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TELEVISION BROADCAST POLICIES

HEARINGS
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS
OF THE
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
FIRST SESSION
ON
OVERSIGHT ON TELEVISION
BROADCAST POLICIES

MAY 9, 10, AND 11, 1977

Serial No. 95-60

Printed for the use of the
Committee on Commerce, Science, and Transportation



CG-51242

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1977

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CONTENTS

Opening statement by Senator Hollings	Page 1
---	-----------

CHRONOLOGICAL LIST OF WITNESSES

MAY 9, 1977

Erlick, Everett H., senior vice president and general counsel, American Broadcasting Co.	10
Howard, Robert T., president, NBC Television Network	2
McGannon, Donald H., president and chairman of the board of Group W (Westinghouse Broadcasting Co., Inc.)	42
Robinson, Glen, professor of law, University of Virginia School of Law	54
Prepared statement	59
Schneider, John A., president, Columbia Broadcasting System/Broadcast Group	15

MAY 10, 1977

Blake, Jonathan, counsel, Association of Maximum Service Telecasters, Inc. ...	141
Block, Richard C., chairman, Council for UHF Broadcasting	127
Prepared statement	130
Harris, Henry, president, Cox Cable, representing the National Cable Television Association; accompanied by Robert Schmidt, president, National Cable Television Association	146
Prepared statement	156
Land, Herman W., president, Association of Independent Television Stations, Inc., accompanied by Leavitt J. Pope, president, WPIX, New York, N.Y.	115
Wasilewski, Vincent T., president, National Association of Broadcasters	107
Wiley, Hon. Richard E., Chairman, Federal Communications Commission; accompanied by Robert E. Lee; James H. Quello; Abbott Washburn; Joseph R. Fogarty; Margita E. White, Commissioners; Wallace E. Johnson, Chief, Broadcast Bureau; and Richard J. Shiben, Chief, Renewal and Transfer Division	65
Prepared statement	92

MAY 11, 1977

Bonk, Kathleen, National Media Task Force Coordinator, NOW; Pluria Marshall, chairman, National Black Media Coalition; and Ulysess W. Boykin, vice president and general manager, WGPR-TV, Detroit, Mich.	301
Prepared statement of Kathleen Bonk	305
Prepared statement of Pluria Marshall	311
Bradbury, Bill, news director, KCBY-TV	169
Proxmire, Hon. William, U.S. Senator from Wisconsin	178
Rothenberg, Dr. Michael B., professor of psychiatry and pediatrics, director, Child Psychiatry-Pediatrics Liaison Services, University of Washington School of Medicine and Children's Orthopedic Hospital and Medical Center, Seattle, Wash.	175, 187
Attachments	195

IV

	Page
Sauter, Van Gordon, vice president, program practices, CBS, New York, N.Y.;	
Archa O. Knowlton, media services, General Foods, White Plains, N.Y.;	
Robert Choate, president, Council on Children, Media and Merchandising,	
Washington, D.C.; Loring Mandel, president, Writer's Guild-East, Hunting-	
ton, N.Y.; and Ted Carpenter, executive director, National Citizen's Commit-	
tee for Broadcasting, Washington, D.C.	211
Prepared statement of Van Gordon Sauter	220
Prepared statement of Robert B. Choate	263
Attachments submitted by Loring Mandel	279
Thurmond, Hon. Strom, U.S. Senator from South Carolina	203

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Blake, Jonathan D., counsel, Association of Maximum Service Telecasters, Inc.,	
letter of May 10, 1977	146
Council for UHF Broadcasting, letter of July 21, 1975	137
Cowen, Eugene S., vice president, American Broadcasting Co., letter and	
enclosures of May 27, 1977	373
Erlick, Everett H., American Broadcasting Cos., Inc., letter and questions and	
answers of September 2, 1977	385
Gerbner, George, professor of communications and dean, University of Pennsyl-	
vania, the Annenberg School of Communications, letter and enclosures of	
May 18, 1977	430
Harris, Henry W., president, Cox Cable Communications, Inc., letter and	
questions and answers of August 19, 1977	418
Jones, B. H., executive vice president, National Livestock Feeders Association,	
letter and enclosures of May 9, 1977	426
Lindow, Lester W., president, Association of Maximum Service Telecasters,	
Inc., statement	143
Mater, Gene P., CBS Inc., letter and questions and answers of September 1, 1977	
393	
Monderer, Howard, National Broadcasting Co., Inc., letter and enclosures of	
June 28, 1977	327
Radio Television News Directors Association, statement	438
Rothenberg, Michael B., Children's Orthopedic Hospital and Medical Center,	
letter and enclosures of June 24, 1977	296
Sauter, Van G., CBS Television Network, letter and enclosures of May 18,	
1977	290
Schlosser, Herbert S., letter and enclosures of March 2, 1977	362
Schmidt, Robert L., president, National Cable Television Association, letter of	
May 10, 1977	164
Schneider, Jack, CBS Inc., letter and enclosures of April 25, 1977	422
Schneider, John A., president, CBS, Inc., letter of May 17, 1977	391
Television Commission of the National Congress of Parents and Teachers,	
statement	436
Television Station Employment Practices 1976 "The Status of Minorities and	
Women," article	452
Wilkin, Eugene W., president, Wilkin Associates, letter of April 8, 1977	420
Wiley, Richard E., Chairman, Federal Communications Commission, letters of:	
July 26, 1977	104
October 3, 1977 questions and answers	408

TELEVISION BROADCAST POLICIES

MONDAY, MAY 9, 1977

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met at 10:07 a.m., room 235, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR HOLLINGS

Senator HOLLINGS. Good morning. Today we begin 3 days of oversight hearings in consumer broadcast policies with particular attention to television.

As we do, I cannot help but draw a comparison between broadcast and energy, a subject I have been deeply involved in for several years. In the energy field, we are experiencing severe shortages. It is a pleasure to turn my attention to broadcasting, a field of great abundance, both in audience and progress.

Television competes with all alternative ways in which we can expend our time. Yet with 97 percent of our households owning television sets, with an average of 6 hours of programing watched each day, the only activity competing with TV for our time is sleep.

Television is a success story; undeniably, it has become the strongest social force in our country.

I am certain many of the witnesses we will be hearing from would be happy if we turned our attention back to the energy crisis, exclusively, and left them and the industry alone.

However, with the success of television and its significant influence, has come new public responsibilities. Broadcasters, like Members of Congress, enjoy a public license. We occupy the public seat. The broadcaster occupies the public home. Both our licenses are periodically reviewed and extended for good performance. Part of the review process involves evaluating the performance of the whole group.

Accordingly, during these hearings it will not be our purpose to look at the performance of individual licensees, but rather to fulfill our mandate to review the activities of the industry in the totality to determine if the public interest is being served.

We have no preconceived notions, but several areas cause specific concern.

If, for example, charges of excessive violence, sexuality, obscenity, and lack of special attention to the needs of children and

teenagers and failure to fully implement equal employment policies are well founded, then the broadcasting responsibilities are not being met and remedial action would be considered.

When appropriate, we are fully prepared to improve the broadcaster's ability to serve the public.

We are equally prepared to applaud the broadcaster's successes.

The broadcaster enjoys a high degree of credibility and community support and has a reputation for fairness and attention to local needs and issues, which we support and encourage.

During this first day we will focus on network practices. Each of the networks is represented, and we will hear from them individually, followed by a question period directed to the three witnesses as a group, if that meets with the pleasure of the committee so as to save time and not be repetitive in the questions.

I would make one other observation with respect to submitting statements ahead of time. We always ask that the statements be submitted 1 week ahead of time, so the staff can review them. We can save time and pick up the important points that the committee members are interested in. When they come in as late as Saturday afternoon before the hearing on Monday morning, hereafter, we will consider canceling the appearances of witnesses.

The first witness is Mr. Robert Howard, president of NBC Television Network.

Mr. Howard, we welcome you and ask you to come forward, please.

STATEMENT OF ROBERT T. HOWARD, PRESIDENT, NBC TELEVISION NETWORK

Mr. HOWARD. Good morning.

My name is Robert T. Howard and I am president of the NBC Television Network. I understand at this session of its hearings, the subcommittee is interested in getting a broad factual overview of television networking—its structure, how it operates and how it relates to other elements in television broadcasting.

That is what I will try to cover. With the permission of the chairman, we thought it might be more interesting if we used slides in our presentation.

Our presentation sketches the basic industry elements: The stations that provide programming directly to the public; the sources of that programming; the functions of the networks; the nature of the network relationship with affiliated stations; the development of network programming, its economics, and supervision of its standards; advertisers; the role of news and sports in the network program structure; and finally, the ultimate question—how viewers judge our service.

We call it "The American Connection." [Slide.]

That's how we regard television—as a central communications institution instantaneously linking the population from all parts of the country, all walks of life, in city apartments, suburban homes, solitary farmhouses—in a uniquely American connection. [Slide.]

The television service in this country is provided directly to viewers by more than 700 commercial stations, and more than 250 noncommercial stations. [Slide.]

Television has developed to the point where 96 percent of the homes in this country have a choice of four or more stations—66 percent have a choice of seven or more. [Slide.]

Television stations are independently owned, either individually or as members of a group. Station ownership is highly decentralized. There are literally hundreds of owners of individual stations. [Slide.]

There are almost 100 different group owners—that is, companies who own more than one VHF station—a station on channels 2 through 13. [Slide.]

Fourteen of them, including the three national TV networks, each owns five VHF stations, the maximum allowed under law. Many others own both UHF and VHF stations. [Slide.]

Many of the programs presented by stations are produced by the stations themselves—documentaries, community and public affairs programming, local sports coverage, local entertainment, and news, a lot of it. [Slide.]

In fact, local station newscasts in total fill many more hours than network newscasts, have more viewers and bring in more revenue. [Slide.]

Stations also buy individual programs and series from syndicators—program suppliers who sell directly to stations. [Slide.]

Syndicators offer original productions, such as "Sammy and Company," [slide] movies [slide] and reruns of network series. And stations affiliated with networks also receive the network [slide] program schedule. [Slide.]

Of the more than 700 commercial stations, 100 are not affiliated with any network. They rely on local programs and—for the most part—on syndicated programs, many of them reruns of popular network series. [Slide.]

The majority—more than 600—are affiliated with one of the three television networks [slide] so that each network has affiliation contracts with about 200 stations. [Slide.]

The networks provide affiliated stations with a daily schedule of varied programs; through these stations, the programs reach a national audience. [Slide.]

Networks lease and administer most of the facilities that interconnect the stations on a full-time, national basis. [Slide.]

And networks sell commercials in network programs to national advertisers, paying the stations an agreed monthly amount, called network compensation, based on the number of network commercials in the programs the station carries. A contractual formula is negotiated with each station. I'll talk more about compensation later. [Slide.]

Affiliation contracts give station first call in their community on the programs of their network. Frequently, they decline network programs in favor of local programs, or in favor of syndicated programs that may provide higher revenue for them. Of almost 600 prime time programs offered by NBC so far this broadcast season, less than 50 were carried by every affiliate. [Slide.]

But most stations do carry most of their network's schedule. [Slide.]

The variety and volume of the network service—and the cost of creating it—are such that no station could develop it on its own, nor could any group of stations. [Slide.]

And no other organization is prepared to undertake this daily service because the costs and the risks are so high. [Slide.]

The average prime time half-hour program costs a network \$155,000 for two showings—that's only one episode, not the series. [Slide.]

The average program, \$335,000. A feature made for television, \$882,000. [Slide.]

Together, the three networks provide more than 16,000 hours a year of programing [slide] at a total cost of more than \$1 billion a year [slide] some of it on programs on which we lose money: major news event coverage, for example, and documentaries, religious programs, some sports events, even a number of entertainment shows. [Slide.]

But mass entertainment programs do overall pay their way. In fact, they earn the money that makes the entire service possible. [Slide.]

The networks finance the development of entertainment programs, and pay for the rights to present them. [Slide.]

But paying these costs does not mean ownership of the programs. Networks themselves produce and own only a handful of the entertainment programs they offer. [Slide.]

Only 1 of the 28 prime time series scheduled by NBC this season is owned by NBC. [Slide.]

Most entertainment programs are produced and owned by independent suppliers. [Slide.]

Networks are not allowed to have any financial interest in the programs they underwrite. In effect, we rent; we buy only the right to present the program one or two times. The outside suppliers own the programs, and hold them for any future sale, usually to individual stations through syndication. [Slide.]

As a mass entertainment medium, a network survives by engaging the interest of the widest possible segment of the population [slide] which puts us in the business of trying to forecast public taste in entertainment. It's a risky business. Movies and Broadway shows fail much more often than they succeed. [Slide.]

Network television's no different. Over the past 4 years, only one-third of the new prime time entertainment series introduced each year survived the first full season, and this year the rate of failure was higher. These failures involve heavy losses to the networks. [Slide.]

Before production, a network must commit to the production company for a given number of episodes. If a series is canceled early due to lack of public response, the network absorbs the cost of the episodes not shown, including those in various stages of production. Today, million dollar losses are not uncommon. [Slide.]

But that's only the tip of the iceberg. Behind the series that do get on the air in a typical year are as many as 50 completely produced pilots [slide] selected from as many as 140 scripts [slide] culled from some 300 program outlines. [Slide.]

In almost every case, we pay for the outlines, used or not; in every case, we pay for the scripts, produced or unproduced. [Slide.]

We finance all, or most of, the production costs of the pilots, broadcast or rejected. [Slide.]

And pilot development runs high, it averages \$293,000 for a half-hour pilot, \$560,000 for 1 hour. Over \$1 million for a 2-hour pilot. And we'll pay for the testing of the pilots, before sample audiences in theaters, or over selected cable TV channels where viewers can watch at home, in urban and rural areas, and then give us reactions in a telephone survey.

Networks create opportunities for a large number of program suppliers, both major and minor. [Slide.]

With our doors open to a diversity of suppliers, a wide array of program ideas pour in. NBC considers more than 2,500 in a typical year. They may be original; or conceived as a vehicle for a particular performer; or drawn from novels, short stories, motion pictures, the stage, other TV series; or based on actual events. [Slide.]

Interestingly, all the statistics I've given on programing are in the process of changing. Television is a medium of constant evolution, and new forms emerge. [Slide.]

The miniseries—"Roots" or "Jesus of Nazareth," for example—are designed to run for a limited number of episodes instead of an entire broadcast season. And the number of different prime time series introduced each season is growing steadily. At NBC, we used to consider 12 a lot; this season we introduced 21. [Slide.]

So the trend is for more changes of programing, not just in September and January, but spread throughout the entire broadcast season. Among the three networks, 33 of the 66 prime time programing hours have been changed so far this season, which means fewer repeats, more original programing, more diversity, more development, more cost, more risk. [Slide.]

For networks do seek out new forms, new ideas. It's the only way to respond to changing audience appetites. It's essential in a competitive industry. [Slide.]

To some of our critics, who look for a revolution rather than an evolution in public taste, it may not always seem that way. But there's no brushing aside the fact that it's a long way from "Father Knows Best" to "All in the Family." From "Ed Sullivan" to "NBC Saturday Night." [Slide.]

So we seek ideas—but many factors go into the selection process before an idea becomes a reality on the screen. There are tangible ones: Can an idea be well written, cast, acted, directed, produced? [Slide.]

There's the intangible—the one we spend the longest, hardest hours at: Will the program have the ingredients to attract a large enough audience for a mass medium service? [Slide.]

Then will there be problems of taste? NBC has a large staff in a department called broadcast standards. The other networks have equivalent departments. These men and women specialize in judgments on propriety and taste—on conformity to contemporary standards. [Slide.]

They are involved in every entertainment program, every day of the year. For a proposed new program, they'll review concept and theme, script, rough cut, final cut. Their advice will be an essential element in the decision to go ahead with a program or to make changes in it. [Slide.]

And, of course, we're concerned with the competition. Will a program be competitive? Where can it be scheduled competitively? The rivalry among the three networks is a daily and nightly affair. It spurs program development, improvement and innovation. That's how we attract audiences and compete for advertising revenue, the financial base for the entire system. [Slide.]

And after we complete all the steps of development, production, scheduling, and the programs are on the air, the viewers decide. [Slide.]

People often ask us, "How do you know what I really like?" Well, there's no way to survey each of the Nation's 201 million viewers. [Slide.]

But as in almost all political polls, U.S. Government studies, and business surveys, a scientifically selected sample will yield a consistently reliable estimate. [Slide.]

The most widely used national audience measurement service is that supplied by the A. C. Nielsen Co. Nielsen installs audimeters in a scientifically selected sample of 1,200 homes throughout the country. The homes chosen are kept confidential, and at least 20 percent of them are changed each year. [Slide.]

The meters automatically record which station each set is tuned to, minute by minute. They measure what viewers actually do, not what they say or remember. The resulting figures—the well-known Nielsen ratings—represent which portion of the available national audience actually tuned to which program. [Slide.]

Are 1,200 homes enough of a sample? Laymen are often skeptical—but experts are not. [Slide.]

Most social surveys of the full population use that sample size—or smaller—successfully. So do most surveys taken for American industries and for the U.S. Government.

The reliability of this sampling size was demonstrated in a study by CONTAM—this is the Committee on Nationwide Television Audience Measurement—some years ago. The study used graduated samples from 100 to 2,500. It measured 10 different programs, with many different graduated samples, and found that once a sample size between 1,000 and 1,200 was reached, any possible improvements in accuracy would be relatively small. [Slide.]

But with millions of dollars at stake, we can't afford less than the best and most complete market research available. Many other techniques are used to cross-check audience size, and to judge audience anticipation, interests and desires—techniques that include viewer diaries, questionnaires in the mail, telephone surveys, panel discussions, indepth interviews. [Slide.]

TV entertainment programs live in a daily national referendum—probably the Nation's most direct democratic process—to be accepted or rejected with the flick of a channel selector. [Slide.]

Networks react quickly to adjust their service to consumer demand—more so than any other industry. For us, it's a matter of good business, which flows from good service. [Slide.]

And as programing has evolved, so has television's advertising structure. [Slide.]

In TV's early days, advertisers bought entire programs, produced them, and identified with their programs and performers. [Slide.]

But television grew rapidly to massive dimension—the broadcast day expanded—and more and more advertisers clamored for a chance to use the effective new medium. New patterns had to develop. [Slide.]

Today, very few programs are sponsored by a single advertiser. In this way, network television has become open to a wide range of advertisers. Many place commercials across network schedules, in time periods that promise the audiences they want to reach. [Slide.]

In the current season, 554 different advertisers bought network scheduled time, and 62 of them were new. NBC's advertisers ranged from America's largest companies to one which bought network time for only \$2,000. Now, this is just the NBC story. [Slide.]

Advertisers typically do not produce programs, but they do produce their own commercials, through their advertising agencies. However, these are broadcast only after screening by specialists of the broadcast standards department. They examine claims, demand factual substantiation, and the advertiser's research in support of the claims. [Slide.]

But while commercials in mass entertainment programs bring in most of the revenue, the entertainment programs are only a portion of the total network service. And reaching the maximum audience is not always our standard. We know, for example, that many specialized programs—in the children's, religious and cultural areas—will reach a lesser audience than broad-appeal entertainment programs. And, of course, that's true of many news programs.

Each of the three networks operates a national and international news organization. They have a constant capability to cover and report news developments anywhere in the world. [Slide.]

At NBC News alone, more than 1,400 people are employed, at 20 bureaus around the world, covering and reporting for NBC Television, NBC Radio, NBC's owned stations, and supplying a daily news-film service available to affiliated TV stations. [Slide.]

Our network television programming includes "Today" [slide] "Update," the news magazine Event, Weekend, Meet the Press [slide] special reports, some of them spanning an entire 3-hour broadcast evening, political coverage—the candidates' debates, primaries, conventions, election. Television has come to play a central role in the national electoral process [slide] and major news event coverage, sometimes continuing for days if needed. The three networks are the only organizations ready to provide instant, nationwide TV coverage. [Slide.]

While NBC produces almost none of the entertainment programs it presents, all news programs are produced by the NBC news division. We must do this if we are to be accountable on matters relating to public issues and information. So the network takes the responsibility and the cost. [Slide.]

Maintaining a global news organization is costly. For NBC, more than \$100 million a year. Political coverage alone this past election year ran to \$20 million. And many news programs are presented at a loss.

It may surprise you that some of the major sports events also are not profitable. [Slide.]

Top sports events draw huge audiences, and carry commercials sold at high rates. But the rights to cover them cost millions, and the technical job of coverage additional millions. Some events earn money for the networks—but others run at a loss. Yet it's only through the continuing service by the networks that the entire national public can see top sports events—without charge. [Slide.]

So the cost of networking is high—for entertainment programs, news, sports, network interconnection, research, and many overhead services. [Slide.]

Advertising revenue is the primary source of meeting these costs and returning a profit—for networks and for the stations. [Slide.]

