,250	4,750	4,000	20,000
Provision for tax	695,639	50,000	250,000	275,000	100,000	675,000
Add depreciation and amortization	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period	763,600	104,000	241,250	189,250	141,000	675,500
Cumulative cash gain or (loss)		86,200	327,450	516,700	657,700	

D. H. OVERMYER COMMUNICATIONS CO.

ESTIMATED STATEMENT OF INCOME AND CASH FLOW, WECO-TV, PITTSBURGH, PA.

[For years ending Aug. 15, 1967, through Aug. 14, 1971]

	1966-67	1967-68	1968-69	1969-70	1970-71
Operating revenues:					
Local time sales	\$210,000	\$345,000	\$570,000	\$990,000	\$1,565,000
National time sales	560,000	865,000	1,380,000	2,140,000	3,235,000
Other broadcast revenue					
Total, revenues	770,000	1,210,000	1,950,000	3,130,000	4,800,000
Operating expenses:					
Administration	65,000	70,000	80,000	90,000	100,000
Sales expense	120,000	175,000	270,000	450,000	660,000
Technical	140,000	150,000	200,000	225,000	275,000
Advertising	31,000	50,000	65,000	100,000	150,000
Programming	300,000	415,000	520,000	650,000	850,000
Total, broadcast operating expenses	656,000	870,000	1,135,000	1,515,000	2,035,000
Equipment leases	55,000	180,000	175,000	178,000	175,000
Building leases	40,000	40,000	40,000	40,000	40,000
Total	95,000	220,000	215,000	218,000	215,000
Gross operating profit	19,000	120,000	600,000	1,397,000	2,550,000
Other expense:					
Interest, real property	12,000	12,000	9,000	4,000	2,000
Interest, other	20,000	30,000	25,000	15,000	6,000
Total	32,000	42,000	34,000	19,000	8,000
Net profit before tax	(13,000)	78,000	566,000	1,378,000	2,542,000
Provision for Federal income tax		36,000	252,500	699,000	1,271,000
Net profit after tax	(13,000)	42,000	313,500	679,000	1,271,000
Add depreciation and amortization	10,000	10,000	10,000	10,000	10,000
Cash flow	(3,000)	52,000	323,500	689,000	1,281,000

PROJECTED STATEMENT OF QUARTERLY CASH FLOW, WECO-TV

	Projected 1st year P/L	Cash flow Aug. 15, 1966, to Aug. 14, 1967				Cumulative cash flow, 1st year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales	\$210,000	\$15,000	\$50,000	\$60,000	\$60,000	\$185,000
National time sales	560,000	35,000	125,000	170,000	155,000	485,000
Other broadcasting revenue						
Total	770,000	50,000	175,000	230,000	215,000	670,000
Operating expense:						
Salaries and wages	240,000	58,000	62,000	62,000	58,000	240,000
Sales commissions	8,000			2,200	2,200	4,400
Office expense	10,000	2,500	2,500	2,500	2,500	10,000
Research materials	2,500	250	1,000	750	500	2,500
Research materials	2,500	250	1,000	750	600	2,500
Program and news expense	32,500	7,100	7,700	9,000	8,700	32,500
Repair and maintenance	9,000	600	1,500	3,000	3,900	9,000
Other expenses	66,000	16,500	16,500	16,500	16,500	66,000
Overhead allocation	37,800	4,800	14,000	5,000	14,000	37,800
Direct program expense	140,000	75,000	75,000	75,000	75,000	300,000
Building leases	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases	50,000	12,500	12,500	12,500	12,500	50,000
National sales rep.	84,000	5,000	20,000	25,000	23,000	73,000
Advertising expense	30,800	5,000	10,000	10,800	5,000	30,800
Total	750,600	197,250	232,700	234,250	231,800	896,000
Cash flow from operations	19,400	(147,250)	(57,700)	(4,250)	(16,800)	(226,000)
Nonoperating expense, interest	32,000	8,000	8,000	8,000	8,000	32,000
Provision for tax						
Add depreciation	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period	(2,600)	(152,750)	(63,200)	(9,750)	(22,300)	(248,000)
Cumulative cash gain or (loss)		(152,750)	(215,950)	(225,700)	(248,000)	