As I mentioned earlier, networks not only give their affiliates the network programs, the networks pay the stations for carrying them. This payment—it's called compensation—is negotiated with each station. Size of market, and audience contributed by the affiliated station, are among the factors in formulating compensation. A key point about compensation is that the stations get compensated on the basis of the number of network commercials within a program, even if the network loses money on it—so compensation is free of risk to the affiliated stations. [Slide.]

Compensation paid by networks to stations ranges from about 8 percent of the annual revenue of large market stations to 20 percent for smaller markets. [Slide.]

Network affiliation is particularly important to them, for smaller markets have trouble attracting national advertisers directly. Without network programing furnished free, and without the network compensation, smaller market stations would have to cut back on their service, or go out of business. [Slide.]

But even more important than the direct network payment to affiliated stations is the indirect value generated by network programs. These draw large audiences, which makes them attractive to advertisers. The networks provide commercial positions in their schedule for stations to sell directly to local and national advertisers. So stations have valuable commercial time, with no program costs attached. [Slide.]

The largest portion of the average stations' revenue—in some markets as high as 65 percent—is from its sale of these commercials in and around network shows. [Slide.]

In a parallel to the network operation—where revenues from mass entertainment programing supports news and other unprofitable services—this station revenue helps to subsidize local public affairs and community programs. [Slide.]

Naturally, the relationship between network and stations is more than just a checkbook affair. We visit stations; they visit us. Frequent large-scale conferences are held. There are phone calls, letters, and telegrams by the thousands as we exchange views on new programs, current programs, news coverage, and different community needs. [Slide.]

And previews of programs are arranged via closed circuit to stations—as much as 20 hours a week of such previewing—a large proportion of the total prime time schedule. Station reactions play an active part in shaping the course of network programing to be seen in their markets. [Slide.]

Stations accept responsibility for everything they broadcast in their communities, and the network service takes that into account. As business enterprises in the community, and as residents of the community, station interest is self-evident. [Slide.]

But they're also accountable under law. A station can exist only with a license granted for a 3 year term by the FCC. That applies equally to stations owned by networks, affiliated stations, and those that operate without network affiliation. [Slide.]

The Commission also exercises various regulatory powers in connection with its grant of licenses. So television lives, in part, in a wide area of regulation. But because the Commission is barred by statute from censorship of programs, and is subject to first amendment requirements, Government and broadcasters tread a delicate constitutional and legal line on the form and extent of regulation. [Slide.]

Is the system working for viewers? They're the ones who truly shape the course of national television. A series of nationwide Roper polls that began in 1959 indicate a high degree of public confidence. [Slide.]

The latest edition shows: 70 percent of those polled rate the performance of television stations as good to excellent [slide] ranking it ahead of all other community institutions; [slide] 64 percent cite television as their main source of news—far ahead of all other media; [slide] 51 percent call television the most believable source of news—also far ahead of all other media; [slide] 75 percent say television is the leading source for acquainting them with candidates for national office; [slide] 75 percent believe having commercials is a fair price for being able to watch television. [Slide.]

What the public says is supported by what it does. It watches more and more. Ten years ago, a TV set was in use in the average home 5 hours and 41 minutes a day; today—6 hours and 20 minutes a day. [Slide.]

So stations, networks, program producers, advertisers, and the public are linked in a uniquely American connection. Not a perfect system. It will not please everybody at every given moment. But the alternatives are worse. And it is a system instantly responsive to the needs and desires of the vast majority of the public it serves. If we cease to do that, we'll be out of business.

Thank you.

Mr. Chairman, if I could just read one other statement.

Senator HOLLINGS. Surely. Surely.

Mr. HOWARD. Late last week we finalized our new schedule for the new television season, and I am pleased to announce it was consistent with the commitments we had made, that there would be a reduction of the hard action series on the network. We have distributed to the committee, I am sorry it is late, and the staff, our press release regarding this new schedule.

As you can see, there is a heavy emphasis on entertainment formats that do not rely on hard action.

Thank you very much.

Senator HOLLINGS. Mr. Howard, you obviously get better than a 70-percent rating, unless you brought that audience with you. I never know. But we appreciate your statement.

We will withhold questions as I indicated earlier.

We will now hear from Mr. Erlick, senior vice president, general counsel of American Broadcasting Co. Inc.

Senator GRIFFIN. Can I interrupt for a definition of "hard action"?

Senator HOLLINGS. Mr. Howard, what does "had action" mean? I want an answer myself.

Senator GRIFFIN. You used the term "hard action." I guess you will have to tell us what that means. We are not that familiar with the term.

Mr. HOWARD. The question on "hard action. A definition—

Senator GRIFFIN. What does it mean to you?

Mr. HOWARD. Programs would be—let's just say a police action type program, where there would be chase involved, there would be physical action, heavy physical action and—

Senator SCHMITT. I think he is trying to say "violent."

Senator GRIFFIN. Violent. That is what you mean.

Senator HOLLINGS. Thank you very much.

Mr. Erlick, We will be glad to hear from you.

STATEMENT OF EVERETT H. ERLICK, SENIOR VICE PRESIDENT, GENERAL COUNSEL, AMERICAN BROADCASTING CO., INC.

Mr. ERLICK. Thank you, Mr. Chairman and members of the subcommittee. I am Everett H. Erlick, senior vice president and general counsel of American Broadcasting Co., Inc.

Thank you for the opportunity to participate in these hearings.

Originally, I had intended to offer the subcommittee an overview of the television industry, similar to Mr. Howard's excellent presentation. To avoid duplication, I shall comment only briefly on some of ABC's television network practices and operations.

Also, I would like to offer ABC's views, in summary form, on certain issues currently subject to congressional and FCC consideration.

The heart of the ABC Television Network is our program schedule, consisting of 4,300 hours of entertainment, news, public affairs, and sports per year.

Of ABC's 1,300 prime time hours during the 1976-77 season approximately 182 hours are devoted to news and public affairs; 117 hours to sports; 104 hours to variety series and specials; 182 hours to situation comedy; 143 hours to dramatic series and specials; 169 hours to detective and action series; 182 hours to fantasy and adventure series; and 130 hours to movies, both theatrical and made-for-television. The balance of the hours are not yet scheduled.

Each of our prime time entertainment programs, other than theatrical features, goes through a full developmental cycle—from idea to story line, to script, to pilot, to series. From initial concept to telecast, there is an average lapsed time of approximately 18 months. Annually, ABC spends over \$500 million on the acquisition and production of network programming.

Each year, our program department evaluates hundreds of program concepts, approximately 200 of which are scripted; 40-50 are made into pilots; and 5-10 hours ultimately evolve into series, depending upon our requirements. Of the total entertainment programs telecast, the great majority are acquired from outside suppli-

ers; the rest are produced by ABC. Only about one-third of new series introduced each year are successful. And program failure can be, and often is, very costly.

ABC's news, public affairs and sports programing is almost all produced "in-house."

ABC's goal is to develop and present a program schedule of diversity and balance, reflecting quality and taste, which will be entertaining and informative to broad segments of the viewing public. ABC's philosophy on televised violence was recently summarized by Frederick S. Pierce, president of ABC Television, as follows:

The principal program issue in the public forum today is violence. It has become a daily topic with the press. Its popularity as a subject to criticize our industry is increasing in geometric proportions.

What has been lost in the intensity of rhetoric on this subject is the fact that ABC, while increasing the balance and diversity of its prime-time schedule, began to diminish the number of action programs in prime time and the incidents of violence in those programs well before the subject became a popular drum.

We have decreased on a year-to-year basis the amount of programs dealing with violence and we have decreased the incidents of violence portrayed within those programs. We have implemented, and we will continue to implement, strict standards as to the actual portrayal of acts of violence.

Mr. Pierce's March 2 statement before the House Subcommittee on Communications, reference copies of which have been furnished to this subcommittee, contains a detailed analysis of ABC's programing operations.

The program selection process is a team effort requiring close cooperation between network management and the Department of Broadcast Standards and Practices. This is also true of program content. In both instances, discussion with our affiliates is involved.

Completion of the program schedule is a step-by-step building block process, commencing with, among other things, consideration of our own family viewing policy. Fully weighed in the final decisions are balance, audience flow, competitive factors, quality and taste.

Comedy and variety programs have become an increasingly important part of our prime time schedule, and have received a great deal of emphasis in our development activities. As a result, we recently announced that all six new shows which will be introduced on our 1977-78 prime time schedule starting next fall will be comedies in a wide variety of forms. The new program series are described in the attached press release of April 25. This is the first time we can recall that a television network has introduced exclusively comedic form programs in its new fall schedule.

As to sales: In network television, advertising time is sold primarily to advertising agencies acting on behalf of national advertisers or, in some cases, regional advertisers. Advertising rates are determined in a very competitive marketplace and are influenced heavily by prevailing economic conditions and the degree of confidence existing in major consumer industries.

Prices are also keyed to the size and demographic composition of the audience reached by a particular program.

Network sales patterns have altered dramatically over the years. In 1957, for example, approximately 77 percent of all ABC prime

time entertainment programing was sold on a single or alternate week program sponsorship basis.

In 1965 there were only 270 national advertisers on ABC.

Today, due largely to dramatic increases in program costs and advertiser desire to spread risk of program failure, 95 percent of our network sales are on a participating basis—that is to say, 30-second or 1-minute advertisements are purchased in a variety of programs by a number of advertisers.

Changes have permitted many more advertisers, including smaller ones, to use the medium, and to do so throughout different parts of the broadcast day. Today, about 450 advertisers, both large and small, purchase time on our network each year.

ABC seeks to generate sufficient revenues in entertainment programing to cover program and operational costs and to return a profit, used in part to offset the deficit incurred principally in news and public affairs.

Our news and public affairs programing, although usually sponsored, does not generate sufficient revenues to cover the enormous costs involved, for example, in maintaining a worldwide radio and television news service with 17 bureaus, and well over 1,000 employees.

ABC has primarily affiliation agreements with its 5 owned and 187 other television stations located throughout the United States.

An ABC primary affiliate is entitled to first call on all ABC Television Network programs; however, the station is not obligated to telecast any particular program or series of programs.

Affiliated stations not only have the right to broadcast ABC network programs without paying for them, but they are compensated by us for the sponsored network programs they carry.

ABC, of course, receives its revenues from advertisers whose commercial messages appear in those programs.

In addition to the network compensation, a major source of affiliated station income is national, regional, and local commercials which appear adjacent to, and sometimes within, network programs. All the revenue from those commercials goes to the station, not the network.

Prior to telecast ABC's affiliates receive written advance program advisory bulletins which describe in detail the offered prime time program. Also prior to telecast, all prime time first run entertainment programs, news specials, documentaries, short story specials, after-school specials and the premiere episode of each daytime series are closed circuited to stations over network lines. These procedures enable affiliates to prescreen and evaluate the programs before they are actually carried.

Having described some of ABC's network practices and operations, let me discuss a few of the more pressing issues which the Congress and the Commission are presently considering. These include the Communications Act rewrite; pay cable; section 315 and the "fairness doctrine"; and the Commission's network inquiry.

As to Communications Act Rewrite: As you know, your colleagues on the House Subcommittee on Communications are considering a rewrite of the Communications Act. ABC has no objection to a thorough review of the Communications Act, and the manner in which it has been implemented over the past 40 years,

but we doubt that a wholesale rewrite of the act would be wise or productive. It bears pointing out that under the act, this country has developed by far the most effective and competitive system of radio and television communication in the world. This fact alone suggests that rewrite, for its own sake, is unnecessary.

We do believe that certain specific areas require legislation. In the Supreme Court's 1972 decision in *United States v. Midwest Video*, Chief Justice Burger observed:

(T)he almost explosive development of CATV suggests the need for a comprehensive re-examination of the statutory scheme as it relates to this new development, so that the basic policies are considered by Congress and not left entirely to the Commission and the Courts.

These concerns are, of course, more acute today than they were in 1972, as the recent *Home Box Office* decision, which I shall discuss, makes clear.

While we have generally supported the desirability of legislation extending license terms, providing greater stability in the renewal process, we must frankly state that we consider this to be of less urgency than congressional action with respect to the pay cable issue.

As to pay cable: There are now in excess of 1 million pay cable subscribers in the United States, many of whom are serviced by the Home Box Office Network, utilizing satellite interconnection.

Stanford research has forecast that, by 1985, there will be 15 million pay television users generating annual revenues of \$2.5 billion—approximately double the combined program expenditures of the three television networks in 1975. So far, this estimate is proving to be realistic.

However, the costs associated with wiring the Nation indicate that for the predictable future cable and pay cable will remain a service available only to an affluent, urban minority of the U.S. population.

It is estimated that it would cost \$250 billion to wire the entire Nation, but only approximately \$15 billion to wire the one half of the Nation living in the densely populated areas.

Yet, if permitted, this subscribing minority will generate sufficient revenues to permit pay cable to outbid the networks for some of the best product.

In this regard, the March 25, 1977 decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Home Box Office, Inc. v. FCC*, is most significant.

The court there held that the Commission, under present statutory authorization, is powerless to prevent pay cable from utilizing this economic potential to siphon any and all program material it can from the free television system, principally, sports and movies.

We do not believe this decision to be compatible with the concerns consistently expressed by many of the Members of Congress responsible for national communications policy. We have long believed that legislation in this area is essential; the decision, in our view, makes such legislation a major priority.

ABC's views on the pay cable issue have been brought to the attention of the Congress on other occasions. This subcommittee has been furnished with reference copies of my May 25, 1976, testimony before the House Subcommittee on Communications.

Section 315 and the fairness doctrine: Two other topics of recurring concern and interest to ABC are section 315(a) of the Communications Act, the so-called "equal-time" provision, and the fairness doctrine. As to section 315(a), it is our view that a permanent suspension should be enacted for Presidential and Vice Presidential candidates. We have also supported a trial suspension of section 315(a) for all other candidates—Federal, State, and local, and continue to urge adoption of these measures.

Such legislative revision would afford broadcasters greater freedom and flexibility in their campaign coverage and would, in turn, benefit the public by permitting the most effective presentation of the major party candidates plus the most comprehensive exploration of important issues.

The presentation of the Presidential and Vice Presidential debates last fall exemplifies the valuable contribution that broadcast coverage can provide to the public.

Nevertheless, as the subcommittee is aware, broadcast coverage of those debates was possible only because of an interpretative ruling by the FCC, upheld by the courts, that debates, arranged by those other than broadcasters and candidates, could qualify as a "bona fide news event," exempt from the "equal-time" provision.

However, the coverage was not without its difficulties, and broadcasters are still precluded from arranging debates.

We continue to believe that a permanent suspension is necessary to resolve lingering ambiguities and to permit even greater flexibility in the political broadcasting area.

As to the fairness doctrine: In general, ABC believes that its own news policies and practices would be substantially the same, regardless of the doctrine's existence.

On the other hand, as a regulated medium, we recognize that without the fairness doctrine, pressures would increase to institute something we regard as even more onerous, such as mandatory access.

Therefore, ABC has not urged abolition of the fairness doctrine—rather, we have emphasized the need to place continued and even greater emphasis on licensee discretion in the FCC's administration of the fairness doctrine.

As long as licensee discretion may be freely exercised and the Commission does not attempt to second-guess the broadcaster, the networks and individual stations will be able to function as responsible journalists. A more detailed expression of ABC's views on this important subject is contained in our statement presented to this subcommittee in April 1975.

In January 1977 the FCC initiated an inquiry into commercial television network practices. The inquiry is concerned with two principal matters; first: The relationships between networks and their affiliated stations; and, second: The relationships between networks and entities that produce programs for network telecast—typically, Hollywood production companies.

ABC believes that the present network system, involving a working partnership between networks and local stations, has served the public well, making possible a rich diversity of high quality news, entertainment, and sports programs.

We also believe that network production of some entertainment programming carries with it no inherent evil; to the contrary, network production efforts have provided the viewing public with programming of substantial merit.

Also, such production may be essential to the development of new forms, such as ABC's "Good Morning America" program.

ABC intends to cooperate fully with the Commission's inquiry. We are confident that, when the record has been compiled, the Commission will conclude that existing relationships between the networks and their affiliated stations, on the one hand, and their program suppliers on the other, are proper and in the public interest.

Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you, Mr. Erlick.

We will withhold questions. We will now hear Mr. John A. Schneider, president of the CBS broadcast group.

STATEMENT OF JOHN A. SCHNEIDER, PRESIDENT, COLUMBIA BROADCASTING SYSTEM/BROADCAST GROUP

Mr. SCHNEIDER. Good morning, Mr. Chairman.

Senator HOLLINGS. Good morning.

Mr. SCHNEIDER. My name is John Schneider, president of the CBS/broadcast group.

I would like to direct my remarks today to the dynamics of programming, for that is what television is really all about—what the viewer sees when the set is turned on. And within the basic concept of programming may be found many of the issues that this committee may wish to discuss.

At the outset, I want to stress the fact that television is here to inform and to entertain. To this end, television offers a mix of news, informational, and entertainment programming. To a large degree, this mix and these programs reflect the interests of the viewing public, for it is the viewer who ultimately decides what will be on television.

There is, of course, one major exception to this basic rationale.

The major exception is news, where sheer popularity plays little part. We have accepted a commitment to aid in establishing and maintaining an informed electorate. At present, of the 22 hours, of prime time, making up the CBS Television Network schedule, 2 hours are regularly devoted to informational programming—"60 Minutes" and "Who's Who." During the broadcast season, "CBS News" preempts 20 hours of regularly scheduled entertainment programming for CBS-produced news specials.

All of this, of course, is in addition to the "CBS Evening News" with Walter Cronkite, the "CBS Morning News" with Hughes Rudd and Bruce Morton, and such regular series as "Face the Nation." CBS News also produces the twelve 2½-minute "In the News" programs for children on Saturday and Sunday mornings and the half-hour "What's It All About?" series for children.

While our fundamental goal is entertaining and informing, in the children's area we go one step further, with the inclusion of prosocial messages.

There is an unfortunate tendency for our critics to lump all of children's television together and claim that "there is nothing good

on for children." This is completely untrue, and generally comes from those who have not taken the trouble to watch children's television, to take into account what children will watch, to understand the problems of programming to children who have limited attention spans, and to avoid making television a sixth day of school.

Initially, most children's programming was derivative. We offered much of what had been successful Saturday movie house fare—cartoons and short comedy films. Some were good, some were bad. Many people wanted something better.

As a result of development, CBS introduced two new concepts in 1972—informational programming and prosocial messages. At the same time, we called on a number of experts to help us put together these programs: Child behavior specialists, educators, social scientists. The result was an array of programs that children found enjoyable and which served a distinctly useful purpose—the communication of factual and prosocial messages.

Rather than take the time of this committee with the details of what we did and the success of that effort, I would like to make available to each member of this committee and to submit for the record a booklet that CBS recently issued. The title really tells it all. It's called "Learning While They Laugh."

We program for children in other ways than our Saturday morning schedule.

We present a series of broadcasts each year called "The Festival of Lively Arts For Young People," in which we have introduced children to Shakespeare, to poetry, to ballet, and other art forms.

This fall, CBS will launch another series for children. Called "The Winners," it will be a profile-in-courage series about young people. Starting in October, "The Winners" will be an after-school series on the second Thursday of each month.

But it is general entertainment programming that probably consumes more time of more executives than any other aspect of broadcasting. It is here that reflections of public thinking and interests are most fully put to bear on what is—and isn't—offered on television.

We do not operate in a vacuum. Although the ultimate responsibility for what goes on television is the broadcaster's and cannot be shared with others, much goes into the mix of comment and thought in program development and scheduling, including:

Our affiliates, who visit, write and telephone on a daily basis, and meet with us in one national and three regional sessions each year, and, I can assure you, who are not shy in voicing their opinions;

The letter-writing public, with some quarter million pieces of mail each year, praising and protesting;

A wide variety of public interest groups, both national and local, who are quite vocal in making their specific wishes known;

The ratings, for ratings are to broadcasters as votes are to elected officials as an indication of success and failure;

What our competitors are doing, for television is certainly one of the most competitive industries in America today.

And into this decision mix goes more than a program's viability. We have to take into account not only what the public wants. We

have to consider what some perceive as problems in television—violence, language, permissiveness, sex.

There are, of course, many parts to the Network Schedule. That schedule represents a broad spectrum of programs and audience.

On CBS, it ranges from the instructional "Sunrise Semester" early in the morning to "Captain Kangaroo" to the world's longest running soap opera, "Guiding Light," that started in radio in 1937 and moved to television in 1952, to "The Waltons" to "Kojak" to "Mary Tyler Moore." There are also sports programs and movies and entertainment specials that go into the mix.

In effect, we have to program to meet the interests and needs of the broadest possible audience.

Of course, we cannot expect to satisfy everyone. Indeed, it would be foolish to think that any one network or station could have 100 percent of the audience attention at any one time. But there is enough variety there, on our network and the others, for each of us to find something that will satisfy our particular interest in entertainment programming.