Projected Statement of Quarterly Cash Flow, WECO-TV—Continued

	Projected, 2d year P/L	Cash flow, Aug. 15, 1967, to Aug. 14, 1968				Cumulative cash flow, 2d year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$345,000	\$50,000	\$80,000	\$105,000	\$95,000	\$330,000
National time sales.....	865,000	130,000	200,000	260,000	235,000	825,000
Other broadcast revenues.....						
Total.....	1,210,000	180,000	280,000	365,000	330,000	1,155,000
Operating expense:						
Salaries and wages.....	262,000	64,000	66,000	68,000	64,000	262,000
Sales commissions.....	21,000	3,400	4,000	6,000	6,000	19,400
Office expense.....	10,400	2,600	2,600	2,600	2,600	10,400
Research materials.....	3,000	750	900	600	750	3,000
Program and news expense.....	37,000	9,000	8,700	10,200	9,100	37,000
Repair and maintenance.....	9,600	900	1,500	4,200	3,000	9,600
Other expenses.....	70,000	17,500	17,500	17,500	17,500	70,000
Overhead allocation.....	42,000	5,000	16,000	5,000	16,000	42,000
Direct program expenses.....	250,000	85,000	85,000	90,000	90,000	350,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	175,000	44,000	44,000	43,500	43,500	175,000
National sales representative.....	130,000	20,000	30,000	40,000	35,000	125,000
Advertising expense.....	40,000	5,000	15,000	15,000	5,000	40,000
Total.....	1,090,000	267,150	301,200	312,600	302,450	1,183,400
Cash flow from operations.....						
Nonoperating expense, interest on notes.....	120,000	(87,150)	(21,200)	52,400	27,550	(28,400)
Provision for tax.....	42,000	9,000	11,000	11,000	11,000	42,000
Add depreciation.....	36,000					
	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	52,000	(93,650)	(29,700)	43,900	19,050	(60,400)
Cumulative cash gain or (loss).....		(341,650)	(371,350)	(327,450)	(308,400)	
Operating revenues:						
Local time sales.....	\$570,000	\$90,000	\$125,000	\$170,000	\$155,000	\$540,000
National time sales.....	1,380,000	210,000	310,000	415,000	375,000	1,310,000
Other broadcasting revenue.....						
Total.....	1,950,000	300,000	435,000	585,000	530,000	1,850,000
Operating expense:						
Salaries and wages.....	320,000	70,000	82,500	83,500	84,000	320,000
Sales commissions.....	20,000	2,000	5,000	6,000	7,000	20,000
Office expense.....	12,000	3,000	3,000	3,000	3,000	12,000
Research materials.....	6,000	3,000	2,000	500	500	6,000
Program and news expense.....	40,000	10,000	10,000	10,000	10,000	40,000
Repair and maintenance.....	12,000	5,000	1,000	2,000	4,000	12,000
Other expenses.....	70,000	17,500	17,500	17,500	17,500	70,000
Overhead allocation.....	60,000	15,000	15,000	15,000	15,000	60,000
Direct program expenses.....	325,000	80,000	80,000	95,000	100,000	355,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	175,000	44,000	44,000	43,500	43,500	175,000
National sales representatives.....	205,000	38,000	50,000	64,000	53,000	205,000
Advertising expenses.....	65,000	25,000	25,000	7,500	7,500	65,000
Total.....	1,350,000	322,500	345,000	357,500	355,000	1,380,000
Cash flow from operations.....						
Nonoperating expense, interest on notes.....	600,000	(22,500)	90,000	227,500	175,000	470,000
Provision for tax.....	36,800	10,000	9,700	9,000	8,100	36,800
Add depreciation.....	252,500			85,000	50,000	135,000
	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	320,700	(30,000)	82,800	136,000	119,400	308,200
Cumulative cash gain or (loss).....		(338,400)	(255,600)	(119,600)	(200)	