Those who are dissatisfied complain. While one never gets accustomed to severe criticism, most of us accept it as one of the prices of success. In fact, dialog with our critics is a daily occurrence for virtually all broadcasters, and poses no problem. Indeed, constructive, informed criticism could do for television what such criticism has done for most art forms.

I have no problem with the individual who chooses not to watch one program or another, for whatever reason, or with the parent who restricts his child's viewing. And I have no problem with the preacher who preaches or the teacher who teaches that certain programs should not be watched for any reason. In fact, I would encourage more parental guidance about television viewing, just as the parent has a voice in the selection of the books a child reads, the clothing a child wears and the friends a child brings home.

There is one final point that I would like to make.

There could be a tendency to look upon broadcasting as some sort of monolithic institution. That is as incorrect as assuming that because all the members of this committee are Senators, you think and act alike. The witnesses on this panel are all broadcasters, but there the similarity ends.

We don't think alike, we don't act alike, we don't program alike. We differ on issues both large and small.

And we are not perfect, but we are satisfying millions of Americans every day with diverse programs to fit everyone's needs and interests.

There is also an occasional tendency on the part of some of our more vocal critics to feel that we are not doing things right, or that we are not doing enough.

Often these people seem to feel that if they could get their hands on the network controls they could cure everything from the common cold to crime in the streets to illiteracy to the corn blight. Would that it were so easy.

Instead, television entertains and informs—and I believe that we do it well. Indeed, I am firmly convinced that the American system of broadcasting is the best in the world in terms of service to the most diverse and demanding audience anywhere.

Thank you.

Senator HOLLINGS. Thank you, Mr. Schneider.

I invite now Mr. Howard and Mr. Erlick to come join you at the table.

We will proceed to the questions of the subcommittee. We will not have any particular alternating between majority or minority or any particular time limit. Perhaps we, as a subcommittee, can interrupt each other and move from subject to subject perhaps in an orderly fashion. If we get bogged down then we will have to split up the time.

What I really want to do is yield after one question, because Senator Griffin and I are enthused with the attendance today.

Senator Schmitt has been with us. We want these others to get a chance to ask questions; we want to encourage a continued interest.

Mr. Howard, we have gone through the entire subject. One of you took care of all the children, and the other went to comedy to eliminate violence and the other entertained us.

You all work pretty well together.

With respect to the pay TV, I take from Mr. Erlick's statement that the sky is falling on this magnificent broadcast industry if pay cable is allowed to expand.

Assuming that is true, Mr. Howard, what would you like?

Would you give an exclusive franchise and monopoly to the broadcasters bands in this country and decree that there should be no pay cable TV?

If there should be, how would you as a Senator legislate it?

Mr. HOWARD. Mr. Chairman, NBC feels that as far as cable television is concerned as a supplementary service, we feel we are for that.

Our big concern with pay cable comes particularly for sports events, where a few systems could outbid the networks and the Nation could be shut out of these events. I think that is our biggest concern.

Senator HOLLINGS. You think if we passed a bill regulating the access to sports events, then the major part of the problem with the HBO decision would be satisfied?

Mr. HOWARD. I think it would go a long way toward possible correction. I think it is something we want to call your attention to. I think it has to be followed and examined and it certainly seems you are doing that.

Senator HOLLINGS. Do you think so, Mr. Schneider?

Mr. SCHNEIDER. Obviously, it is something that has been discussed and debated a great deal over a long period of time. I will try to summarize our position as briefly as I can.

In referring to Mr. Erlick's testimony as a data base, he did indicate it would take a relatively small amount of money to wire the best areas of the Nation. In that case, cable could, in a relatively small percentage of the Nation, outbid commercial networks that try to serve the entire Nation. So, domination by the few could deny access to the many. This is something that legislative bodies have to address.

Basically, I am opposed to Government interference with the free marketplace. It would be nice if we could openly compete in the marketplace for broadcast rights.

However, the cable systems grew up, off our backs. They were using our broadcasts at no cost to them to wire the percentage of the country they now have wired. Off that matrix, off that grid of wires, with connections to all of those homes, then the pay service started. It was basically an unfair system to begin with.

I am afraid, however, that we are never going to get Humpty-Dumpty back on the wall, so now we have to deal with the situation.

Relatively few homes in this country could be in a position to outbid the many. The most clear and present danger is sports.

Senator HOLLINGS. Suppose you had to legislate it, how would you do it?

Mr. SCHNEIDER. I think you can protect those sporting events which have already been broadcast by commercial networks. This is not just a network problem. This would be hometown baseball, hometown basketball, or hockey being offered by a local station. On a pay basis the local station can be outbid. Those people who can least afford to pay for cable, for the pay cable for an entertainment or sports program, who now stay home and see it all free, will be denied that opportunity on a pay basis.

Senator GRIFFIN. If we were to completely rewrite the act, as has been suggested in some quarters, certainly one of the questions that would come up is, whether or not the networks should be licensed.

It seems to me, in the background of that is the question of how much independence and control do the affiliates really have, those who are licensed. Since this is an overview session, where we are learning the basic successes and fundamentals, I would like to know more about the recirculationship between the networks and the affiliate stations, how much advance opportunity do they have to screen network programs and decide whether or not they want to run them?

Would you begin, Mr. Howard, and give me some education in that area?

Mr. HOWARD. As I had stated, Senator, we go down about—send down the line about 15 to 20 hours a week. Now, we have 22 hours of prime time programing. The main questions that arise with some of our affiliates are in the prime time area. Usually they will get it 3 to 4 days in advance of the air date. Now, their problem is with the Television Guide, which usually has a TV ad date approximately 4 weeks in advance of the sceduled on-the-air date.

Sometimes it is 3 weeks. But they would be concerned if they are going to take off the program and it is going to appear, say, in television guides. That is just one of the problems that does exist for them.

I would think though over the year, taking a look at the number of programs that a station or stations have taken off, they have not been taken off because of content, but more frequently to supplement in prime time their local public service and, I think the schedule we announced today again points out that we, at least at

NBC have lived up to our commitment to reduce some of the programs that they were concerned about.

Senator GRIFFIN. Mr. Schneider, isn't it possible to give the affiliates more of an opportunity than a couple of days?

Mr. SCHNEIDER. Regretfully, Senator, we don't take delivery on most of our programs until 5 or 6 days ahead of broadcast. We do prescreen, speaking only now for CBS, every one of the programs that has a history of causing an affiliate problem. Every "All In The Family" is prescreened. We have 22 hours of prime time scheduled and about 10 of those hours can be previewed. Almost every feature filmed is prescreened for the affiliates. Every "All In The Family," every Maude," and programs of that nature that deal with topical issues that might have a theme that bothers some people, is prescreened. I don't think it is necessary, and I don't believe it is the feeling of the affiliates that it is necessary that they preview every "Mary Tyler Moore Show," every "Waltons," or programs like that that have not represented a thematic or language problem.

On top of this we can't prescreen a program like "60 Minutes" because it is put together very shortly before showtime.

Senator GRIFFIN. Is it a fact the "Who's Who" program you referred to is being canceled?

Mr. SCHNEIDER. No; it had its last broadcast on Tuesday, and it will be on Sunday night. When we see what the public response to it is following "60 Minutes"—which we think is the more appropriate lead in—the program may continue. If the public rejects it following "60 Minutes," then we would have to reexamine whether it should be on the air. The public decides in that case.

Senator GRIFFIN. As I understand it the profit situation for the networks is improving.

What about the improvement? What about the news segment? Is that a profitable part of the business?

Mr. ERLICK. Speaking for ABC, it is not. We lose substantial amounts of money in the news division on an annual basis and, of course, in an election year, where there are heavy additional expenditures, for primaries, conventions, and the election itself, that loss increases sharply.

Senator HOLLINGS. That surprises me.

I understand you have come up in the ratings, in a dramatic fashion in the last 2 or 3 years. I have been led to believe that success has been due to the tremendous investment you put in news and the wide news coverage.

I thought that the news was the moneymaker for ABC and you say it is the money loser?

Mr. ERLICK. It is not a moneymaking division, as far as the network is concerned. As I understood Senator Griffin's question, he said he had understood, in general, that the news divisions of networks, television networks, are a loss operation and he wanted to inquire, I think, of each company as to whether or not that was a fact.

Senator GRIFFIN. I indicated, I generally believe the profit picture of the networks is looking better. I was wondering about the news part of it.

Mr. ERLICK. Your assumption about profits in general is quite correct. It is particularly correct about ABC. We have had a very substantial increase as a result of the success of particularly the prime time entertainment schedule.

Nevertheless, what I pointed out, Mr. Chairman, in my statement is that the overall Department, of 17 bureaus, well over a 1,000 people, and so forth, when you consider the total expense of that division, the expense of specials, documentaries and so forth, as well as the cost of the Monday through Friday evening news program, weekend coverage, all the other coverage, it is not profitable. Significant losses are incurred by us on an annual basis. I can't speak for the other two.

Senator CANNON. Gentlemen, this is a period when Congress and the executive branch are concerned with the issue of regulatory reform. This committee has already gotten involved in one industry, in which it about scared the participants to death, when you talked about lessening the regulation.

I would like to ask the three of you, do you feel you have too much or too little Federal regulation and do you think that Congress ought to do something about loosening up the regulatory aspect?

Mr. SCHNEIDER. I will begin. I am antiregulation. I wanted the record to be perfectly clear. I think that we probably have too much regulation. Speaking for CBS, we are not in favor of a complete rewrite of the Communications Act, if that is implicit in your question.

Senator SCHMITT. Would you say that again.

Mr. SCHNEIDER. We are not in favor of a complete rewrite of the Communications Act. I think we have a first-rate communications system in this country. I think the communication system of radio and television, as we know it, certainly renders a better service to the American public than any foreign service I have either seen or read about.

And I see no reason to rewrite the Communications Act, top to bottom.

I think that there could be alteration to it, such as my colleague, Mr. Erlick, suggesting that section 315 might quite properly be abandoned.

But for that, you don't need a complete top to bottom rewrite. You can simply amend the act. The act has been amended many times since 1934. And I think that our responsibility, both the stations and the networks, in handling news, makes the fairness doctrine obsolete.

I think we have paid our dues sufficiently to have full standing under the first amendment, such as our competing news media have. So from that point of view, I would say, yes, we are overregulated.

Mr. ERLICK. In general, I agree with that. I would like to add a couple of postscripts. I think we have to recognize that in an industry like this, where we are dealing with a scarcity of frequencies, that regulation really as far as licensing is concerned is inherent in the medium. And I don't see any way that Congress or the Commission or an administration can avoid the fact that you are dealing with a scarcity of spectrum space in certain areas and

regulation directed toward an equitable solution of that situation has to continue.

Second, it is very fashionable to be against regulation, and of course, I feel that way, too. I guess everyone does. I think we also have to recognize there are certain situations that call for regulation or congressional action, hopefully, which would direct regulation. To come back to pay cable, I think that is a perfect example, Senator Cannon.

If we were dealing with a normal marketplace situation, we would not be here making this point.

ABC was born out of a free competitive situation, which Congress helped to foster. That was our birthright. We are not going to sit here and argue against competition, nor are we going to sit here and tell you that a fourth network should not exist.

If there is a market for it, and they can make the grade, good luck to them.

Senator HOLLINGS. Do you think a market should exist for that gentleman to put down his cable and bid, let's say, on a movie or event and buy it and deliver it to persons that he has within that cable area?

Mr. ERLICK. Yes, sir.

This was our position originally and it still is: We are not against cable television as such. We are not against another competitive medium, as such, had they been licensed and had they been treated as broadcasters with responsibilities and obligations, as well as privileges. And if they had to go into the open market and buy their programs, as ABC did, in order to compete with NBC and CBS, we would not be taking that position.

But what has happened is, that Congress has given this industry an enormous subsidy, as a result of the Copyright Act which was recently passed; \$9 million a year is what the cable industry pays for the use of over \$2 billion worth of broadcast programs.

Now, that is not a marketplace situation.

What that amounts to, as I understand it, is 7 or 8 cents per home per month. That, of course, is passed on to the subscriber and the company itself is paying literally a token fee for the use of that programing.

That cable into the home gives pay cable the right to hitchhike on its back into the home, into a ready market.

Pay cable, and the cable systems are operated by the same companies. They use this privilege and this subsidy which Congress has given them and before the Commission gave it to them, where they pay nothing at all, in order to get a pay cable entry into the home. Using that base, that economic base, they would now bid against us for the very programs which are the economic foundation of our industry.

That is not a fair marketplace situation, as we have understood it before in American commerce.

That is the thing we feel should require some kind of congressional attention.

Senator HOLLINGS. When you say congressional attention, what you are saying is, if we licensed them with full-fledged rights and responsibilities, such as we now require of the broadcaster, then that would remove the inequity or the unfairness?

That is what you would do if you were a Senator? You would put in a bill to do that?

Mr. ERLICK. I am not sure you can do that. I am not sure you can turn back the clock 25 years.

I am not sure that is realistic.

I am not saying this is the answer, but S. 2283 was introduced in July of 1973 by Senator Beall. That bill provides, in part, that the Commission shall regulate pay television in such a manner that (a) the development and provision of pay television will be consistent with the establishment and healthy maintenance of free over-the-air television broadcast service, available to all members of the public, and (b) pay television program originations will be innovative and supplemental to the program services of television broadcast stations and will result in increased local community expression, and so forth.

That is one approach that might be taken.

Senator HOLLINGS. The legislation says they would be supplemental?

Mr. ERLICK. That is a policy directive which the Commission would authorize them to implement.

I think they should be encouraged to do innovative and new things and not bid against us for the things we have given free to the public.

Senator CANNON. Mr. Howard?

Mr. HOWARD. I hope, Senator, the Communications Act will be looked at. We feel it is a good vehicle and it has led to the United States having the best service in the entire world.

As we were discussing, I hope you will look into the aspects of 315. There are other parts of it that should be looked at. But, overall, we feel that it is a very good act.

Senator CANNON. In your presentation, and in the specific suggestions for change by Mr. Erlick, nothing was said about the term of the license.

A few years ago, we had quite a drive on to extend the license term beyond the 3-year period.

What is the feeling among you gentlemen as to the license period?

Mr. SCHNEIDER. Senator, there will be licensees who will come before you who will speak to the issue of longer license periods. I am here to speak for CBS, which owns five television stations and 14 radio stations. While we would like a longer license, we aren't complaining that we are handicapped by the license that exists.

I think the longer license period would be helpful to the smaller radio and television stations, where it is an expense, so that the general manager and his immediate staff are involved very deeply in the license process paperwork.

Fortunately, our stations, by and large, are large enough, where we have the staff and we are not as inconvenienced.

I don't want to make a claim on behalf of other broadcasters who are perfectly capable of making it themselves.

Senator CANNON. The burden for filing an application for renewal is a tremendously heavy burden under the regulations now.

Mr. SCHNEIDER. It is even for us, but we consider it such a privilege to be in the broadcasting business that it is not something that we think is appropriate to complain about.

Senator CANNON. You take the small one-man radio station, it is a tremendous burden.

Mr. SCHNEIDER. One application we made, according to my recollection, was about 8 inches high. It is regulation, and we have to accommodate it.

Mr. HOWARD. It is a particularly heavy burden for the smaller operator, especially because he determines the community needs on a daily basis. He is there with the people, and particularly for the smaller stations, I think, it would be helpful for an extended time.

For the larger stations, as well, as Mr. Schneider said, it is a very expensive operation to put together.

Senator CANNON. But you find no particular problem with it, being one of the biggest operators?

Mr. HOWARD. That is correct. We would like to see it.

Mr. ERLICK. We feel the same way, Senator. I think we are in agreement with that. I am in agreement with you. I think in the case of some of the smaller stations, particularly radio stations, it presents a serious administrative problem, but I feel due to various cases which have taken place since WHDH that this whole question of stability and the licensing process has been greatly improved.

I think a good operator today is not really fearful that someone will come along and outpromise him and get his license at renewal time, which some people concluded after WHGH. And by the same token, I think it is fair to say that a poor operator is not going to be saved by legislation. In our judgment, the presumption of renewal which really goes to the credit of a first-class bona fide operator probably exists already in terms of the present rules. And other than the administrative problem which you quite properly bring up with regard to small stations, we do not see a significant overall problem.

Senator CANNON. We continue to receive complaints about excessive violence or more and more emphasis upon sex in the TV programing.

Recognizing that we have a censorship problem, the first amendment rights at stake, what recommendations can you gentlemen make in this area and how do you respond to those people who insist that the network can't deal with the problem, that that ought to be a problem for either the Congress or the FCC to deal with?

Mr. HOWARD. Senator, as I stated earlier, I think the action of NBC as far as its scheduling, speaks to that. I think that action is better than words and I think analysis of that will show we have lived up to the promise we had stated earlier that with our new season we would have the reduction, it's there, and I think that's the best answer I can give.

Mr. SCHNEIDER. Senator, since 1972, when the whole violence question was first addressed in public forums, the CBS Television Network has had a reduction of 35 percent in violent incidents in its prime-time schedule. And in the season next fall you will not see coming back such programs as "Nashville 99," "Delvecchio,"

and, "Hunter," and so on, so there has been a net reduction in that sort of thing at our network as well.

If I may, may I expand on that just a little? I think that we have had action-adventure shows and we had had violence on television for a very long time. I think that the thing that brought it most recently to the forefront of public attention has been an evolution from a different kind of violence displayed in westerns in the late sixties, to police shows which largely reflect crime in the streets.

As crime in the streets came to the forefront of everyone's attention, in public forums and discussions, and indeed on the campaign trail, the programming on television, the entertainment programming, was reflecting crime in the streets, as well, so there was a very delicate sensitivity.

The fact is, violence has been coming down on television for some years, but the public is perceiving it as being increasing. We have vastly less violence on than we had when we all had a lot of westerns on. Then there is another kind of perception. Whenever we start talking about violence, we have to talk about definitions. I don't do this to beg the question, but is "Six Million Dollar Man" a violent program? Is our new program that we will be putting on next fall, "Daniel Boone," as Daniel, age 25, goes through the Cumberland Gap to Kentucky with a young companion, if he's attacked by a bear, is that violence?

Many of these people counting violence today would define that as a violent program. We don't think it is. We think it will be good, wholesome adventure. There aren't going to be Indian scalps but there is going to be jeopardy. Is this violence?

Speaking of programs, if my colleagues will permit, is "Six Million Dollar Man" a violent program? Is "Bionic Woman"? Is "Wonder Woman"? "Roots" had violence on it. "Jesus of Nazareth" had violence. So as people talk about violence they talk about various things. I think that what made the public so terribly vocal about violence were the police shows reflecting street violence.

It's been a self-correcting influence. There were too many and the public responded to it. I referred to three coming off and—

Senator HOLLINGS. You haven't decided between "Roots" and "Daniel Boone." Whatever you decide, perhaps on a cumulative basis, you could determine the volume of violent shows. Someone was telling me that a high school graduate has seen 15,000 murders by the time he gets out of high school.

Mr. SCHNEIDER. I never said anything like that.

Senator HOLLINGS. Maybe you call it hard action instead of violence. On a cumulative basis, it mounts, and it does have an impression. Don't you think there is some responsibility on the part of the networks. Granted you will have to be Solomon to decide what is without violence, but you certainly can take it all and add it up and say when there is too much.

Mr. SCHNEIDER. I think it is a network responsibility. I think we do accept that and I think we are willing to be accountable for what is on the air.

Mr. HOWARD. Senator, I think that's true. We have an awful lot of input from all over the country. We have 212 affiliates, we are constantly talking to them. We get a tremendous amount of communications with the public. But decisions have to be made, just as

you have stated, based on what you believe, and what the other people that I work with believe in. If we were to look at—we had 231,000 pieces of communication with the public last year. Of that, if I remember the figure correctly, about 777 letters had to do with violence.

Now, that's less than three-tenths of 1 percent but we are not acting off of that. Our schedule was based on a commitment that we had made last year, and that we have lived up to and will continue to do it, because we believe in it. I think that's our intent.

Mr. ERLICK. Mr. Chairman, may I just add from ABC's standpoint, two or three thoughts. First of all, I really think it's important for this committee, and I am sure it will, to look at the efforts of the three networks from an overall perspective, and not simply at two or three shows which happen to have drawn a lot of criticism.

In ABC's case, and while I'm referring to last year's schedule now, the number will be reduced next year. As indicated in my statement, all six new programs will be comedic form. However, detective action programs in the 1976-77 season, represented only 10.8 percent of the entire schedule.

Now, I grant you that in some cases there may have been questionable judgments. We are not perfect. We try to do our best. We have 70 or 80 people in the program standards area reviewing these every day. But 10 percent in an overall program perspective is not really out of bounds, I would think, or unreasonable. If you look at the 30 most popular series on the air from September to April of 1977, you find only 3 detective actions shows in the top 30. "Baretta," "Hawaii 5-0," and "Starsky and Hutch." It is not as if the network is solely devoting itself to this programing because of the ratings. Actually, the top five shows are comedies.

Finally, I would say that there is, as Jack points out, a definitional problem here. The Johnson committee, which made the survey on which a lot of these criticisms are based, defines violence as an overt expression of physical force, with or without a weapon, against oneself or other which may be an intentional or accidental action, humorous or serious or a combination of both.

Now, in other words, a pie in the face in a certain situation or that type of event, under this definition, is an act of violence. We think we ought to get together with some of the public interest groups or definitions and I think if we could clarify the definition, some of the facts might tend to get sorted out and be put in a better perspective.

Senator CANNON. From what each of you have said, while you didn't answer my question directly, I take it you feel there is no action required by the Congress or by the FCC in this area, that the matter is being properly handled by the networks.

Mr. ERLICK. We certainly do.

Mr. HOWARD. For self-regulation, I think that would be the assumption.

Senator FORD. Starting with Mr. Howard and working to his right, how much effect has the criticism of violence on TV had, not on the networks themselves but on your advertisers? There have been direct turnoffs of TV; religious organizations and churches are saying we are going to turn TV off for 30 days, they have gone

directly to your advertisers and complained. Has that affected your programing?

Mr. HOWARD. There have been programs that certain advertisers will drop out of. That doesn't mean all police stories are wrong, either. We have a program, "Police Story" that I think is one of the finest on television. That portrays the police officer's problems, why are so many of them alcoholics and all the other problems. It's a dramatic form and it does it well. There are others we feel, as well as advertisers that we should eliminate from our network schedule and have done so.

There has been an effect in working with advertisers, certain advertisers will drop out of a program, sometimes I don't think it's right, I think they will drop out of a program for the wrong purpose and it will prevent us from putting on sometimes or possibly could prevent us from putting on programs of a controversial nature that could be helpful to the American public.

We have a program on by "NBC News" on incest, which is a very serious problem, and 50 percent of the advertisers dropped out of it because of the nature of the program which was on at 11:30 at night. Now, this is a problem to the American people, and it should be put on the air. We have put it on the air, but advertisers dropped out. It does not mean that they don't have the right to be able to do that. I believe they do. And they take advantage of that right.

But there are other programs, where I feel it does help to discuss and reveal a problem, and sometimes it's done in a dramatic form, where advertisers will drop out, but they have a perfect right to and have been doing it.

Mr. SCHNEIDER. Advertisers on occasion will ask for relief—it's our euphemism for dropping out—if it's a program they don't want to be associated with. That program can be something like "Helter-Skelter" broadcast by CBS. Based on the title they thought it was going to be violent, though it didn't contain a violent act.

It was really the detective story surrounding the murders.

They also drop out of programs because they think they are going to be too violent and don't want to be associated with them. There are pressure groups who are directly in touch with advertisers and to say they are not mischievous would be incorrect.

Mr. ERLICK. We have had the same experience, Senator Ford, with both advertisers and serious public interest groups that have attempted to organize a boycott of a particular sponsor or show or series.

We try to handle these things fairly and in good faith. On the other hand, we are concerned about two aspects of it. One is that it becomes a highly orchestrated thing, originating from widespread public interest groups. Undoubtedly they have very sincere motives. I'm not deprecating anyone's motive. If a massive action is encouraged one way or another, then we are talking about some sort of a prior restraint, in terms of our own decisional process.

That, I think, could be a dangerous problem down the line. I don't think it has reached that point yet, but I think it could.

Second, when you attempt to organize an economic boycott, actively, and without any punches pulled, there is some question as to whether or not that action is proper or legal.

We have these concerns, but so far, despite the fact that there are problems, I think like Jack and Bob we are attempting to meet the thing as reasonable businessmen.

Senator FORD. I think most of you have covered the scheduling for the new season as it relates to the violence.

You brought that out in your testimony, so I won't dwell on that. I understand that Dr. George Gerbner of the Annenberg School of Communications at the University of Pennsylvania, has issued violence studies every year for the past several years.

Is his analysis of violence on TV—do you accept it as to which programs are really violent or not?

Mr. SCHNEIDER. Let me attempt to answer. Dr. Gerbner reports from the Annenberg School of Communications, and he's done a violence profile. We have to understand what the profile is. The profile is Dr. Gerbner's invention and depends on who—what the economic and racial status of the offende and offender are. He also only measures 1 week a year.

Now, we have all seen in this year's television schedule any given week is certainly atypical. At CBS we have been conducting parallel studies to Dr. Gerbner's and years ago we decided 1 week was not a fair experience. So we extended it to 13 weeks and we publish our findings every year.

I have sent to the chairman a copy of our rebuttal of Dr. Gerbner's findings and I would be pleased to put in the record the CBS analysis of Dr. Gerbner's findings, as well as the CBS violence count for the broadcast year 1976-77. And, therefore, I think your staff and each of you can receive that and make your judgments.

We have definitional problems, we have definitional disagreements with Dr. Gerbner. I must make it clear that what Dr. Gerbner is calling his violence index, is not a violence count, although it has been convenient for our critics to pick it up and say it is a count or absolute measurement. It is weighted in many unusual and nonprojectable ways, whether it is men or women or minorities or children or comedic, and it is very convoluted, and we disagree with it completely.

Senator FORD. Any of you other gentlemen disagree with that?

Mr. ERLICK. I share Mr. Schneiders' opinion on it.

Mr. HOWARD. I think that was a good summation.

Senator FORD. I think each of you referred to screening of the programs, and you can give your affiliates some time in advance, maybe not as long as some think they should have and others long enough. It is my understanding we will have them to testify shortly, that Westinghouse Broadcasting Co. would like to have network programing available to them for review at least 4 weeks prior to the time it is shown on the air.

What does each of your networks do to prescreen programs and would it be in your best interest, or can you do at least 4 weeks before airtime?

Mr. HOWARD. Senator, we have a major production problem of getting a product to send down, as we call it, down the line or to have it previewed 4 weeks in advance.

Currently, it is NBC's practice to preview 15 to 20 hours per week of programing, up and coming programing, usually the week preceding will show what is coming up the following week.

Sometimes it is only 3 or 4 days in advance of on-the-air.

The production community, because of the changes that we have today, particularly with the NBC event-type scheduling, where there is not 1 week that is made up entirely of series that are on a continuing basis, each week there is something new coming on. From a producing point, we just can't get the delivery to do it 4 weeks in advance.

As I said a little earlier, one of the problems is Television Guide, which demands for advertising in its publication submission 3 to 4 weeks in advance, and if you were working at a station, I can certainly understand a problem that you said, well, I don't want to take that particular program, all of a sudden there might be an ad. That is only in the major markets.

It would not occur in the smaller markets, or it would be on-the-air promotion that they would be concerned about, but as I say, there are very few of those programs.

The usual preemptions we are really talking about are due to insertion of public affairs programs or other types of entertainment programing that is beneficial to the local station, that they want to put in for increased revenue purposes.

Mr. SCHNEIDER. We preview at CBS about 10 hours a week. We have been just a little remiss in previewing our feature films, because we do have those in advance.

So, with feature films, we have not been providing previewing as early as we might. We will correct that in the fall. But for other programing, it is a very real problem, because we don't take delivery on it. A man sits down at the typewriter with a piece of paper and starts to write the show, and he puts it off as long as he can, and he keeps improving it, and chances are it doesn't improve, but he thinks he is improving it, and that is his perception of reality, so he submits his script at the last possible moment. Then the actors work on it until the last possible moment, and the editors, and so on. They know if they get it to us 3 or 4 days before air date, it will make the air.

While we have contractual commitments to get the material 12 to 14 days before air, it is rarely there on time.

We can go back to the fellow and say, "Hey, we want it 2 weeks ahead of time like our contract calls for," or we can go and change our contract and ask for 28 days—

Senator FORD. Do you have a default paragraph?

Mr. SCHNEIDER. You want to have the best possible people working for you, and you try to accommodate them. And the joke in the business is, "Do you want it funny, or do you want it Tuesday?" So we say we want it funny. OK. You get it Friday, because he wants to work on it for 3 more days. In an effort to get the best programing on the air, we are engaged in a very inexact science. We just don't get programs until the last possible moment. We are not in a mechanical business, where it must be there in 28 days or it doesn't go on the air. You have never turned on your television at 8 o'clock at night and found a blank screen because something didn't come in on time.

There is something on the air. So we have a great writer or great producer or a fine actor who says, "I can't make the 28-day deadline or the 14-day deadline." What are you going to do? You are

going to give him a couple of more days. That is how, over time, we have gotten it down to the last possible moment.

Now, do we have to prescreen "The Waltons" every week? I don't think so. Do we have to prescreen "Mary Tyler Moore" 28 days ahead of time? I don't think so.

Every affiliate prescreens the opening one or two episodes of everything that is on the air in the fall, then we presume that the series is going to follow that pattern, and by and large they do.

When they don't follow that pattern we tell the affiliate. We warn early and prescreen the episodes.

Mr. ERLICK. About the creative process, all of our contracts normally require delivery from 14 to 30 days or more ahead of time of a program or series but we are not stamping out bolts and nuts here. The creative community is going to have its problems, just as Mr. Schneider described, so that to be realistic I think there will always be a number of shows each week which will not be in our hands more than, let's say, 2 or 3 days prior to broadcast.

ABC's policy up until about 6 weeks ago was to prescreen approximately 15 hours a week of its prime time schedule. Currently, we are following a policy of rescreening all prime time first-run entertainment. That necessarily means some of that programming does not go down the line until 2 or 3 days before broadcast for the reasons Mr. Schneider described, but presently we are prescreening all prime time entertainment, news specials, and documentaries.

Senator FORD. I am concerned about the whole communications law, and I think we ought to be very slow in taking off on that. We hear a lot about the mail system, the U.S. Mail, but one of the theories is we have allowed private enterprise to come in and take the cream off of that and we have been left with rural free delivery. We have the Bell Telephone built up, and worrying about others moving in, taking the cream off their crop and raising the rates to residential users.

Now we hear today that pay cable has piggybacked the communications system into our homes and that is going to cause a considerable problem where they might eventually be able to usurp the bids for particular sports events and that sort of thing, so I do think that what decision we make here will reflect a broad spectrum as it relates to the free enterprise system and the ability of so-called idea people out there.

You might suggest in your contract if they want to be funny, be on time.

Senator RIEGLE. First I want to say I appreciate your appearances today, your statements and your responses to questions we pose. I would like to start by making one comment on the violence issue, then I want to raise two questions, one on profitability and one on pay TV.

I for one am pleased to learn that the trend lines show you are moving away from more violence portrayals of situations on television. It just would be my thought, and I gather probably as many people have opinions as there are people on the subject, that even one, special vivid impression, say, of a violent murder on television is likely to have a profound impact on somebody. I mean I don't think you have to keep drumming this in until you have finally hardened somebody to the point where they are immune—violence

is part of the ethic or standard practice in society. I think that even a limited amount of that programming, if it is done in an excessive fashion, can be harmful and I worry about it. I would be among the last to interfere with programming content and I think to scale down the amount is one thing, but I think also there is the residual question of what it is that is still there, and how it is done. The power of television is so great to be able to create an enactment in front of somebody's eyes of a particularly violent crime has got to have a profound impact on somebody. It is not the same as seeing it in person but it is the next closest thing to it.

I think there is an enormous amount of responsibility that goes with the kind of power which you have, the power to take and jolt people and give people those first-hand experiences. I think it is possible over time to create an atmosphere where people begin to think of these things in a matter of fact way, as a part of life, and I think people, some people particularly can become hardened to that and sort of accept that as part of the prevailing ethic. I am concerned about it, so while the number of murders or number of muggings or rapes or whatever may be going down, I still think the way that subject is handled, even if it is handled once, still has relevance in terms of a possibly adverse effect on people. I just raise that point in passing.

In the area of profitability, I would like to ask what the networks are making today. I assume each network is a separate profit center. If not, please tell me so, but what, for example, would be the prospective level of net income of each of you over the last reporting period.

Mr. ERLICK. May I say this to that question? Customarily networks have not individually publicly disclosed their profitability. The figures are submitted to the FCC and the FCC issues a combined profitability report, which is public information, but normally we have not given that type of information individually. I am sure we would be glad to furnish it to you privately.

Senator RIEGLE. Why is that? What is the reluctance to make it public?

Mr. ERLICK. It is simply not a breakdown which has been given in the past for competitive reasons.

Senator RIEGLE. So your argument would be you would be adversely affected if either of these two fellows knew what the net income was of your network in a given year. I fail to understand why that is so. Can you indicate to me why that is so?

Mr. SCHNEIDER. We are different companies, organized in different ways, we allocate our costs differently. It clearly may not be a comparable figure.

Senator RIEGLE. I take it that is because you are a part of a larger corporate entity. That is, each network is owned by a company bigger than the network and the way it is allocated and the various other things make it difficult. I think there may be some value in knowing publicly what the levels of profitability are. Can you give me any running average for a running year, or is that all just secret information?

Mr. SCHNEIDER. We make other disclosures, regulatory disclosures. I believe they involve SEC regulations, that I simply couldn't disclose at this time.

Senator RIEGLE. Do you make a lot of money or a modest amount of money? Are you making a profit?

Mr. SCHNEIDER. The CBS Television Network is a profitable enterprise.

Senator RIEGLE. Let me ask you this question. How many people would any of the three of you employ at salary levels, say, above \$60,000 a year? What would be the size of the number of people on the payroll, roughly; perhaps you don't know it off the top of your head but, say, earning above \$60,000 a year in the network? Would it be \$25,000, \$50,000, \$200,000, \$500,000, what would be the figure?

Mr. HOWARD. I wouldn't even attempt to guess at that, Senator, but I do know that some of our cameramen have made over \$60,000 a year.

Senator RIEGLE. One of the three of you ought to be able to make some kind of educated estimate.

Mr. SCHNEIDER. Our difficulty is the television network, in any case, you add news to that—

Senator RIEGLE. The whole thing; everything that falls under the network as a profit center.

Mr. SCHNEIDER. Our news division is not in the network. We are not organized like that.

Senator RIEGLE. Your news department is outside the network.

Mr. SCHNEIDER. Yes.

Senator RIEGLE. What umbrella does that fall under?

Mr. SCHNEIDER. Under the broadcast group.

Senator RIEGLE. What does that fall under in a bigger company?

Mr. SCHNEIDER. Following down the ladder, we have four groups.

In the broadcast group there are four divisions: CBS News, CBS Television Network, the owned-television stations, and CBS Radio.

Senator RIEGLE. Let me stop right there for a moment. It seems to me, from the way you described it, the television news could be recombined with broadcast, and wouldn't those two pieces make up the whole of telecasting in the network, or not?

Mr. SCHNEIDER. Part of CBS News is the news service for—

Senator RIEGLE. Can't your accountants break that out for you?

Every corporation in the United States has shared costs within different parts of their organization and that is why they have cost accountants to make those assignments.

Mr. SCHNEIDER. I am saying we do not now break it out and analyze it that way.

Senator RIEGLE. Here is my concern. Some would say you are not doing that because you don't want anybody to really know what the profitability is. I think your case might be stronger, especially because you worry about pay-TV, which I want to get into in a second, if you were able to be more forthcoming about what you actually earn, what your expense picture looks like. If there is an awful lot of fat on your bones, that you don't want people to know about and therefore you hide behind the cloak of secrecy, I think you have one kind of a problem. If on the other hand, this is not an excessively profitable business and there are a lot of tough years along the way, the full story will bear that out, then you have a stronger case to argue. I leave it to you to decide which way you want to play it, but I think you would strengthen your case by being much more forthcoming about the profits.

Mr. ERLICK. I understand your point, and we would be happy privately, as I said, to give you any information we have at our disposal. Second, there was a time in the history of this industry, when ABC was considering merging with a larger corporation because of its economic needs, and these figures were public between the years of 1961 and 1971. The ABC television network lost a total of approximately \$115 million. During that period, had we not had the privilege of owning stations, which furnished the economic basis for real investment spending and building in the various areas, I don't think ABC would be sitting here today in front of you as a fully competitive national network.

Senator RIEGLE. You are in a new situation. You are now making money.

Mr. ERLICK. Absolutely true.

Senator RIEGLE. One other question. I don't want to take more time than the others. With respect to the issue of pay television, one of the questions in my mind which I would like to think about with you conceptually for a minute, is whether free television is really free. I was looking in one of your presentations at the list of advertisers, I guess in one case, there were about 450 advertisers, that basically do the bulk of the advertising and I assume that is where the great bulk of revenue comes from.

I assume they are advertising because they have found this is a very good way to do it. If they didn't, you wouldn't be advertising—I know from prime time last fall in our election even 15-or 20-second segments aren't cheap. In any event, I assume they are buying that time because it is a good economic decision for them and because they are in turn making money on that investment. It is an investment, that is a profitmaker to them. So in effect, what happens to the viewer out there who tunes in and gets this shot of messages, not only getting programing content but this constant wash of advertising, is that he goes out and buys these products and ends up, in effect, paying for the advertising and the programing.

Mr. SCHNEIDER. Not necessarily.

Senator RIEGLE. That may be where we have a disagreement but in effect somebody is paying for the advertising.

Mr. SCHNEIDER. Not necessarily.

Senator RIEGLE. We will get to that, because I would like to know how the advertising is paid for. My own experience on the corporate side, especially with companies that are merchandising products is that advertising expenditures are cost of sales and if you are going to be in a profitable business you have to, in the price of your products, build in those costs and recoup those costs in order to stay in business. It would be my strong feeling that every major advertiser on television of any consequence, I am talking about people selling things to consumers, would be recouping their cost in their selling price, the cost of their advertising.

In any event, to the extent that is true, you may want to argue that is not true all the time, maybe that is right, I would argue it is true most of the time, but the thing that concerns me is that people in effect are paying for the television they get. They are paying for it in the price of the product they are buying, that they are having advertised. We won't get into the merits of the prod-

ucts. I think sometimes the products with the least merit do the most advertising because that is a way to move the product. I don't want to get down that side road right now.

What I am saying is, if that line of reasoning holds true, then in effect free television isn't free. The viewers are paying for it in a disguised form. The reason I raise the issue is, if one had the chance, say on a network, forget cable for a moment, to buy television access without the advertising, without having the movies interrupted and getting a lot of the other things that I think is a lot of the advertising base anyway, it is a personal comment, that is the way I feel about it, somebody might be willing to pay for clean television without all the unwanted messages, if you will, and actually come out ahead. Instead of getting a bombardment of advertising all the time and ending up paying for it in terms of inflated product prices for things they end up buying.

Now, I would appreciate any of the three of you sort of responding to that set of thoughts.

Mr. ERLICK. I will start first. On your first point, Senator, the cost of advertising, there is an equally strong school of thought which says that due to the increased demand which advertising generates, the products are produced at a much lower cost and are available to the consumer at a much lower ultimate cost than they would be without such advertising. Robert Nathan & Associates have quite a study which I will be happy to submit to you if you are interested.

The cost of advertising conceivably could range between 1 and 2 percent, in some very large companies, maybe up to 5 percent or more for others. The theory of Mr. Nathan's treatise, which he has testified to, is that the cost of the product has been reduced significantly more than that amount, therefore the public is benefitting from a product which it is buying ultimately cheaper.

Laying that to one side, as far as pay is concerned, and the kind of a choice you are suggesting, we don't have any problem with that choice at all. We have no problem with the fact that if an individual wants to pay \$1 or \$2 or whatever to see an event without commercial interruption, he should be able to do it. We don't have any problem with that. What we are talking about is the use of what, in effect, is a mammoth governmental subsidy by the cable companies and the pay-cable companies to enter the American home, and then to take our product and resell it at a profit. That is where, you know, we part company.

Senator RIEGLE. I understand your argument in that area. I don't have any trouble understanding that point but I wonder if the other gentlemen will respond to that.

Mr. SCHNEIDER. I have nothing to add to Mr. Erlick's statement. I agree with the economic principle, that the volume brings that product to the consumer at a cheaper per unit price so the advertising on television becomes self-liquidating.

Senator RIEGLE. That is amazing. You believe that in the case of every product? Is that true for automobiles?

Mr. SCHNEIDER. Particularly automobiles. When the volume goes down the unit cost soars.

Mr. HOWARD. I think there are cases available you can see. It is realistic. It is there.

Senator RIEGLE. I am interested in seeing Nathan's argument but I would be surprised if that is true across all products.

Mr. SCHNEIDER. That is the goal. Some people advertise so badly and have such a bad product it doesn't work out that way.

Mr. HOWARD. The intent is there.

Senator RIEGLE. If you follow that all the way to the end, if somebody had a fairly decent product, they could buy so much television time and sell so many units and drive down the cost so much, finally they could just end up giving it away.

Senator HOLLINGS. Mr. Howard, with respect to the responsibility, which you assume for programing, all three networks have testified on awareness on the violence question, and with respect to children's programing, the testimony was to the effect that almost all the trouble lay in permissive parents. Do you accept any responsibility for the advertising on the programs?