Projected Statement of Quarterly Cash Flow, WECO-TV—Continued

	Projected, 4th year P/L	Cash flow Aug. 15, 1969, to Aug. 14, 1970				Cumulative cash flow, 4th year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$990,000	\$140,000	\$230,000	\$295,000	\$270,000	\$935,000
National time sales.....	2,140,000	320,000	495,000	645,000	575,000	2,035,000
Other broadcast revenues.....						
Total.....	3,130,000	46,000	725,000	940,000	845,000	2,970,000
Operating expense:						
Salaries and wages.....	360,000	85,000	90,000	92,000	93,000	360,000
Sales commissions.....	30,000	7,000	8,000	8,000	7,000	30,000
Office expense.....	15,000	3,500	3,500	4,000	4,000	15,000
Research materials.....	10,000	4,000	3,000	1,500	1,500	10,000
Program and news expense.....	65,000	16,500	16,500	16,000	16,000	65,000
Repair and maintenance.....	15,000	5,000	2,500	2,500	5,000	15,000
Other expenses.....	80,000	20,000	20,000	20,000	20,000	80,000
Overhead allocation.....	70,000	17,500	17,500	17,500	17,500	70,000
Direct program expense.....	450,000	125,000	125,000	135,000	140,000	525,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	178,000	44,000	44,500	45,500	44,000	178,000
National sales representative.....	320,000	65,000	82,000	92,000	81,000	320,000
Advertising expenses.....	100,000	40,000	30,000	20,000	10,000	100,000
Total.....	1,733,000	442,500	452,500	464,000	449,000	1,808,000
Cash flow from operations.....						
Nonoperating expenses, interest on notes.....	1,397,000	17,500	272,500	476,000	396,000	1,162,000
Provision for tax.....	22,000	7,300	6,100	4,900	3,700	22,000
Add depreciation.....	699,300	50,000	50,000	250,000	150,000	500,000
	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	686,000	(37,300)	218,900	223,600	244,800	650,000
Cumulative cash gain or (loss).....		(37,500)	181,400	405,000	649,800	
Operating revenues:						
Local time sales.....	\$1,565,000	\$235,000	\$360,000	\$470,000	\$420,000	\$1,485,000
National time sales.....	3,235,000	495,000	735,000	970,000	870,000	3,070,000
Other broadcasting revenue.....						
Total.....	4,800,000	730,000	1,095,000	1,440,000	1,290,000	4,555,000
Operating expense:						
Salaries and wages.....	440,000	100,000	110,000	115,000	115,000	440,000
Sales commissions.....	50,000	10,000	12,000	15,000	13,000	50,000
Office expense.....	15,000	3,500	3,500	4,000	4,000	15,000
Research materials.....	15,000	5,000	5,000	2,500	2,500	15,000
Program and news expense.....	125,000	32,000	32,000	30,500	30,500	125,000
Repair and maintenance.....	15,000	5,000	2,500	2,500	5,000	15,000
Other expenses.....	90,000	25,000	25,000	20,000	20,000	90,000
Overhead allocation.....	85,000	21,000	21,000	21,500	21,500	85,000
Direct program expense.....	600,000	140,000	140,000	150,000	150,000	585,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	175,000	44,000	44,000	43,500	43,500	175,000
National sales representative.....	450,000	110,000	198,000	135,000	97,000	450,000
Advertising expense.....	150,000	60,000	60,000	15,000	15,000	150,000
Total.....	2,250,000	565,500	573,000	564,500	532,000	2,235,000
Cash flow from operations.....						
Nonoperating expenses, interest on notes.....	2,550,000	164,500	522,000	875,500	758,000	2,320,000
Provision for tax.....	3,600	2,400	1,200			3,600
Add depreciation.....	1,271,000	150,000	150,000	400,000	30,000	1,000,000
	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	1,285,400	14,600	373,300	478,000	460,500	1,326,400
Cumulative cash gain or (loss).....		664,400	1,037,700	1,515,700	1,976,200	

EXHIBIT IV
D. H. OVERMYER COMMUNICATIONS CO. PROJECTED STATEMENT OF INCOME AND CASH FLOW,
WBMO-TV, ATLANTA, GA.