Mr. HOWARD. Yes. We have a standards department that works very closely and checks out every piece of commercial that comes in, for advertising, whether it be in children's programing or in any other part of the schedule. We are particularly aware of the children's commercials. We worked very closely with outside groups and we are very selective in the type of programs that we have. I think we have a balanced schedule, not only on Saturday morning, but in prime time such as the Disney program.

We also have after-school specials that have been very effective. In recent years there has been a reduction in the commercials in children's programing and we are constantly analyzing it.

Senator HOLLINGS. Mr. Schneider, you were testifying that the parent had just as much control on what the child reads and what he wears.

As a parent I have had a difficult time on what they read and what they put on. It is a struggle.

Mr. SCHNEIDER. Up until the age of 10 perhaps.

Senator HOLLINGS. Senator Riegle wins out, I think they look better with longer hair. A child will see 21,000 ads in 1 year, and less than 2 percent relate to anything really nutritious.

Mr. SCHNEIDER. I don't know how they can be prevented from seeing the advertisements. On the school bus, as he goes down the road, he sees advertisements.

We have 84 people that go over the content of everything this is broadcast on our television network.

Senator HOLLINGS. You make sure everything nutritious is screened out? Only 2 percent coming in, the facts show.

Mr. SCHNEIDER. I don't understand.

Senator HOLLINGS. Two percent of the advertising on children's programing, are for regular nutritious foods, dairy products or otherwise, most of it is for other products.

Mr. SCHNEIDER. I am sorry. I am simply not familiar with the statistics you are referring to.

Senator HOLLINGS. What volume do you think on advertising—does the competition keep that fairly much in line, or you have increased the advertising I noticed for the past several years?

Mr. SCHNEIDER. Over the past few years we have reduced the amount of commercials in children's programing. The NAB Code reduced what we call nonprogram matter, that includes promotion-

al announcements, advertisements and the like. Several years ago the television advertising code permitted 16 minutes of nonprogram material in 1 hour on Saturday morning. That has been reduced to 9½ minutes. We did it in steps over the past few years, so there is a different standard in children's programming from other programming as to the amount of nonprogram material permitted. I think it has been a positive step the industry has taken in self-regulation.

Senator HOLLINGS. What is the industry doing for deaf viewers? There are about 13 million deaf citizens, of which 1,700,000 are totally deaf. I was watching last night, and it just struck me that the deaf are really shut out. Now public broadcasting is going to captioning.

Mr. SCHNEIDER. We are trying to find ways to do it. Public broadcasting has disagreed with my company's position. They think it is simpler. The technology is not, in our opinion, sufficiently sophisticated to do the job properly.

Senator HOLLINGS. Is technology holding you back or the cost?

Mr. ERLICK. Let me add this to what Jack said. I think there is a basic misunderstanding about the problem and the scientific, technical aspects of it. We all received, I guess, a letter from the President on this subject and he inquired as to how we could help, and what we would suggest. I think each of us replied. ABC replied somewhat along these lines: that we do not regard this as purely a network problem. This is a national problem. This is a problem of national health, as you point out, of millions of citizens so we have suggested that the Department of Health, Education, and Welfare, convene a summit meeting if you will, of all the interested parties. That would include equipment manufacturers, it would include networks, include broadcasters, include production companies, it would include the unions involved, whose rules and regulations may present some inhibitions here. I think if everyone took chips in this problem and everyone endeavored to meet the problem, including the Government of the United States, because I think part of it is a governmental problem related to health, that we probably could find a solution. But I don't think it is fair to look at the three networks here and say, in fact, what are you doing about this problem, because it is not exclusively our problem.

Senator HOLLINGS. But public broadcasting is moving on it.

Mr. ERLICK. Yes, sir.

Senator HOLLINGS. They are not waiting for a summit meeting.

Mr. ERLICK. We have, too, Senator.

Senator HOLLINGS. You don't look upon it as an opportunity for the relative costs? What cost studies have you made, Mr. Schneider, that found it was too expensive?

Mr. SCHNEIDER. We took an episode of "The Waltons" and went through the entire captioning process and we found it cost us about four times what public broadcasting said it cost them to do it.

Now, that was our experience and we tried to do it the best way we knew how. And—

Mr. HOWARD. Mr. Chairman, I think there is an enormous cost factor here for both, with different systems that could be used, there we are investigating and looking into, but there is also the cost there for the deaf consumer and that is the reason, I think,

Mr. Erlick is referring to getting a summit group together, to work out all the problems.

There are a lot of problems and we are aware of that.

Mr. ERLICK. Including hardware.

Mr. SCHNEIDER. Each television set would have to have a black box converter that would cost \$150 at the minimum.

Senator HOLLINGS. Well, for the deaf recipient?

Mr. SCHNEIDER. Yes, sir.

Senator HOLLINGS. All right. We have some other questions.

Senator GRIFFIN. Let me preface this by saying I don't think there is anything wrong with making a profit. I think that is the name of the game when you are in business, but in view of the fact the question has been raised about profitability, we ought to put into the record the FCC information, which doesn't take up very much space.

Advertising sales from network operations were \$2.7 billion for 1976, up 23.9 percent. Pretax profits from network operations for the three networks for 1976, according to this, were \$295.6 million, up 41.8 percent from 1975.

According to the FCC, net broadcast revenues of the television networks, ABC, CBS, NBC, and their 15 owned and operated television stations, were 2.6 million for 1976, up 25.8 percent from 1975. Profits before Federal taxes were 445 million, up 44.5 percent from 1975.

If any legislator thinks we are dealing with an industry that is on the ropes that wouldn't be quite the case. I have another question or two.

Mr. Howard, in your presentation you pointed out the fact that a very large percentage of the American people rely on television news, and that a large percentage rely on television coverage for their familiarity with political candidates and issues, which becomes very important, not only during campaign time but between campaigns.

Mr. Schneider, what is your policy at CBS as far as covering the loyal opposition during the periods between campaigns? For example, during the period now when we have a Carter administration, just what do you think the responsibility of the network is to see that the party out of power has some fairness and equity?

Mr. SCHNEIDER. We think we have some responsibility. I think sound and proper and fair coverage of current events means that in our regularly scheduled news broadcasts, voices of opposition of Presidential policy are sought out, and frequently we are successful in getting a spectrum of spokesmen to speak out in opposition to a Presidential initiative.

The most recent example of that, in the weeks President Carter was introducing the energy program to the—

Senator GRIFFIN. He was on national television three times that week.

Mr. SCHNEIDER. He had his press conference, he addressed the joint session, and his message. CBS broadcast 1 hour of that week of voices in opposition from 8 to 9 on Friday night. All of those people speaking against the President's energy initiative were not necessarily Republicans, but they were people in opposition.

I think it's unfortunate in this country that we don't have everything broken down into Democrats and Republicans, and we have liberals from the East and the people from the South and people from Texas and other areas.

Senator GRIFFIN. Is it a consistent policy compared with the treatment accorded to the Democrats during the period when, say, President Ford was in office?

Mr. SCHNEIDER. I believe, it's consistent, although I must tell you, Senator Griffin, that the decision is ours. It's a news decision. The judgement is made in our news department and I don't know of a better way to do it than that.

We did have Democratic voices in opposition when the Republicans had the presidency. They were not limited to Democratic voices in opposition. They were simply voices in opposition.

We don't have the cabinet system as they have in England, and we can't particularly have it as well organized. We have to deal with the way our government and the voices in opposition to our Government are organized in this country.

That is the best way to do it. I think if we look at votes in Congress, there are times when Democrats and Republicans cross the line. There may be Republicans supporting the Presidential initiative and Democrats not supporting it.

That is why we can't limit it to party line. It's ideological, geographical. It's economic. It's from all over the place. I think that is what makes our process work so very well.

Senator GRIFFIN. You have a serious and grave responsibility resting on your shoulders as you make those decisions.

Mr. SCHNEIDER. I think every time we make news judgments on a national level we have a great responsibility. I am not begging, but I hope you think we do it well. If you don't, we are subject to your criticism and the criticism of everyone out there. We don't operate under a bushel basket. Everybody sees what we do. We are subject to everybody's criticism.

Senator GRIFFIN. I must confess, I haven't been watching CBS all the time, so I am not really sure that I know enough about the record to pass judgment. But I would like, in view of the fairness doctrine and the responsibilities that we have, to be aware at least of what the networks are doing. I would like to ask you, Mr. Schneider, if you would provide the committee with a record going back through the beginning of the Ford administration. I would like to know the extent to which President Ford appeared on television, fireside chats, and otherwise, which are certainly available to you.

Then I would like to know when and if and to what extent CBS provided television coverage for the opposition party spokesmen. And I would like to have you carry that record right up through the Carter administration today.

Mr. SCHNEIDER. Certainly.

Senator GRIFFIN. Including those who appeared as guests on your "Face the Nation" program, et cetera. You can do that?

Mr. SCHNEIDER. Yes.

Senator HOLLINGS. Can the three of you expand on that a little? Not just CBS. And all of you go on back to Mr. Nixon. Would you make a particular comparison on President Nixon and his hours

explaining executive privilege vis-a-vis Mr. Carter explaining the energy crisis?

If I can get Mr. Carter as much time explaining the energy crisis and energy needs of this country as Mr. Nixon spent explaining executive privilege, I would like that comparison.

Senator GRIFFIN. As amended by the chairman's request, we will go back to the beginning of the Nixon administration.

Senator HOLLINGS. Yes. That is what I seem to remember most.

Mr. ERLICK. We will be happy to supply it. In general, our policy is very much the same as CBS. We attempt to achieve fairness and balance, Senator Griffin, and we use our best judgment for that purpose.

We likewise gave the Republican Party or its spokesmen an opportunity to respond to the energy message in prime time.

Senator GRIFFIN. I noticed that, Mr. Erlick, but I noticed CBS refused that opportunity to the Republicans.

Mr. SCHNEIDER. That is not true. We had a broadcast that Friday night, 8 to 9 o'clock.

Senator GRIFFIN. Was that the one Ralph Nader appeared on? That was the Republican hour?

Mr. SCHNEIDER. No. I didn't say it was the Republican hour. I said it was voices in opposition.

Mr. HOWARD. We will be happy to supply the chairman the information.

Senator GRIFFIN. Thank you very much

Senator HOLLINGS. I thank the panel very, very much. It's been very helpful this morning. We appreciate it.

Our next witness is Donald McGannon—

Senator RIEGLE. Mr. Chairman, before they leave, is it appropriate to give them some questions to respond to?

Senator HOLLINGS. Yes. The record will be open for questions. Thank you very much.

[The following information was subsequently received for the record:]

THE FREENESS OF FREE TELEVISION

(By Robert A. Nathan, Associates)

Mass advertising of the kind exemplified by commercial broadcast television plays an essential role in the mass-production-mass-distribution economy of the United States. It is clear that the economics of mass production and the rising productivity characteristic of the American economy depend in significant part on advertising to channel demand toward standardized, identifiable products which lend themselves to the economics of large scale output and distribution. The question of the "freeness" of commercial television to the viewer depends, in turn, on whether television makes this process more or less efficient, considering the costs and benefits not only of advertising but of selling and other functions of the distribution process.

Conventional broadcast television is, of course, free to the viewer at the point of viewing, in the sense that any quantity of viewing is available at no cost other than the cost of operating the receiver. What, then, of the transactions that support the free viewing—the large outlays for program production and transmission and the offsetting revenues received by broadcasters from the sale of commercial announcements? Although in the aggregate, and at any point in time, advertising outlays are part of the structure of costs that have to be met from the prices of goods and services, they represent a very small and stable fraction of consumers' outlays; and there is no basis for concluding that consumers' prices would be lower in the absence of television advertising. Indeed, the opposite may be the case.

Total outlays for advertising over the 20 years since television broadcasting became a significant factor have ranged between 3 and 3½ percent of personal

consumption expenditures (table A). The percentage is not now significantly different from what it was in 1950 (or in 1940, before television). Thus, it does not appear that television has added appreciably to consumers' costs per dollar of personal consumption. Indeed, since this comparison takes no account of the greater efficiency of television as an advertising and selling medium, the advent of television advertising may have lowered the total costs of distribution per dollar of sales, including not only media advertising but other advertising, selling and distribution costs.

Television advertising in the aggregate in 1971 was about one-sixth of all advertising, or about one-half of one percent of personal consumption expenditures (table B). What appears to have happened is that the advent of television has precipitated a marked shift among advertising media. Of the five leading media, which accounted for about three-fourths of all advertising expenditures in 1950 and 1971, there has been a marked shift from newspapers, magazines, and radio to television, because of its greater advertising efficiency.

ADVERTISING EXPENDITURES IN LEADING MEDIA, AS A PERCENT OF PERSONAL CONSUMPTION EXPENDITURES

Media	Percent	
	1950	1971
Newspapers	1.09	0.93
Magazines	0.27	.21
Radio .....	.32	.21
Subtotal	1.68	1.35
Direct mail .....	.42	.44
Television .....	.09	.53
Subtotal .....	.51	.97
Total of leading media	2.19	2.32

TABLE A.—PERSONAL CONSUMPTION EXPENDITURES AND ADVERTISING EXPENDITURES, 1940–71

[In billions of dollars]

Year	Personal consumption expenditures	Advertising expenditures	Advertising as percent of consumption
1950	191.0	5.710	3.0
1955	254.4	9.194	3.6
1960	325.2	11.932	3.7
1961	335.2	11.845	3.5
1962	355.1	12.381	3.5
1963	375.0	13.107	3.5
1964	401.2	14.155	3.5
1965	432.8	15.255	3.5
1966	466.3	16.670	3.6
1967	492.1	16.866	3.4
1968	536.2	18.127	3.4
1969	579.6	19.482	3.4
1970	617.6	19.600	3.2
1971	667.2	20.500	3.1
1972	726.5	23.060	3.2

Source: Personal consumption expenditures from U.S. Department of Commerce. Advertising expenditures from trade sources cited in "Statistical Abstract of the U.S.," 1972, p. 757.

TABLE B

Distribution and Services

No. 1260. ADVERTISING—ESTIMATED EXPENDITURES, BY MEDIUM: 1950 TO 1971
 (In millions of dollars, except percent. See also *Historical Statistics, Colonial Times to 1957*, series R 90-102, R 110-113, and T 339-351)

MEDIUM	1950		1955		1960		1965		1970		1971 (prel.)	
	Expenditures	Percent of total	Expenditures	Percent of total	Expenditures	Percent of total	Expenditures	Percent of total	Expenditures	Percent of total	Expenditures	Percent of total
Total.....	5,710	100.0	9,194	100.0	11,932	100.0	15,255	100.0	19,606	100.0	20,500	100.0
National.....	3,257	57.0	5,407	58.8	7,296	61.1	9,365	61.4	11,460	58.5	11,720	57.2
Local.....	2,453	43.0	3,787	41.2	4,636	38.9	5,890	38.6	8,146	41.5	8,780	42.8
Newspapers.....	2,076	36.3	3,688	33.6	3,703	31.0	4,457	29.2	5,745	29.3	6,215	30.3
National.....	533	9.3	743	8.1	856	7.0	869	5.7	1,011	5.2	1,125	5.5
Local.....	1,542	27.0	2,945	25.5	2,867	24.0	3,587	23.5	4,734	24.1	5,090	24.8
Radio.....	695	10.6	545	5.9	692	5.8	917	6.0	1,308	6.7	1,380	6.7
Network.....	196	3.4	84	0.9	43	0.4	60	0.4	56	0.3	55	0.3
Spot.....	136	2.4	134	1.5	222	1.8	265	1.7	371	1.9	387	1.9
Local.....	273	4.8	376	3.5	475	3.9	589	3.9	881	4.5	878	4.3
Television.....	171	3.0	1,025	11.1	1,859	15.6	2,515	16.5	3,596	18.3	3,526	17.2
Network.....	85	1.5	546	5.9	783	6.6	1,237	8.1	1,658	8.4	1,575	7.7
Spot.....	31	0.5	280	2.9	437	3.7	656	4.3	1,234	6.3	1,150	5.6
Local.....	55	1.0	225	2.4	291	2.3	412	2.7	704	3.6	795	3.9
Magazines.....	515	9.0	729	7.9	641	5.4	1,169	7.7	1,323	6.7	1,405	6.9
Weeklies.....	261	4.6	390	4.3	525	4.4	610	4.0	517	2.6	630	3.1
Women's.....	129	2.3	161	1.8	184	1.5	269	1.8	301	1.5	310	1.5
Monthlies.....	85	1.5	133	1.4	209	1.7	292	1.9	371	1.9	405	2.0
Farm, national.....	37	0.6	39	0.4	32	0.3	37	0.2	31	0.2	29	0.1
Farm papers.....	21	0.4	34	0.4	35	0.3	34	0.2	31	0.2	28	0.1
Direct mail.....	803	14.1	1,299	14.1	1,530	12.8	2,324	15.2	2,796	14.1	2,950	14.4
Business papers.....	251	4.4	446	4.9	669	5.6	671	4.4	740	3.8	705	3.4
Outdoor.....	143	2.5	192	2.1	293	2.4	160	1.0	234	1.2	260	1.3
National.....	96	1.7	130	1.4	137	1.1	120	0.8	154	0.8	175	0.8
Local.....	46	0.8	63	0.7	66	0.5	60	0.4	80	0.4	85	0.4
Miscellaneous.....	1,125	19.7	1,836	20.0	2,328	19.5	2,059	13.5	3,857	19.7	4,037	19.7
National.....	610	10.7	1,040	11.3	1,368	11.5	1,750	11.5	2,144	11.0	2,190	10.7
Local.....	515	9.0	796	8.7	960	8.1	1,209	7.9	1,713	8.7	1,847	9.0

Source: McCann-Erickson, Inc. 1950-1965, compiled for Decker Communications, Inc., New York, N.Y.; in *Printers' Ink* (copyright). Beginning 1970, compiled for Crain Communications, Inc.; in *Advertising Age* (copyright).

Coupled with relative declines in minor advertising media (e.g., outdoor advertising), these data demonstrate that the increased use of television represents largely a substitution of a more efficient medium for less efficient ones, which, given the fixed ratio of advertising to consumption, is to the advantage of consumers at large.

To the individual viewer, the decision to watch broadcast television at any given time is costless, except for the trifling cost of operating the receiver: his receiver is in place, and it costs him no more to watch than not to watch. In this sense, television-viewing is a free good.

The value of this costless choice, of course, depends on the quality of the program, as perceived by viewers. There are, theoretically, several ways in which this value might be measured. One way would be to find out what prices would how many viewers pay for various programs if they were required to pay. Depending on the program, this might be zero for some viewers, a great deal for others, and for most somewhere in between. Another measure would be the amount by which incomes would have to be raised in order to permit consumers to obtain the same satisfaction in other ways if there were no television. A third way would be to value programs by "shadow prices," that is, the prices of buying equivalent or comparable entertainment or information through other media, for example, motion picture theaters.

The amount spent by advertisers may be a very crude proxy for the value of television to viewers: the "better" the program, the more the viewers. Thus adver-

tisers weigh the added cost of program "improvement" against the value of the added audience. A more direct measure is exemplified by a recent study, based on experiments with subscription TV, which concluded that "the value of free, over-the-air television to Americans is at least \$20 billion—\$25 per month per TV household, or about 4 percent of after-tax household income. This is about seven times the present revenues of television."¹

An alternative procedure is to assign an arbitrary value to an hour of viewing and multiply by the total of viewer-hours. For example, assuming that the value to the viewer of each hour of viewing is worth, on the average, as little as 10 cents this procedure yields an estimate of \$24.68 billion as the total value of free, over-the-air television.

On the other hand, "shadow pricing" of categories of programs according to type of program and time of day, multiplied by estimated numbers of viewers, yields an estimate of \$174 billion as the value of free over-the-air television, based on prices of comparable program content purchased from other media.²

All such measures are necessarily imprecise because it is not possible to place precise values on services which, though very valuable, are provided free. The imprecision is evident in the wide range of the estimates. But it is clear even from the lowest of the estimates that the value to the viewers of free, broadcast television far outweighs the costs—if, indeed, there are any costs beyond the costs of owning and operating the television receiver. Consumers are reaping a huge "consumer surplus"—the difference between what they pay (almost nothing) and what they would pay if put to the market test. Moreover, this consumer surplus appears to be tilted in favor of low-income families, since they are reported to spend more hours per week in television viewing: those with incomes under \$5,000 view more hours than those with incomes between \$5 and \$10 thousand who, in turn, view more than those with incomes above \$10,000.³

We will next hear from Donald McGannon, president and chairman of the board of Westinghouse Broadcasting Co.

STATEMENT OF DONALD H. MCGANNON, PRESIDENT AND CHAIRMAN OF THE BOARD OF GROUP W (WESTINGHOUSE BROADCASTING CO., INC.)

Mr. MCGANNON. Senator Hollings, members of the Communications Subcommittee, I am Don McGannon, president and chairman of the board of Westinghouse Broadcasting Co., which is known as Group W.

I welcome the opportunity to talk with you this morning about the overall state of broadcasting in this country. I have with me but he will not be participating in the direct dialog, Mr. Wallace Dunlap, our vice president stationed here in Washington and John Lang, partner in the firm of Hedrick and Lane, a Washington law firm, who is our attorney.

I know your time is limited and the subject field is voluminous with multiple facets, each one of which has its own constituency, history, and background. And I therefore have opted to merely deal with a few of the subjects I feel are involved in an oversight hearing such as this is. I would like, however, to take a moment to discuss with you a little bit of history in this particular connection, because Westinghouse was the first licensee in the United States having been granted a radio license for KDKA in Pittsburgh in

¹Noll, Roger G., Peck, Merton J., and McGowan, John J., *Economic Aspects of Television Regulation*, Brookings Institution, 1973, p. 42.

²Robert R. Nathan Associates estimated for the Association of Maximum Service Telecasters, 1969, updated to 1972.

³A. C. Nielson Co., cited in Noll, Peck, and McGowan, op. cit.

1920 and the first program to appear on the night of November 2, 1929 were the results of the Harding-Cox Presidential election.

Since that time in the field of radio, we have been privileged to add radio station operations in New York (WINS), Los Angeles (KFWB), Chicago (WIND), Philadelphia (KYW), Boston (WBZ), and Fort Wayne (WOWO), in addition to Pittsburgh's KDKA.

In this connection, I would like to comment a little bit about the hour of these media and while talking of radio, I would like to point out that 25 years ago, there were only slightly more than 100 million radios in the American homes or 2.3 per household. Today, there are 425 million radios—or 5.7 per household, plus over 95 percent of the automobiles on the road have radios as well.

And through the years, other aspects of the broadcasting industry have also grown in importance. In 1927, when the first legislation was enacted to regulate broadcasting, television did not exist, nor was it even mentioned in that act or in the Communications Act of 1934. And just 30 years ago, in 1947, 12 television stations were licensed to broadcast to the 14,000 homes in the country which had television sets.

Today, there are almost 1,000 television stations, and over 71 million homes in the country—over 97 percent—with television sets. Television has also become all important and ever present in everybody's life. The average American family watches television 6 hours and 18 minutes each day. The average child under 12 years of age watches for over 4 hours each day. And people have become so dependent on television that in my opinion today it is one of the most powerful social forces in the country.

From the earliest days of the television industry described above, Group W was a licensee of the television medium. In Boston, WBZ-TV went on the air on June 9, 1948 as the first television station in New England. Subsequent to that time, we were again privileged to have been granted licenses to broadcast in Philadelphia (KYW-TV), San Francisco (KPIX-TV), Pittsburgh (KDKA-TV), and Baltimore (WJZ-TV).

It is our belief the most important foundation of the industry which has developed over the years of its growth is the local orientation of the broadcasting system. This is important, since the system in this country differs from those in other parts of the world, and it has been designed to be responsive and accountable to local communities. Most other systems are owned by governments and are national in scope, direction and content, and ours is privately owned and local in its orientation.

This local emphasis has been stressed throughout the history of the industry and as early as 1942 the Supreme Court "chain broadcasting" decision pointed out that "The licensee is obliged to reserve to himself the final decision as to what programs will best serve the public interest."

Earlier, in 1952, the FCC issued its "Sixth Report and Order" distributing broadcasting frequencies to as many communities as possible to insure maximum opportunity for local self-expression.

In 1960, the FCC reiterated this point of view, saying that "* * * the basic responsibility for all matter broadcast to the public at the grassroots level (is) in the hands of the local licensee."

Of course, as the local aspect of broadcasting was being reinforced, another element of the broadcasting structure was growing and flourishing * * * namely, the networks, now of course, as the local aspect of broadcasting. Through the years, the networks have provided indispensable services to the people of this country. They have supplied a wide variety of programing, from entertainment to documentaries, from a box seat at every major sporting contest to news coverage of every event and development in all parts of the world.

Given this brief historical sketch of the broadcasting industry, I would like to talk with you for a few minutes about the current structure of television. As you have heard from the preceding speakers, which I am sure you know from your own experience, by and large the industry consists of four elements: local stations, networks, programs and producers and suppliers, and advertisers and their agencies. these elements interact in a variety of ways.

Basically, television networks sell access to a national audience to advertisers. To attract this national audience to the television set, the networks buy programing from program producers. The networks contract for time under their network affiliation agreements with their local station affiliates—numbering approximately 200 per network—and then simultaneously transmit the programing and the commercials to those affiliates through the facilities of the American Telephone & Telegraph Co.

Now, you have heard me mention the word “group” in the course of the last few months. A group is not a network. As indicated by one of the network spokesmen it is an entity that owns more than one station and is, as the word implies, simply a group of local stations under common ownership and is therefore quite different from the structure and function of the network as they are known to be.

In the early days of television there existed a cooperative mutually beneficial relationship between the networks and their affiliates. And in those years the hours of the day which the networks offered programs to their affiliates were considerably more limited than they are today.

Then, the networks sold blocks of time to advertisers, who broadcast their own programs during those time periods. Only later on did the networks begin to sell time—called spots—within programs which they had produced. Progressively, over the years, as one network began to offer programs in another part of the day, the others followed suit and gradually the networks programing filled more and more of the broadcast day. At the present time, two-thirds of the broadcasting day from 7 a.m. to 2 a.m. on most network affiliates consists of programs from the networks. And 100 percent of the prime-time hours from 8 p.m. to 11 p.m. is programed with network offerings—7 days a week.

These changes present certain problems, both for local affiliates of the networks and for the people of the communities they are licensed to serve. The broadcasting system of the United States was primarily directed toward local needs and interests, as I indicated before, but was also designed to accommodate networking. However, the latter was never intended to be the dominant factor in the industry, in my opinion, and the system was not intended—as were

other broadcasting systems in the world—to be national and identical across the country.

What may be deemed suitable by community standards in one area of the country might be deemed less acceptable in another part. This diversity is to be expected and is, indeed, desirable in a pluralistic society. It is the very reason for the Commission's licensing so many individuals and organizations to serve the particular needs of their varied audiences.

But the role of the networks in this process creates two problems for local licensees in their commitment to fulfill their responsibilities to their communities.

Involved in the first problem is the availability of time to broadcast programs, produced locally, about local interests and local problems. As I said before, 66 percent of the broadcast day on affiliated stations is devoted to programs from the television networks. Because of this, it is increasingly difficult to program about issues which deal with the important interests of local viewers.

Further, since two-thirds of the time of the station is being programed by the networks since the programing is selected, scheduled, and contracted by the networks without real input from the licensee, the local station has a real problem. If the station is going to be responsive to the needs of the audience and thus carry out its responsibility for all of its programing under the Communications Act, then the station will have to look at the network programs in advance of the time they are scheduled to be broadcast and make decisions regarding suitability. While the networks provide some opportunity to preview their programs, it is unfortunately generally a case of too little too late.

I say this because it is the network which determines which of the preproduced programs will be offered for previewing and the networks which also determine when this will occur. Most of these programs come into the station within a day or two before their scheduled broadcast dates. This does not give the average broadcaster the necessary time to look at the program involved, to arrange for the best possible substitute program in the event the stations decide, for whatever reason, that the network program is unsuitable.

Further, it does give the broadcaster a chance to weigh the merits of a network program against a variety of alternatives, including the station producing its own program, which would be available if more leadtime were permitted.

This condition has become progressively more serious over the past few years and has become increasingly alarming as national programing has contained such an abundance of crime, violence, and adult content.

For a number of reasons, no arm of the Government can or should regulate or control the content of these programs. Instead, the only one that can do this is the individual station licensee, and the licensee's power to do this must be reinforced.

The role of the Commission in this regard should simply be to insure the stations' ability to live up to that responsibility to broadcast programs which are in keeping with the broadcaster's judgment as to the community's tastes, needs, and interests.

And let me say that we do not view this, as some have characterized, as more Government interference. Quite to the contrary, the return of this responsibility to the local stations was one of the significant elements in a petition Group W filed before the FCC last September, in which we also requested the Commission to reexamine the proper role of the networks in the overall structure of the broadcasting industry.

The FCC concurred this past January that such a reexamination was needed, and voted to begin such an inquiry.

I have not attempted to discuss any aspects of the current debate regarding cable television because it is my understanding that you will be holding separate hearings on this subject this coming summer. Needless to say, if my information would be desirable for input, I would be pleased to give you any information we may have.

I have also not raised the rewriting of the Communications Act of 1934. I appreciate the significance of the act to the American people over the last 50 years and I do not suggest that it be discarded carelessly or arbitrarily. But I must also point out that the technological advances which have occurred during those years are bound to continue in the future.

In order to take advantage of this progress, we must be better able to assess the results which such technological advances will have on the people of this country. We must more successfully coordinate our current abilities to accomplish this or the governmental structure currently in existence will have to be reorganized to make the best possible use of one of our greatest national resources—the electromagnetic spectrum.

To summarize the points I have discussed in greater depth, it is like that, in order to reach the full potential of the medium of television, it may be necessary to take a step backward in order to take many steps forward. A step back to the original foundation of the local orientation of the broadcasting system. And steps forward toward a broadcasting system which will effectively serve the interests it was meant to serve; that is, the interests of the people of this country, determined where the people live. That prospect, to those of us in broadcasting at the local level, is a most challenging one and I welcome this opportunity to present them to you this morning and afternoon.

Senator HOLLINGS. Do you think, Mr. McGannon, that the inquiry by the FCC at your initiation, is adequate for the time being or is legislation recommended?

Mr. MCGANNON. The petition was a very substantial one and had a great deal of scope to it. Shortly after we filed it, we filed an additional motion to sever the issue of program review because we saw the amount of time that was going to transpire before final action would be taken to finalize the basic petition that we would lose 1, 2, or 3 years possibly insofar as programing was concerned.

Regrettably, this petition was turned down, we think inappropriately, and we now have a motion for reconsideration of this motion to sever, but irrespective, I think whatever the programing coming on for next season will be lost for this purpose, for whatever influence it could have had on it.

I think, Mr. Chairman, it will depend on how the inquiry develops. Bear in mind this is not the first inquiry by any means. There was one conducted in 1958 by Dean Ruscoe Barrous and one earlier they named the "Broadcasting Report."

Senator HOLLINGS. You would introduce a bill to do what with respect to the relationship between the local station and the broadcasters?

Mr. MCGANNON. If the Commission or this hearing or otherwise didn't do the job I would suggest it request a Senator to introduce a bill so there would be the restoration, if you will, of the responsibility and the duties and obligations of local stations.

When you have 66 percent of the program delivered to you in all of the prime time heavy audience period, you can realize there is a considerable loss of direct control. I don't say that is, per se, wrong. I am talking about the quantity, perhaps, that is out of balance. Beyond that there is a limited amount of programing we do control, substantial portions of which are low audience time when we have what we call our local prime time, which is from 5 p.m. to 8 p.m.

One-half of it is local news and some stations carry 1 hour or 1½ hours of news.

So you can see there is very little creative involvement on the part of local stations which I think has a debilitating effect.

Senator HOLLINGS. Looking at the overall percentage of 66 percent, from your experience, is that almost too great or does it become too great when it approaches 80 percent? What percentage would you use?

Mr. MCGANNON. No, sir. I think that is too great already.

Senator HOLLINGS. You think they ought to have what percent?

Mr. MCGANNON. I don't think it is either desirable or possible to give a hard number. I think it ought to be done in terms of the relationship of what periods of time are necessary in order for the local licensee to fulfill his obligations.

I think, for example, the fact you have to preempt the period of time in prime time in order to present the public versus programing, is a cumbersome and undesirable way to do that. I think local stations ought to program all day in all day parts. That includes prime time. The problem with preempting a network show is, there is always that segment of the public that is disappointed they lost that program and there is a lot of efficiency and loss of economic values involved, nevertheless, we do it on our stations and will continue to do so, because we think it is a mandatory obligation.

Coming down to a finite hard number is not necessarily the way to arrive at that. I think they should be in the course of this discussion with the networks and the FCC, the inquiry to determine what is necessary in order to effectively program for the need of each community.

Senator HOLLINGS. Well, I understand, yet I know in the Washington area they don't seem to have much difficulty preempting prime time programing in order to put on the Bullets Basketball game in the evening or some other event, but maybe I am not looking at it properly. Just one thing and I will yield.

You said you would not comment at this particular time, but pay TV, cable TV, has come up.

Do you have a comment you can give us?

Mr. MCGANNON. I want to harken back to my comment about Westinghouse being involved in broadcasting since 1920. We are very much committed to it, we take pride in what we do and, therefore, I would think if there is going to be an evolution from our current system into a cable system, Group W will be involved in it.

My deep concern about cable is the manner in which it is unfolding. That is one of my reasons for supporting some review of the Communications Act. I think what is happening at the moment, by the erosion and by the progression of time we are inadvertently, perhaps not inadvertently, establishing a new system. And there is going to come a critical mass stage at some point, as indicated by some of the network representatives, there is going to come a critical mass stage where the capability of cable is going to compete with them in order to get programs.

National Football League programs, for example. I think it is counterproductive at that point to have the American public pay for that program when they can get it free, in all deference to the Senator who was talking about what possible impact advertising costs would have on the cost of products. I think also there is a very serious problem involved in that, because I think people in areas that are sparsely populated are going to find there is nothing good to be a service because the economics, as you say this morning, are not feasible and I think the same thing would be true in the lower socioeconomic level in the inner city who would have a tremendous problem in maintaining the economics that programing is in paying for the things that programing is at the present time.

I think Congress should take a look at these two systems and determine how the blending of one or both of them will give the greatest service to the American public over the years, before the end of the century, before it gets so big you can't stop it.

Senator HOLLINGS. Would you do it just on sports programs?

Mr. MCGANNON. No, sir, all programing. Sports programing happens to be a part that is organic and definitive, but it applies to all sorts of programing. Once the balance is swung over and there is an economic base for cable to present programing of the caliber of National Football League or similar programs, they could buy any program. They have the buying capability.

Now, competition is not what I am worried about in this process. What I am worried about is the fact that you would then proceed to erode, if you will, a system that has served well, essentially speaking, and now you are going to substitute it for a system that is going to cost the American public direct out-of-pocket dollars and possibly disenfranchise two significant groups of people, the suburban and rural people and possibly the urban people, especially of low socioeconomic level.

Senator GRIFFIN. Mr. McGannon, I think you made an excellent statement. I wish we had more time than we have.

How much real impact and effect do the affiliates have on programing decisions made by the networks?

Mr. MCGANNON. I would say none, Senator.

Senator GRIFFIN. That is what I thought.

Mr. MCGANNON. We are a large affiliate. I don't recall—and I have been head of this company for 22 years, I don't recall ever being consulted about a specific program, in anticipation of a program. And the aspect of previewing is a very serious question, because I respected the network people who were here before, but we took their recent offer of expanded program schedule and this included a solid week for all three networks and I must point out there was only one program in two parts that had more than 7 days' preview notice. That had 14 days in one case and 17 days in another, and that was "Jesus of Nazareth." Everything else was down usually around 3 days or 2 days.

Now, with a 2-day lead time you can do something. There is nothing you essentially can do in that particular situation. If you have programing in the house, that probably has been run many times before. As a consequence of that, it is not a fair substitute for what otherwise might be first-run material or just second- or third-run material. You have to have, in my opinion, at least 30 days, to make the decision, to secure programing on to produce programing, and then to inform the public so they are not misled by the items in the various scheduling situations, what is really going to be on the air on a given night.

And also to promote it, because after all you are going head on with network programing.

As a consequence, I don't think we have addressed ourselves to this problem. Also, I think in all respect to the network people, I understand it. We started talking to them about this problem 3 years ago, and we heard the very same thing and we haven't had an answer to the basic question as to why you can't simply put back another 30 days, in other words, start 30 days earlier than the schedule, and then the creative people and other people would have their opportunity to do all of that over-the-weekend polishing they were talking about.

I think also you ought to consider talking to some of the creative people because in some of the indications we have had, they are not opposed to the idea and could readily handle the situation if in fact, it was a desirable thing from the public's point of view.

Senator GRIFFIN. Yet despite the fact you have practically no impact on program decisions, you get little opportunity for advance feed-in, and very limited time to preview, as Mr. Schneider of CBS said in his statement.

The ultimate responsibility for what goes on television is the broadcasters, the licensee. I think this is a basic fact of life that seems a little odd in view of the realistic circumstances.

Thank you, Mr. Chairman.

Senator CANNON. Thank you, Mr. Chairman.

How would you characterize the distinction between yourselves and the network.

Mr. MCGANNON. Well, sir, we simply have the privilege of operating five stations. We don't create any interconnection between them except for public affairs programing. The only program we produce is public affairs on an individual basis. You may have recently had occasion to see a program called "Six American Families" which was a Bicentennial effort on our behalf in conjunction with the United Church of Christ and the United Methodist

Church which dealt with the whole ethical considerations of family life today.

That appeared not only on our five stations but it was run on the Public Broadcasting Network. We produce that kind of program, usually of public affairs nature.

We also produce the Mike Douglas show which is not sold as a network program but syndicated, sold to individual stations around the country.

Senator CANNON. Are you affiliated with a network?

Mr. MCGANNON. Yes, sir.

We have two stations with NBC, two with CBS, and one with ABC.

Senator CANNON. It is just your individual stations that have the affiliation.

Mr. MCGANNON. Yes, sir.

Senator CANNON. Do we know whether or not the local audiences have a preference for more local programing or would they prefer the networks?

Mr. MCGANNON. Well, I am not necessarily offering a formula. I avoided that when the chairman asked me a specific quantitative question. I am not sure we should at this point make a determination as to what the quantity of that should be or what the program should be. What I am looking for is an open option, an opportunity to do that when the occasion arises or is dictated.

Senator CANNON. You are saying you do not have enough lead time to make a decision?

Mr. MCGANNON. And the networks are programing 66 percent of every day.

Senator CANNON. What happens when an affiliate does not carry an acceptable level of programs?

Mr. MCGANNON. There is, or course, a concomitant economic impact because by not carrying the program you do not get the money. Also, I think it becomes counterproductive insofar as the network is concerned and the affiliate is concerned. Networks become very disturbed by it, and understandably so.

Senator CANNON. Do the affiliates run the risk of being canceled out as an affiliate?

Mr. MCGANNON. There is certainly a risk in that connection. The risk is limited because most communities only have three television stations. As a consequence, therefore, there may be a shifting about if they are a weak network, perhaps you could find yourself being put in that position.

Senator CANNON. Do most of the affiliates really have the resources to do their own programing? Suppose they screen the program, did the advance screening. Have they really got the resources now to go out and program?

Mr. MCGANNON. I think it was adequately described before, when I think Jack Schneider said, "It is not necessary"—maybe Bob Howard said, "You don't have to preview 'The Waltons' very often." All programing does not have to be previewed, and if you preempt it you certainly would not be preempting in my mind a large quantitative amount.

Also, with the preview opportunity, in my mind, that is the quickest way to solve the crime and violence question, because with

that situation is going to come a high degree of accountability. And with accountability, I think, is going to come alleviation of the problem.

Senator CANNON. You are saying the local affiliate, if they turned down a few of those programs on that basis, would make the networks stand up and look?

Mr. MCGANNON. And ask why; yes, sir.

Senator FORD. I have got a little problem here trying to unwind some things. We are definitely discussing programing of major networks in this country today, and the objection, if any, is directed toward them, and not you as a local station owner, unless they give it to you to move on up the ladder. It seems we are beginning to say or looking at very hard, the possibility of getting into some policy decisions as it relates to programing, which gets into legal problems.

Not only are we placing this on the back of the networks, but you are suggesting that the affiliates have the ability to pull out any program they want to.

Now, do you pay the networks any amount of money?

Mr. MCGANNON. No, sir, they pay us. They pay us for the time which they in turn put their programs in and their spot announcements in.

Senator FORD. So your affiliates then would be in a position when you file for your license, based on what the network was doing, you then would go to the viewing public and in turn you would—you are figuring your net income or gross income from that affiliate, what they generate?

Mr. MCGANNON. Yes, sir. If I understand you correctly.

Senator FORD. So your profit figure would come from whatever the network does, basically.

Mr. MCGANNON. No, sir.

Senator FORD. At least a portion of it.

Mr. MCGANNON. Yes, sir.

Senator FORD. They do not want to go broke, so they apparently will come up with programs, try to come up with programs you would want. Do they do advertising for you or do you do your own local advertising?

Mr. MCGANNON. We do our own local advertising.

Senator FORD. Say "Jesus of Nazareth" you talked about you had a 14-day or 17-day lead time. Was there any publicity by the network for that?

Mr. MCGANNON. I think it was mostly on this promotion, Senator.

Senator FORD. Now, we are talking about looking at the networks and maybe making some policy decisions, and you are saying the affiliates should do that. Am I correct you ask for a 4-week lead time on all programs?

Mr. MCGANNON. Yes. In order to preview and look at the programing that is going to appear on the station we are licensed for.