[For years ended Sept. 30, 1967, through Sept. 30, 1971]

	1966-67	1967-68	1968-69	1969-70	1970-71
Operating revenues:					
Local time sales.....	\$235,000	\$351,000	\$538,000	\$766,000	\$1,115,000
National time sales.....	275,000	427,000	646,000	1,005,000	1,526,000
Total revenues.....	510,000	778,000	1,184,000	1,771,000	2,641,000
Operating expenses:					
Administration.....	75,000	84,500	97,000	107,400	127,000
Sales expense.....	103,000	122,500	200,000	265,000	375,000
Engineering.....	110,000	125,000	142,500	154,400	167,000
Advertising expense.....	30,800	40,000	45,000	60,000	75,000
Programming.....	250,000	300,000	350,000	400,000	525,000
Total, broadcast operating expenses.....	568,800	672,000	834,500	986,800	1,269,000
Equipment leases.....	49,300	183,400	179,900	176,400	168,700
Building leases.....	42,500	42,500	42,500	42,500	42,500
Total.....	91,800	225,900	222,400	218,900	211,200
Gross operating profit.....	(150,600)	(119,900)	127,100	565,300	1,160,800
Other expense:					
Interest, real property.....	14,800	14,400	14,000	13,500	13,000
Interest, other.....	21,000	45,000	60,000	48,000	36,000
Total.....	35,800	59,400	74,000	61,500	49,000
Net profit before taxes.....	(186,400)	(179,300)	53,100	503,800	1,111,800
Provision for Federal income tax.....	0	0	0	106,200	533,700
Net profit after taxes.....	(186,400)	(179,300)	53,100	397,600	578,100
Add depreciation and amortization.....	10,000	10,000	10,000	10,000	10,000
Cash flow.....	(176,400)	(169,300)	63,100	406,600	588,100

EXHIBIT XV
D. H. OVERMYER COMMUNICATIONS CO.
ESTIMATED STATEMENT OF INCOME AND CASH FLOW, WSCO-TV

[For years ending Oct. 1, 1966, through Sept. 30, 1971]

	1966-67	1967-68	1968-69	1969-70	1970-71
Operating revenues:					
Local time sales.....	\$190,000	\$285,000	\$415,000	\$590,000	\$825,000
National time sales.....	460,000	725,000	1,090,000	1,560,000	2,155,000
Other broadcast revenue.....					
Total revenues.....	650,000	1,010,000	1,505,000	2,150,000	2,980,000
Operating expenses:					
Administration.....	65,000	70,000	80,000	85,000	90,000
Sales expense.....	100,000	110,000	175,000	250,000	390,000
Technical.....	120,000	125,000	135,000	150,000	175,000
Advertising.....	30,000	35,000	40,000	60,000	80,000
Programming.....	250,000	275,000	325,000	400,000	475,000
Total broadcast operating expenses.....	565,000	615,000	755,000	945,000	1,210,000
Equipment leases.....	61,000	184,000	180,000	185,000	180,000
Building leases.....	40,000	40,000	40,000	40,000	40,000
Total.....	101,000	224,000	220,000	225,000	220,000
Gross operating profit.....	(16,000)	171,000	530,000	980,000	1,550,000
Other expense:					
Interest, real property.....	20,000	19,000	18,000	17,000	16,000
Interest, other.....	20,000	15,500	11,500	7,000	2,500
Total.....	40,000	34,500	29,500	24,000	18,500
Net profit before taxes.....	(56,000)	136,500	500,500	956,000	1,531,500
Provision for Federal income tax.....		38,700	240,300	459,000	735,200
Net profit after taxes.....	(56,000)	97,800	260,200	497,000	796,300
Add depreciation and amortization.....	10,000	10,000	10,000	10,000	10,000
Cash flow.....	(46,000)	107,800	270,200	507,000	806,300