Senator FORD. The statement from this morning I remember, "Do you want it Tuesday or do you want it funny?" The networks say we want it funny, and they indicated they are dealing with a specialized group that felt like they have got to do things, got to get the feel of it. Maybe they do not get the feel of it on Tuesday, it

is Thursday before they really get into it. And they want it for the next Tuesday, maybe they get it Saturday and get it to you. So they would prefer to have a good program rather than have it on time. What I am trying to get to, it looks as though all onus is going to one place, and not necessarily on you or others.

Mr. MCGANNON. The issue of, "Do you want it funny or do you want it Tuesday?" is the question of what Tuesday we want it. I think that can be arranged because I think it can be carried out.

If you talk with these creative people, that this is not an imponderable subject.

Senator FORD. You are asking for the responsibility of screening?

Mr. MCGANNON. Yes. Which I think we have now as a matter of mandate and law.

Senator FORD. I think the NAB established what we called a family viewing period. You are familiar with that, I am sure.

Mr. MCGANNON. I am, sir.

Senator FORD. And the district court in California struck that down. Do you think we should observe the theory of a family viewing program? Are you taking the responsibility for what is on your network or affiliate, then getting sued and carrying that load?

Mr. MCGANNON. No, sir. That would never arise, in my opinion. As the law is now written, we have this responsibility. We are not attempting to interpose this judgment on anybody, anybody or anybody else—any place else but our own station, where we have, as I say, right now, under the stipulation of our license, the obligation to do that.

Senator FORD. Do you carry product liability? You do not carry product liability. Are you not producing a product, in essence?

Mr. MCGANNON. Yes. But I do not see that—

Senator FORD. What I am saying, you are taking the responsibility and you are wanting the responsibility, and you want the decision to be yours, nobody else's, what goes on in your affiliate.

Mr. MCGANNON. But we have that responsibility right now, but the practicalities of it, it does not work.

Senator FORD. What I am saying, if your station would get sued by a group of people over a program you had on your station that came from a network, would you not get them to come with you and help you out of your trouble?

Mr. MCGANNON. Well, it has never occurred, Senator, so I do not see it being a serious jeopardy.

Senator FORD. I am not a lawyer, so I can ask legal questions. You say you provided a series for public broadcasting or you sell, you have sold some things to public broadcasting.

Mr. MCGANNON. Just that one incident.

Senator FORD. Do you have any problems with the public broadcasting interfering with your affiliates' business?

Mr. MCGANNON. No.

Senator FORD. I have not talked to the networks along this line, but many affiliates are very concerned about public broadcasting and the foundations. They see the name, and they are getting about as much advertisement from foundations making donations to public broadcasting.

Mr. MCGANNON. We have supported public broadcasting from the beginning. We are responsible for the New York station right

at this moment in their fundraising drive. I think the ability to use foundation money is a highly desirable thing, and I think public broadcasting is an important adjunct of our communications system.

Senator FORD. Let me ask another question. You are an affiliate—I am trying to look at your problem—you have a good many stations in large areas. Are you worried about drop-in stations?

Mr. MCGANNON. Well, I am worried about it to the extent it would cause greater competition for our stations, but I am not sure that is necessarily all bad. We have a station in San Francisco where there are four VHF television stations and some UHF. We compete hard. Insofar as the VHF signals are concerned, I do not think it would be appropriate from my point of view to resist anything that legitimately, effectively, and logistically could help to provide more service to the public, so to answer your question, I am concerned, because we have to work harder, but I am not concerned over the basic public thesis involved.

Senator FORD. The reason I asked this question is that in rural areas, southeastern or south-central Kentucky, for example, their reception is very poor because they are beginning to get out of range.

Partly the problem is, dropping in a station between one community and another, and when they begin to overlap, those in those fringes get nothing. The people in the fringes are entitled to see this TV like everybody else, but the drop-in station has created the problem. And the FCC, I think, has some so-called drop-in station petitions before it now. But you do not see any problem with drop-in stations? It just makes you work harder.

Mr. MCGANNON. I am also presuming there is not going to be a serious interference factor that will destroy----

Senator FORD. I do not think a drop-in station is going to go to an area that does not have viewers.

Mr. MCGANNON. But the manner in which the Commission will handle this or is supposed to handle it is by being very discreet in the areas in which they locate those, and also the power of those stations.

Senator FORD. That is all I have, Mr. Chairman.

Senator HOLLINGS. Thank you very, very much.

Senator FORD. Let us just ask about 5-year renewal.

Mr. MCGANNON. We have testified at various times and I have said 5-year renewals are not something that is of high urgency in our regard. We are satisfied with the 3-year renewal. We would like to see some means worked out by which criteria for renewal could be established, so that stations can work against, if you will, a goal, and have at least a prima facie position of renewal when you go back into the situation, and not be confronted by, if you will, what I call strike actions in some situations.

Senator HOLLINGS. Thank you very much, Mr. McGannon. We appreciate you and your colleagues' appearance here.

The final witness, Mr. Glen Robinson, professor of law at the University of Virginia School of Law.

STATEMENT OF GLEN ROBINSON, PROFESSOR OF LAW,
UNIVERSITY OF VIRGINIA SCHOOL OF LAW

Mr. ROBINSON. Mr. Chairman, members of the committee, I am Glen Robinson. I am a professor of law at the University of Virginia, to which I came from the Federal Communications Commission a year ago. I served on the Commission for 2 years. I am pleased to be here to testify at the request of the committee on the role of networks in our broadcast system.

Mr. Chairman, in deference to the hour, I wonder if it would please you for me to submit the written statement for the record and just touch on some of the highlights?

Senator HOLLINGS. Good. We will include the statement in its entirety. You highlight it as you wish, and I apologize for the lateness of the hour.

Mr. ROBINSON. No problem. I think, in fact, I can summarize the burden of, pretty much the bulk of the paper, the first 12 pages or so, by suggesting that what I attempted to do was to review the history of the Government's policy toward networks—in particular reviewing some of the early rules, the chain broadcasting rules which were first adopted in 1941. Then I give the subsequent history of one particular rule, the option time rule and then review the prime time access rules, first promulgated in 1970 and the financial-interest and syndication rules, also promulgated in 1970. The burden of, and the point of, all this was to suggest that basically the rules have not worked. The aim was to regulate network broadcasting vis-a-vis, first of all, the affiliates—to reduce the network dominance and its influence over the affiliates—and second: In 1970, to regulate the networks as buyers of programs as against the Hollywood film producers. That was the point of the nonsyndication and financial interest rules. I think the rules have been misdirected and indeed, I am sad to say, I think the current FCC inquiry is misdirected, although I am pleased that it was instituted when it was, and I think the misdirection comes in fixing too hard a focus on the contractual relationship between the networks and affiliates and in ignoring the basic economic structure.

I think the Commission has throughout its history assumed that the contract was the controlling determinant of economic power. In fact I think that is quite wrong. It has tinkered with the network/affiliate relationships; it has also attempted to intervene in the network producer relationships—all to very little avail because it has not recognized that the basic economic power of the network stems from its economic structure and not from any contract terms.

I think this is to some extent also reflected in the current FCC inquiry—I will here pick up the threads of the formal statement on page 12, if I may—the current inquiry launched in 1977 had its genesis in the petition by Westinghouse Broadcasting, which called for Commission investigation of three aspects of the network affiliate relations: One, increases in scheduled network programming, two, network practices which foreclose the ability of the affiliated stations to preview programming—about which you heard a great deal this morning, and three, the network compensation to affiliates—about which you heard very little.

The FCC's inquiry is in response to this petition and also in response to a Justice Department antitrust suit that has been pending since 1972, which was, I might note, initially dismissed, and then reinstated. The FCC inquiry has been touted as a new Barrow report, a new investigation comparable in scope to the 1958 report on network broadcasting. Indeed I hope it is, but I hope that in some sense it will be even broader, and perhaps more penetrating.

Reading the initial notice of inquiry, for example, I am struck by the fact that the Commission's approach is still imprisoned within a rather confined and static conception of industry structure. As in the past, as with all of the prior rules, the Commission's approach basically assumes the continuation of the present industry structure and looks only at the behavior within that structure.

The Commission proceeds on the implicit premise that broadcasting will continue to be the dominant delivery system for electronic mass communications and that this is necessary and desirable in most of the cities.

Nowhere in this inquiry has the Commission, or anyone else I am aware of, even raised questions about these premises. I might note, parenthetically, the same is true of the Justice Department's antitrust suit which, making allowance for the necessary differences, follows basically the approach of the Commission in both its past and present efforts. Unless we think about the more fundamental questions, we are unlikely to effect any change in the character of television service.

The Commission has expressed concern over the network oligopoly but has never pursued the question why that oligopoly exists and how it might be altered. Perhaps this reflects the policy of conscious neglect for there are three television networks, for one important reason: Basically, it is because FCC allocations policy has dispersed VHF station allocations to allow most households to receive no more than three strong competitive VHF services. Because of the inferiority of UHF it remains to be seen whether UHF allocations can provide the basis for additional networks. Up until now it is very plain that UHF has not provided a sufficiently strong base to support a fourth competitive network and certainly not a fifth or sixth. With only three fully competitive stations in the market comprising two-thirds of the station's television households, there can be no more than three brokers for any 1 hour of national broadcast. As a result, program decisions will be virtually the same as those being made currently by the three national networks, reflecting their perceptions of the taste of the mass audience.

Now we can, of course, change the identity of the program suppliers. We can limit the time periods in which they are permitted to sell their wares but the economic incentives will remain unchanged because they are basically set, according to the number of competitive outlets. Firms will tend to program to maximize audience shares in light of the viewing options, currently limited by basically three local outlets. So long as the number of viewing options remains the same the strategy of commercial programming will remain the same for any networking agency and the degree of diversity enjoyed by the public will remain unchanged.

If there is to be a serious attempt to reduce network dominance and therefore to increase program diversity, it must begin with recognition that the basic source of the problem is the limited number of economically competitive stations in each market. Unfortunately within the present structure of communications, significant enrichment of programs services is very limited, insofar as it rests on the full, competitive development of UHF—which is an uncertain hope for the foreseeable future.

I think that the more substantial promise for new programing, and for diversified communications services generally, lies beyond UHF, and even beyond broadcasting—at least beyond broadcasting alone. In particular, it lies with the full development of new broadband service facilities.

At this point the network issue must be put into a broader perspective; it is necessary to ask not merely what is the role of networks in broadcasting but what is the role of broadcasting in electronic mass communications? This is not the occasion for launching into a discussion of new technologies and the like and how they may affect our communications services. But it bears notice that a continued preoccupation with the traditional broadcast structure as the dominant form of electronic mass communications effectively forecloses any lasting resolution of the problem of program diversity—which is the core of the network problem.

We need to think beyond mere tinkering with the network-affiliate, or the network-producer relationships and to consider new forms of communications delivery such as broadband communications systems such as cable, fiber optics, direct broadcast satellites.

I do not say, and I am sure you will not believe, that broadband communications systems are free of problems of their own, and you have heard about some of those problems this morning from the networks.

In particular the full development of broadband communication systems will require us to take a close look at our localism policies. Is it necessary to sacrifice some degree of local broadcast service? I personally think it will not be. If it is, how much are we willing to forego in order to receive additional services? Can rural areas continue to be served as effectively as now—or might they be even better served? Again my personal view is they will be better served.

Assuming the desirability of a new communications system, how can we get there from here—with a minimum amount of economic cost and political bickering? These are not easy questions, but I think they take us to more important issues than we have to date encountered in the debate over “chain broadcasting.”

Senator HOLLINGS. How do we increase the number of viewing options? You say you don't answer it. Now, you have me curious. I want to know how would you do it? How would you break out of this three-broadcast campaign and go to beefing up UHF?

Mr. ROBINSON. I think UHF has limited potential. There are a variety of plans to try to beef it up. The Commission has before it a proceeding to look into ways of strengthening broadcasting largely by fixing new standards for TV receivers.

I think that is not likely to have much immediate promise. When I said it is necessary to look beyond broadcasting, I guess I really

had in mind cable and fiber optics which I think will shortly replace cable.

Senator HOLLINGS. Cable or fiber optics, you can see the difficulty we are having with that right now.

Mr. ROBINSON. Yes.

Senator HOLLINGS. One witness testifies to the fact that you ought to adopt former Senator Beall's approach in the bill introduced some years ago, for cable to be supplemental. What is your view of that?

Mr. ROBINSON. Mr. Chairman, I think that is precisely the wrong approach. It seems to me if anything it ought to be the broadcasting system that is supplemental. If we had it to do all over again, that is almost certainly the road we would take. We would see that the protected conduit offers promise for a vast array of services which would provide the basic service. Then you would look to the broadcast service to reach out to outlying areas which could not be effectively wired. We are coming upon an era within a decade or so where fiber optics will be economical to install perhaps as part of the regular telephone service.

That is already being done as far as trunking between switching plants now. At some distant point, maybe 10, 15 years—maybe a little longer—it should be economical, I think, to install fiber optics in lieu of the copper wire pair. At that point, it is really quite incredible to think that we would still be content with the present TV service.

Senator HOLLINGS. We had one estimate it would cost \$350 billion to wire America.

Mr. ROBINSON. I think the estimate was for copper—talking about coaxial cable. There, you see it being laid on in addition to new telephone plants. I am talking about something that would carry telephone service, as well as television service. There are some advantages to fiber optics that do not come with coaxial cable.

Senator FORD. I know you are a professor of law at the University of Virginia.

Mr. ROBINSON. Yes, sir.

Senator FORD. Yet, you come today with your testimony and you are more in the engineering field than you are in the legal field. What puts you in that position? You come and tell us not about the law but what we ought to be doing in the research and development field. What prompted you to do that?

Mr. ROBINSON. You flatter me by referring to me as an engineer.

Senator FORD. You are asking for new technology.

Mr. ROBINSON. I am asking for new technology assessment, Senator. I think it is time to really break out of the old mold. If we are seriously interested in new diversity, I think the system we have, which is a good system—I am not here to knock the system; it is a good system—but if we want major improvements in the system, I think we have to think about new system design. I think instead of this worrying about the network affiliate relationships, we are going to have to worry about new networks and how are we going to get the networks; the present broadcast over-the-air system could provide them perhaps only with some strain. I think on the

other hand, with new technology—let us say cable or fiber optics—we are reaching the point where half a dozen services——

Senator FORD. Let's look at satellites. Isn't that a new innovation, a new creature that everybody took advantage of?

Western Union sends its telegrams now by satellite. We are seeing what the President is doing, almost instantaneously, by satellite. What kind of improvement would you make on that?

Mr. ROBINSON. We don't yet have the direct broadcast satellite service. Satellites are used purely as common carriers. The networks themselves use them, but they are not being used or not being thought of primarily in terms of service direct to the user.

However, the technology is available and at some order of improvement in cost, it will become available widely. I have seen estimates, for example, Comsat has an estimate that indicates that over the northeastern sector of the country, it would be possible to provide 12 simultaneous services—12 television channels—to everyone in that area, roughly an area bounded by Boston, Philadelphia, and Washington. I think the equipment would cost—the earth station equipment would cost—a couple of hundred dollars. Those costs are coming down constantly.

There is no question in my mind that some point in the very near future, that presently feasible technology will also become economically feasible. Then the question is whether or not we promote that service or we retard that service.

Right now, our policies of localism would discourage that service, because it would skip over the local broadcast stations. At least that is what the broadcast industry has said.

Senator FORD. You commented on the study by the Commission. You referred to the fact that the last study was done in what year?

Mr. ROBINSON. The study I was referring to in 1958 was actually a congressionally ordered study. The Commission has conducted a number of studies of its own.

Senator FORD. The Commission is venturing into a study now.

Mr. ROBINSON. It now has an inquiry underway.

Senator FORD. Would you say it would be in our best interest, those of us who have to make a judgment on revamping or rewriting or altering the Communications Act, would it be best to wait until that study is completed before we jump in and rewrite the Communications Act?

Mr. ROBINSON. No, sir, I think that inquiry, as I have seen from the notices, is very, very limited. The questions being asked are not far-reaching. They may be important——

Senator FORD. In what respect?

Mr. ROBINSON. They wouldn't change the economic structure—the networking at all. As near as I can tell, the most ambitious proposal put on the table is to forbid the network ownership of five owned and operated stations, but even that would not change the basic economic structure of the broadcast industry.

They claim doomsday, but I think the facts are otherwise. What I am saying is, that it would not alter the kind of questions that I have suggested be put on the table, and that your House colleagues are considering as part of the communications——

Senator FORD. What is that?

Mr. ROBINSON. The kind of questions that the House committee, I think, is pursuing would not be affected by this inquiry at all. They go much more to the kind of delivery system you are going to have, whether it is going to be a mixture of broadcasting, fiber optics, satellites, and so on. It sounds kind of far out and futuristic until you realize that all of the other advanced nations of the world are studying this.

Senator FORD. You think we are not. That is all I have.

Senator HOLLINGS. Mr. Robinson, we appreciate your coming. [The statement follows:]

STATEMENT OF GLEN O. ROBINSON

Mr. Chairman and members of the Committee, I am pleased to be here today at the Committee's invitation to testify on the role of the networks in our broadcast system, and more particularly on the course of regulatory policy towards network broadcasting. In the presence of top representatives from the three major networks I think it would be presumptuous as well as pointless for me to review the particular organization of the networks and how they perform their networking function. I shall instead focus on the public policy perspectives on networking. In doing so I would like to pass over aspects of detailed regulatory oversight that take us into matters of program supervision and the like. I propose to deal with questions that are foundational to operational oversight insofar as they involve the basic structure and role of networks.

Since the beginning of broadcasting public policy towards networking has been rather clouded and ambivalent. On the one hand, the Communications Act of 1934 and before it the Radio Act of 1927, presumed a decentralized system of more or less autonomous local stations responsive to distinctive local needs, tastes and interests. On the other hand, as the system grew this concept of decentralization and local autonomy soon found itself in tension with the development of an efficient system for distributing programs nationwide. And the assumption of locally produced and locally oriented programming increasingly conflicted with the public demand for high quality programming that not only appealed to a nationwide audience but required such an audience to support it. This tension has never relaxed; it was intensified with the advent of television which made all the more imperative a nationwide system of distribution.

Nor has public policy found a satisfactory accommodation of the two competing communications models—decentralized localism on the one hand and an efficient, high quality, integrated, nationwide system on the other. The FCC has maintained the original conception of localism at least as a legal fiction by insisting that the stations are the primary obligors of public service. At the same time the FCC accepts as it must the economic reality that it is the three national networks which dominate the system.

To be sure, the Commission, like virtually everyone else, has fussed a great deal over this network dominance—insofar as it undercuts the central premise of localism that has guided regulatory activity from the beginning. And, insofar as the network dominance was concentrated in only three firms, the Commission and others have worried about the effect of network dominance on program diversity. Unfortunately, the Commission's efforts to come to terms with these perceived problems has been something less than successful, as a review of the history will I think reveal.

I. THE EARLY YEARS: THE CHAIN BROADCASTING RULES

The Commission initiated its efforts to cope with problems of networking when both it and the networks were in their infancy. In 1938 the Commission instituted a major investigation into "chain broadcasting" with a view towards promulgating regulations to limit network influence. The result three years later was a series of rules which survive today as the backbone of network regulations. The chain broadcasting rules were primarily concerned about vertical integration of the industry—the control of the stations by the networks. The rules did deal with horizontal concentration in two respects. One, they forbade common ownership of more than one network, and required NBC to divest itself of one of its two networks (the divested network became ABC). Two, they imposed a restriction—one not confined to networks—against ownership of more than one station in any community.

The main thrust of the rules, however, was to impose limits on network-affiliate relationships. The Commission, for example, prohibited networks from preventing a station from carrying the programs of another network and also agreements by the network not to transmit the programs to any other station in the same area. In addition to banning territorial exclusivity the Commission put limits on the duration of affiliation contracts, prohibited the networks from setting station rates, and restricted the amount of time which the station could commit in advance to clear network programs. The latter practice—option time—was originally banned, then permitted subject to limitations on the amount of time that could be “optioned” subject to some other restrictions. Some twenty years later it was again banned altogether.

In keeping with the Commission’s historical commitment to localism, the object of the rules is to minimize the degree of dominance of local stations by national networks; also it was desired to ensure that the stations had at least some degree of flexibility as among the networks and to restrict the degree of vertical integration between a single network and its affiliate. The assumption here was that this would not only enhance local responsibility but would make the networks more competitive among themselves if their control over their affiliates was limited.

As every viewer can see the rules have not quite lived up to their intent with respect to television. (We can ignore radio broadcasting since networking has ceased to play much of a role there in the age of television.) In practical reality network dominance of television stations has grown despite the restrictions on affiliation agreements. There is, for the most part, no fluidity in the relationships either: except in one and two station markets, where secondary affiliations exist under special contract arrangements, the affiliation agreement is rather firmly fixed with a single network. To be sure under the affiliation *contract*, only certain demands can be imposed (and with one, insignificant, exception all the demands run in one direction only—to the station), but the contract has little to do with the economic reality underlying the network-affiliation relationship.