PROJECTED STATEMENT OF QUARTERLY CASH FLOW, WSCO-TV

	Projected, 1st year P/L	Cash flow, Oct. 1, 1966, to Sept. 30, 1967				Cumulative cash flow, 1st year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$190,000	\$20,000	\$55,000	\$50,000	\$40,000	\$165,000
National time sales.....	460,000	40,000	140,000	135,000	90,000	405,000
Other broadcast revenue.....						
Total.....	650,000	60,000	195,000	185,000	130,000	570,000
Operating expense:						
Salaries and wages.....	230,000	55,000	55,000	60,000	60,000	230,000
Sales commissions.....	69,000	15,000	20,000	17,000	14,000	66,000
Office expense.....	10,000	2,500	2,500	2,500	2,500	10,000
Research materials.....	2,500	100	1,150	1,000	250	2,500
Program and news expense.....	32,000	7,000	7,600	9,000	8,400	32,000
Repair and maintenance.....	9,000	600	1,500	3,000	3,900	9,000
Other expenses.....	35,000	8,500	8,500	9,000	9,000	35,000
Overhead allocation.....	32,500	8,100	8,100	8,100	8,200	32,500
Direct program expense.....	105,000	70,000	70,000	55,000	85,000	280,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	61,000	15,000	15,000	15,000	16,000	61,000
Advertising expense.....	30,000	15,000	7,000	5,000	3,000	30,000
Depreciation, transmitter site.....	10,000	2,500	2,500	2,500	2,500	10,000
Total.....	666,000	209,300	208,850	197,100	222,750	838,000
Cash flow from operations.....	(16,000)	(149,300)	(13,850)	(12,100)	(92,750)	(268,000)
Nonoperating expense, interest on notes.....	32,000	7,000	7,500	8,000	9,500	32,000
Provision for tax.....						
Add depreciation.....	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	(38,000)	(153,800)	(18,850)	(17,600)	(99,750)	(290,000)
Cumulative cash gain or (loss).....		(153,800)	(172,650)	(190,250)	(290,000)	

PROJECTED STATEMENT OF QUARTERLY CASH FLOW, WSCO-TV—Continued

	Projected 2d year P/L	Cash flow Oct. 1, 1967, to Sept. 30, 1968				Cumulative cash flow, 2d year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$285,000	\$50,000	\$85,000	\$80,000	\$50,000	\$265,000
National time sales.....	725,000	130,000	220,000	195,000	145,000	690,000
Other broadcast revenue.....						
Total.....	1,010,000	180,000	305,000	275,000	195,000	955,000
Operating expense:						
Salaries and wages.....	245,000	60,000	60,000	62,500	62,500	245,000
Sales commissions.....	75,000	18,000	25,000	20,000	15,000	78,000
Office expense.....	10,500	2,600	2,600	2,600	2,700	10,500
Research materials.....	3,000	1,000	1,000	500	500	3,000
Program and news expense.....	35,000	8,500	8,500	9,000	9,000	35,000
Repair and maintenance.....	9,000	1,000	1,000	3,500	3,500	9,000
Other expenses.....	25,000	6,500	6,500	6,000	6,000	25,000
Overhead allocation.....	32,500	8,100	8,100	8,100	8,200	32,500
Direct program expense.....	135,000	80,000	80,000	85,000	89,000	334,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	184,000	46,000	46,000	46,000	46,000	184,000
Advertising expense.....	35,000	15,000	10,000	5,000	5,000	35,000
Depreciation, transmitter site.....	10,000	2,500	2,500	2,500	2,500	10,000
Total.....	839,000	259,200	261,200	260,700	259,900	1,041,000
Cash flow from operations.....	171,000	(79,200)	43,800	14,300	(64,900)	(86,000)
Nonoperating expense, interest on notes.....	47,000	11,500	11,500	11,500	12,500	47,000
Provision for tax.....	36,500					
Add depreciation.....	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	97,500	(88,200)	34,800	5,300	(74,900)	(123,000)
Cumulative cash gain or (loss).....		(378,200)	(343,400)	(338,100)	(413,000)	
	Projected, 3d year P/L	Cash flow, Oct. 1, 1968, to Sept. 30, 1969				Cumulative cash flow, 3d year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$415,000	\$80,000	\$120,000	\$115,000	\$90,000	\$405,000
National time sales.....	1,090,000	215,000	320,000	295,000	215,000	1,045,000
Total.....	1,505,000	295,000	440,000	410,000	305,000	1,450,000
Operating expense:						
Salaries and wages.....	253,000	61,000	63,000	64,500	64,500	253,000
Sales commissions.....	100,000	22,000	30,000	27,000	25,000	104,000
Office expense.....	10,000	2,500	2,500	2,500	2,500	10,000
Research materials.....	5,000	1,500	2,000	1,000	500	5,000
Program and news expense.....	40,000	10,000	10,000	10,000	10,000	40,000
Repair and maintenance.....	12,000	1,000	2,000	4,500	4,500	12,000
Other expenses.....	45,000	12,500	12,500	12,500	7,500	45,000
Overhead allocation.....	40,000	10,000	10,000	10,000	10,000	40,000
Direct program expense.....	200,000	60,000	60,000	60,000	60,000	240,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	180,000	45,000	45,000	45,000	45,000	180,000
Advertising expense.....	40,000	10,000	15,000	10,000	5,000	40,000
Depreciation, transmitter.....	10,000	2,500	2,500	2,500	2,500	10,000
Total.....	975,000	248,000	264,500	259,500	247,000	1,019,000
Cash flow from operations.....	530,000	47,000	165,500	150,500	58,000	431,000
Nonoperating expense, interest on notes.....	4,000	11,500	10,500	9,500	8,500	40,000
Provision for tax.....	240,000		45,000	50,000	50,000	145,000
Add depreciation.....	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	260,000	38,000	122,500	93,500	2,000	256,000
Cumulative cash gain or (loss).....		(375,000)	(252,500)	(159,000)	(157,000)	

PROJECTED STATEMENT OF QUARTERLY CASH FLOW, WSCO-TV—Continued

	Projected, 4th year P/L	Cash flow Oct. 1, 1969, to Sept. 30, 1970				Cumulative cash flow, 4th year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$590,000	\$105,000	\$175,000	\$160,000	\$125,000	\$565,000
National time sales.....	1,560,000	295,000	465,000	420,000	320,000	1,500,000
Total.....	2,150,000	400,000	640,000	580,000	445,000	2,065,000
Operating expense:						
Salaries and wages.....	275,000	67,000	67,000	70,000	71,000	275,000
Sales commissions.....	175,000	37,000	46,000	47,000	45,000	175,000
Office expense.....	15,000	3,500	3,500	4,000	4,000	15,000
Research materials.....	8,000	3,000	3,500	750	750	8,000
Program and news expense.....	50,000	12,500	12,500	12,500	12,500	50,000
Repair and maintenance.....	12,000	1,000	2,000	4,500	4,500	12,000
Other expenses.....	45,000	12,500	12,500	12,500	7,500	45,000
Overhead allocation.....	45,000	10,000	10,000	12,500	12,500	45,000
Direct program expense.....	250,000	100,000	100,000	80,000	116,000	396,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	185,000	46,500	46,500	46,000	46,000	185,000
Advertising expense.....	60,000	20,000	20,000	10,000	10,000	60,000
Depreciation, transmitter site.....	10,000	2,500	2,500	2,500	2,500	10,000
Total.....	1,170,000	325,500	336,000	312,250	342,250	1,316,000
Cash flow from operations.....	980,000	74,500	304,000	267,750	102,750	739,000
Nonoperating expense, interest on notes.....	19,000	7,000	5,500	4,000	2,500	19,000
Provision for tax.....	460,000	50,000	150,000	100,000	100,000	400,000
Add depreciation.....	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	511,000	20,000	151,000	166,250	2,750	340,000
Cumulative cash gain or (loss).....		(107,000)	44,000	210,250	213,000	
	Projected, 5th year P/L	Cash flow, Oct. 1, 1970, to Sept. 30, 1971				Cumulative cash flow, 5th year
		1st quarter	2d quarter	3d quarter	4th quarter	
Operating revenues:						
Local time sales.....	\$825,000	\$160,000	\$245,000	\$220,000	\$165,000	\$790,000
National time sales.....	2,155,000	410,000	635,000	570,000	435,000	2,050,000
Total.....	2,980,000	570,000	880,000	790,000	600,000	2,840,000
Operating expense:						
Salaries and wages.....	300,000	70,000	75,000	77,000	78,000	300,000
Sales commissions.....	250,000	45,000	75,000	70,000	60,000	250,000
Office expense.....	15,000	3,500	3,500	4,000	4,000	15,000
Research materials.....	8,000	3,000	3,500	750	750	8,000
Program and news expense.....	75,000	18,500	18,500	19,000	19,000	75,000
Repair and maintenance.....	12,000	1,000	1,000	6,000	4,000	12,000
Other expenses.....	50,000	12,500	12,500	12,500	12,500	50,000
Overhead allocation.....	60,000	15,000	15,000	15,000	15,000	60,000
Direct program expenses.....	325,000	120,000	110,000	100,000	100,000	430,000
Building leases.....	40,000	10,000	10,000	10,000	10,000	40,000
Equipment leases.....	180,000	45,000	45,000	45,000	45,000	180,000
Advertising expense.....	30,000	30,000	30,000	10,000	1,000	80,000
Depreciation, transmitter site.....	10,000	2,500	2,500	2,500	2,500	10,000
Total.....	1,430,000	376,000	401,500	371,750	360,750	1,510,000
Cash flow from operations.....	1,550,000	194,000	478,500	418,250	239,250	1,330,000
Nonoperating expense, interest on notes.....	3,000	2,000	1,000			3,000
Provision for tax.....	735,000	100,000	225,000	175,000	175,000	675,000
Add depreciation.....	10,000	2,500	2,500	2,500	2,500	10,000
Cash flow for period.....	822,000	94,500	255,000	245,750	66,750	662,000
Cumulative cash gain.....		307,500	562,500	808,250	875,000	

D. H. OVERMYER BROADCASTING CO.
PROJECTED STATEMENT OF INCOME AND CASH FLOW, KJDO-TV, ROSENBERG, TEX. (HOUSTON)

[For years ended Oct. 31, 1966, through Oct. 31, 1971]

	1966-67	1967-68	1968-69	1969-70	1970-71
Operating revenues:					
Local time sales.....	\$140,000	\$216,000	\$306,000	\$468,000	\$694,000
National time sales.....	393,000	625,000	999,000	1,588,000	2,467,000
Total revenues.....	533,000	841,000	1,305,000	2,056,000	3,161,000
Operating expenses:					
Administration.....	75,000	80,000	85,000	90,000	95,000
Sales expense.....	103,000	115,000	175,000	250,000	390,000
Engineering.....	120,000	125,000	135,000	150,000	175,000
Advertising expense.....	40,000	45,000	50,000	65,000	85,000
Programming.....	255,000	280,000	330,000	405,000	480,000
Total broadcast operating expenses.....	593,000	645,000	775,000	960,000	1,225,000
Equipment leases.....	61,000	184,000	180,000	185,000	180,000
Building leases.....	40,000	40,000	40,000	40,000	40,000
Total.....	101,000	224,000	220,000	225,000	220,000
Gross operating profit.....	(161,000)	(28,000)	310,000	871,000	1,716,000
Other expense:					
Interest, real property.....	20,000	19,000	18,000	17,000	16,000
Interest, other.....	20,000	15,500	11,500	7,000	2,500
Total.....	40,000	34,500	29,500	24,000	18,500
Net profit before taxes.....	(201,000)	(62,500)	280,500	847,000	1,697,500
Provision for Federal income tax.....	0	0	8,160	406,560	814,560
Net profit after taxes.....	(201,000)	(62,500)	272,340	440,440	882,940
Add depreciation and amortization.....	10,000	10,000	10,000	10,000	10,000
Cash flow.....	(191,000)	(52,500)	282,340	450,440	892,940

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