Neither do the Commission’s rules, which have mistaken the form of network power with its substance. Under these rules the station is presumed to be legally the boss in the station-network relationship when the economic reality is the contrary. One thinks of the quip of one of Dickens’ characters when told that the law presumed him to be the master over his wife: “if the law presumes that, it is an ass.” As in marriage so in networking, the reality cannot be captured in a contract—or in a law prescribing contract terms.

II. NETWORK DOMINANCE AND OPTION TIME, AGAIN

Despite the chain broadcasting rules network dominance increased as television programming became more expensive, requiring wide distribution in order to spread costs. As a consequence Congress in the mid 1950s directed the Commission to conduct a study of the problem. It did, and after a couple of years produced the so-called “Barrow Report”—a suitably impressive volume and a laundry list of recommendations for amendments to the network rules to make them tougher. Chief among the recommendations was one to abolish option time. The theory was a continuation of the basic conception underlying the 1941 rules, merely extended a little further. The Commission did not at that time accept the recommendation to abolish option time, but it did accept the underlying supposition that the formal contract relationships between station and network were controlling. It accordingly imposed a still further restriction on the number of hours in each four-hour day part segment which could be “optioned.” In 1963, it went further and banned option time altogether. (In the same year it also invalidated a variable compensation formula under which stations were induced to clear minimum amounts of time. However, in a different form such compensation schemes have continued to exist—without official notice being taken of them until 1977.)

It is important to emphasize at this point that the Commission did not forbid stations to clear network programming. Indeed, its basic assumption was that the stations would continue to clear network programming on a regular basis even though not compelled to do so by contract. That assumption reflected reality. But it was a reality only dimly understood by the Commission, for if the option time contract did not make a crucial difference to the pattern of clearances, neither could its abolition make a substantial difference in network dominance of programming. This last fact soon became obvious. Despite the doomsday prophecies of the networks that abolition of option time would ruin networking, they continued to prosper and grow and the concern for network dominance reappeared.

Two years after it abolished option time the Commission turned to another alternative. This time instead of focusing on the networks’ oligopoly power vis-a-vis

their affiliates, the Commission directed its attention to the networks' oligopsony power vis-a-vis independent program producers. Essentially the theory was to break up that power, to strengthen the independent program distributors, creating more independent sources of program supply for stations and thereby reduce network dominance of programming. It began in 1965 with a proposed rule which would limit direct network production or licensing of programs to no more than 50 percent of the regularly scheduled entertainment programs during prime time. The remaining 50 percent would then be provided to the stations by independent programmers—presumably through advertisers. The so-called "50-50" rule was basically intended to return to advertisers the program brokerage function which they had prior to the late 1950s when the networks' began excluding them from this function. (Today, virtually no programs are brokered by advertisers.) This would, it was presumed, increase the number of brokers—creating more competition for programming while at the same time enhancing local station responsibility.

The 50-50 rule was not adopted, instead the Commission opted for a substitute set of rules which had been initially proposed by Westinghouse (a group owner of affiliated stations which has long been a major antagonist of the networks). These were the prime time access and the syndication/financial interest rules.

III. STATION ACCESS AND NETWORK SYNDICATION

As is often the case with FCC regulations the detail of the access, syndication/financial interest rules is rather complex (sometimes to the point of inscrutability). However, the essential thrust is plain. The syndication/financial interest rules are designed to curb the networks' supposed oligopsony power by forbidding them to engage in domestic syndication (distributing programs to stations after an initial period of direct network distribution—a period which varies from series to series) or from acquiring a permanent financial interest in programs produced for the networks by independent program producers (today networks produce only a small fraction of their entertainment programs, most of it being produced by Hollywood producers and licensed to the networks). In conjunction with these rules the Commission passed the prime time access rule which forbade network programming in one hour of evening prime time. The object of the access rule was to create a market for independently produced and distributed programming.

In one respect at least the new rules reflected an increased sophistication over the option time rules in their recognition that the problem of network dominance inheres in the economic structure of the industry rather than in a mere legal contract. However, the Commission's misdiagnosis of the structural problem caused it once again to miss the mark with its remedy.

Consider first the syndication/financial interest rules. The basic supposition is that network buying power has enable them to "exploit" program producers, forcing them to sell to the networks the residual rights (rights to sell after the network run). This has, the theory goes, weakened the independent producers and thereby also created disincentives to new entry into the production business) and at the same time increased network control over programming. That supposition seems to me most dubious. While network ownership of syndication rights did, I suppose, augment network control of program distribution, it is far from evident that the effect was to diminish program supply. If anything the converse seems more probable since by prohibiting networks from buying residual rights to programs produced initially for network showing, the rules effectively prevent small producers from shifting part of the risks of production (the risk that it will not play long enough to recoup costs) to the networks. By forcing suppliers to bear the risk of syndication runs, the rules do not, contrary to their intent, favor small companies, or new ventures. Rather they favor the larger, existing Hollywood producers who have better access to risk capital to finance the cost of programming.

It should be emphasized that the networks have no incentive to restrict the number of program producers or otherwise limit the supply. Quite the contrary, as buyers, their incentives are to have as competitive and diverse a source of supply as possible in order to keep the price of programs down. Thus interference in the network-producer relationship could not be justified on the ground that it would increase competitiveness among producers, but only on the premise that strengthening the producer's power vis-a-vis three networks would increase the competitive supply of programming available to local stations. However, given the networks' historic control over access to the stations, it was perceived by the Commission that some form of guaranteed access to stations was essential. Abolishing option time had proved futile; therefore it was deemed necessary not simply to forbid the networks from preempting time on the stations, but to forbid them to program

during a certain segment of the day. This was the point of the prime time access rule.

The subsequent history of the prime time access rule, though comparatively brief, is rich with insights into the labyrinthine ways of regulatory policy. Originally the rule forbade television stations in the fifty largest markets from carrying more than three hours of network programming during the four-hour evening "prime time." Further, in order to prevent stations from filling up the "access hour" with old network programs or movies, the rules forbade stations from carrying "off network" or feature films formerly shown in the market within the two previous years. By forcing the stations to seek out new program sources this was designed to promote new program production (including—though this was not a chief purpose of the rule—local programming).

The ink was scarcely dry on the rule before the Commission was presented with requests for waivers for news, sports, "off network" programs and old movies. For several years the Commission pursued a course of ad hoc judgments consisting of attempts to balance the worth of individual programs against the damage to the integrity of the rule. The choice proved to be highly subjective and somewhat erratic giving rise to charges by Chairman Burch, himself unsympathetic with the rule itself, that the Commission was "hip deep" in program judgments. On the other hand the granting of waivers was certainly understandable given the alternative programs that the access rule produced and which were characterized by low budget game shows most of which were revivals of old network shows or "new" episodes of daytime game shows); recently discontinued network series—(such as "Hee Haw" and "Lawrence Welk") and various nature/wildlife features which relied essentially on stock footage. And if the rule did not yield much in the way of new creative programming (unless one is willing to classify "Bowling for Dollars" in that genre), neither did it unleash any notable array of new creative energies. Largely the access programming was the product of the established suppliers. And such new "talent" as was encouraged was made possible only by the absence of any quality competition.

In short the access seed which the Commission had planted in the hope of bringing new beauty to the "wasteland" produced little more than foul smelling weeds beside which the rankest of network shows seemed like rare gardenias. Even those who were reliable critics of networks found themselves calling for a repeal of the rule. The Commission, hard pressed to hide its own embarrassment, considered such a repeal in 1974 only to back off with a compromise which essentially cut the amount of access time in half and also permitted exemptions for certain categories of network programs (those for which waivers had theretofore been granted). However, the court of appeals, dissatisfied with the Commission's procedure remanded the decision to the Commission for correction in procedure, but with a strong suggestion that the Commission take a harder look at the merits of its revised rule. The Commission took another look in 1975, and this time came up with still another version—"PTAR III" as it was now known among the cognoscenti—which was another compromise, this time between the original 1970 rule and the 1974 revision. It retained the rule, but also retained most of the exemptions for network programming of the kind that the Commission liked—"children's specials, public affairs and documentaries." This time the revised rules was upheld by the court.

IV. THE CURRENT FCC INQUIRY

Quite apart from the effect on the public which still had to view the impoverished program fare that the access rule produced, the revised access rule did not bring tranquility to the industry, to industry critics or to government. A year after the access rule was adopted a petition was filed by one program producer to expand it so as to bar "stripping"—multiple exposure of episodes of the same program. The Commission no sooner denied that relief (quite correctly in my view) than it was presented with a petition by Westinghouse Broadcasting Co. calling for Commission investigation of three aspects of network-affiliate relations:

- (1) increases in scheduled network programming;
- (2) network practices which foreclose the ability of affiliated stations to preview programs;
- (3) network compensation to affiliates.

In January of this year the Commission responded to the Westinghouse petition and also to claims being pressed by the Justice Department in a separate antitrust

suit (which was originally brought in 1972)¹ by initiating a broad inquiry into all aspects of network operations, including not only network affiliate relationships, but network-program supplier relationships, and even network ownership of stations.

I support the Commission's inquiry insofar as it promises a broad investigation into the role of the networks. However, reading the initial notice of inquiry I am struck by the fact that the Commission's approach still seems to be imprisoned within a rather confined and static conception of industry structure. As in the past the Commission's approach basically assumes the continuation of the present industry structure and looks only at behavior within that structure. The Commission is evidently proceeding on the implicit premises that broadcasting will continue to be the dominant delivery system for electronic mass communications, and that local broadcast allocations in as many cities as possible are necessary and desirable.

Nowhere in the inquiry thus far has the Commission—or anyone else so far as I am aware—even raised questions about these premises. (I might note parenthetically that this includes the Justice Department's antitrust complaint which essentially takes the same approach as the Commission's past and present efforts.²) I think, however, that unless we begin to think about some of these deeper questions we are not likely to effect any significant change in the character of television service. The Commission like many others has expressed concern over the network oligopoly, but it has never really pursued the question why it exists and how it might be structurally altered. Perhaps this reflects a policy of conscious neglect, for the search for the source of network power leads swiftly and clearly to the Commission's own television allocations policy.

V. COMPETITION, DIVERSITY AND THE INDUSTRY STRUCTURE

There are three television networks for one important reason—our allocations policy has dispersed VHF station allocations so as to allow most households to receive no more than three. Because of the inferiority of UHF it remains to be seen whether UHF allocations can provide the basis for additional networks. But up to now it is plain that UHF has not provided a sufficiently strong base to support a fourth competitive network—and certainly not a fifth or sixth. With only three fully competitive stations in markets comprising two-thirds of the nation's television households, there can be no more than three brokers for any given hour of national broadcasting. As a result, program decisions will be virtually the same as those currently made by the three national network firms, reflecting the tastes of the mass audience.

We can of course change the identity of the program suppliers; we can limit the time periods in which they are permitted to sell their wares, but the economic incentives will remain unchanged. Firms will tend to maximize audience shares in light of the number of viewing options. So long as the number of viewing options remains the same, the strategy of commercial programming will remain the same for any networking agency and the degree of diversity enjoyed by the viewer will remain unchanged.

If there is to be a serious attempt to reduce "network dominance," and thereby to increase program diversity, it must begin with recognition that the basic source of the problem is the limited number of economically competitive television stations in each market which effectively precludes the development of new networks and, correspondingly, new sources of program choice. Unfortunately, within the present structure of allocations the potential for viable new networks or for significant enrichment of program service is limited insofar as it rests on the full, competitive development of UHF—which is an uncertain hope for the foreseeable future.

¹The Justice Department's antitrust suit seeks to prohibit the networks from: (1) buying any interest in independently produced programs beyond the right of the network exhibition; (2) syndicating entertainment programs; (3) producing entertainment programs itself; (4) using its control over access to the network to obtain unfair competitive advantage in any other field.

²In fact, the first two of Department's proposed remedies have already been ordered by the FCC. The third assumes that network production is a threat to competitive supply of programming and I see no evidence and no persuasive logic to support this assumption. The networks currently produce very little entertainment programming (news and public affairs would not be affected by the Justice Department's proposed remedy). I take it they resist giving up programming principally because maintaining the *option* of production is an important constraint on the prices charged by program producers. It is not clear to me how giving the networks this option prejudices competition in program production. In fact quite the converse seems to me more plausible. About the fourth proposed remedy I am uncertain concerning the factual basis, though it is alleged that the networks have engaged in various tie-in type arrangements. If so, I have no difficulty with this proposed remedy—but it will not significantly affect the basic oligopoly/dominance problems that should be the core concern.

I think that the more substantial promise for new programming, and for diversified communications services generally, lies beyond UHF, and even beyond broadcasting—at least beyond broadcasting alone. It lies in the development of new broadband service facilities.

At this point the network issue must be put into a broader perspective; it is necessary to ask not merely what is the role of networks in broadcasting but what is the role of broadcasting in electronic mass communications? This is not the occasion for launching into a discussion of new technologies and how they may affect our communications services. But it bears notice that a continued preoccupation with the traditional broadcast structure as the dominant form of electronic mass communications effectively forecloses any lasting resolution of the problem of program diversity—which is the core of the “network problem.” We need to think beyond mere tinkering with the network-affiliate, or the network-producer relationships and to consider new forms of communications delivery such as broadband communications systems—cable, fibre optics, direct broadcast satellites. I do not say, and you will not believe, that broadband communications systems are free of problems of their own. In particular the full development of broadband communications systems will require us to take a close look at our localism policies. Is it necessary to sacrifice local broadcast service? (I think probably not.) If so, how much are we willing to forego in order to receive additional services? Can rural areas continue to be served as effectively as now—or might they be even better served? (I believe the latter.) Assuming the desirability of a new communications system, how can we get there from here—with a minimum amount of economic cost and political bickering? These are not easy questions, but I think they take us to more important issues than we have to date encountered in the date of “chain broadcasting.”

Senator HOLLINGS. The committee will be in recess until 9:30 tomorrow morning, and we will meet in room 5110 in the Dirksen Building.

[Whereupon, the meeting was adjourned, to reconvene the following day, Tuesday, May 10, 1977, at 9:30 a.m. in the Dirksen Building, room 5110.]

TELEVISION BROADCAST POLICIES

TUESDAY, MAY 10, 1977

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee was reconvened, pursuant to adjournment, at 9:37 a.m., room 5110, Dirksen Senate Office Building, Hon. Howard W. Cannon presiding.

Senator CANNON. This morning the subcommittee continues its communications oversight hearings. We will pick up where we left off yesterday in exploring the various issues of concern of those in the broadcasting field.

The subcommittee chairman, Senator Hollings, has a budget conference going on right now, but I expect him to be joining us later this morning.

In the interim, we will begin by calling Chairman Richard Wiley of the FCC, who has a prepared statement. I understand the Chairman will be joined by other Commissioners who will participate when we begin our questioning.

The FCC panel will be followed by Mr. Vince Wasilewski, president of the NAB.

Mr. Chairman, you may proceed, sir.

STATEMENT OF HON. RICHARD E. WILEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, ACCOMPANIED BY ROBERT E. LEE; JAMES H. QUELLO; ABBOTT WASHBURN; JOSEPH R. FOGARTY; MARGITA E. WHITE, COMMISSIONERS; WALLACE E. JOHNSON, CHIEF, BROADCAST BUREAU; AND RICHARD J. SHIBEN, CHIEF, RENEWAL AND TRANSFER DIVISION

Mr. WILEY. I would like at this point to introduce my colleagues here at the Commission. We have all of the Commissioners here save Commissioner Hooks, who is making a speech.

First we have the dean of our FCC, Robert E. Lee, who served more years than any other Commissioner.

Senator CANNON. Why don't you invite the other Commission members up here to join you.

Mr. WILEY. This is Commissioner Robert E. Lee. On his left, Mr. Washburn. On my immediate right, Ms. Margita White, Mr. Jim Quello, Mr. Joe Fogarty. As I said, Commissioner Hooks is not with us this morning. I also have with me Wally Johnson, chief of the

Broadcast Bureau. He is supported by a number of members of his staff.

We appreciate this opportunity to present an overview of broadcasting from the perspective of the Federal Communications Commission. I have with me a 38-page statement. What I would like to do is go through this, hitting the high points and submit the whole statement for the record, if I might.

Senator CANNON. The statement will be made part of the record in full, and you may summarize.

Mr. WILEY. Thank you.

As you know, Congress created the Federal Communications Commission in 1934 for the purpose of "regulating interstate and foreign commerce in communication." Thus, the Commission is empowered to regulate not only broadcasting but interstate and foreign telephone and telegraph, communication by satellite, as well as public safety, industrial, transportation, amateur, and citizen's services.

We also regulate certain aspects of cable television, although the actual licensing or franchising of such systems is a matter for determination by State and local government.

At present there are more than 9,150 radio and television stations on the air, and several hundred more have been authorized. Most of these are for commercial operation, and are supported by advertising revenue, but there are also numerous noncommercial stations as well.

Mr. Chairman, relative to broadcasting, the Commission has a number of responsibilities. I would like to take you through some of the most important.

First, allocation of broadcast channels. This is one of the basic responsibilities of the Commission, and we are engaged in allocation of the portions of the spectrum to civilian use, both domestically and in conjunction with foreign countries internationally.

In recent months we have considered several issues concerning the allocation of channels within the broadcast service. Let me take you through those.

First of all, VHF drop-ins. What we are discussing here is the concept of the general reduction of the number of miles required between VHF stations operating on the same or adjacent channels. After conducting an inquiry and performing additional studies, the Commission decided that because of increased levels of interference it would not serve the public interest to make a general reduction in the separation standards.

However, we did find that, in four markets, the potential benefits of new television service for a large number of people appeared to outweigh the harm caused by adding "short-spaced" or "drop-in" station.

Early in 1977 we issued a notice of proposed rulemaking proposing that one additional VHF channel be allocated to each of those cities: Charleston, Johnstown-Altoona, Knoxville, and Salt Lake City.

In a separate proceeding, the Commission considered and rejected the possibility of a VHF drop-in for New Jersey. Such a station had been one of the proposals presented by groups concerned about the difficulties of getting local news, public affairs, and political

coverage in New Jersey, when all of the commercial VHF stations serving that area are licensed to the adjoining cities of Philadelphia and New York. The Commission found that a preferable means of dealing with the problem could be found without changing the existing channel allocations structure. Accordingly, the Commission has placed a special New Jersey service obligation on the television stations in the area, and has already received from the larger mass-audience stations statements of commitment of equipment and personnel to New Jersey coverage.

Senator CANNON. What sort of a thing are you talking about there?

Mr. WILEY. Well, for example, the requirement, would be that there be news services provided for New Jersey like electronic newsgathering services that would provide the people of New Jersey quick, fast-breaking news and public affairs coverage. In other words, we wanted to make certain that the New York and Philadelphia stations would recognize their obligation to New Jersey.

Senator CANNON. So part of their programing would be oriented specifically towards New Jersey?

Mr. WILEY. That is right. We have already received from larger mass-audience stations statements of commitment of equipment and personnel for New Jersey coverage. It is a difficult situation because New Jersey is one of several States that has no VHF stations specifically assigned to it. We are therefore placing this requirement on the New York and Philadelphia stations. There may be, of course, another answer to this whole area. That is the one I am moving to now.

It is clear from our study of the VHF drop-ins that any substantial further growth in the number of television stations must come in the UHF frequencies. The problem here has not generally been one of channel availability, but more one of technical difficulties and competitive disadvantage.

The Commission is working toward a master plan for the full development of UHF television, and I might say including both governmental and private sector actions. I am hoping we can continue to work with the industry and with the public in this regard to develop UHF into a comparable situation with VHF television. These channels are there. There is a tremendous opportunity for more service to the American people, and I think the Commission is committed to trying to make UHF fully comparable to VHF.

Senator CANNON. Why has it moved along so slowly so far? Why has it been so far behind the VHF system.

Mr. WILEY. I believe it is a combination of technical problems in UHF in areas of communications which the Commission does not regulate. For example, in the receiver sets, and the way they are being developed, we recently came out with a rulemaking which might lower the noise figure as far as UHF reception is concerned, replace it with a new requirement to the set manufacturers that when they ship the sets—they have heretofore attached a VHF antenna to the set, simply put the UHF antenna in the box, and many people do not know enough to hook it up and how to utilize it.

There is also a problem with the transmitter in UHF television—a problem with the antennas. To some extent there has to be more investment in the private sector, more confidence in the private sector, and that they cannot look only to Government to solve these problems.

The Government now is recognizing more, and the FCC is recognizing more, that there is a public interest factor associated with the development of UHF television. It has moved along slowly, but it is going to move much more quickly in the future.

I might say there is now a council of UHF broadcasting that has been working rather effectively with the Commission in this area. Also, the Public Broadcasting Service has recognized that their future lies with UHF, and they have been associated with the Council of UHF Broadcasting.

So, for the first time, we now see a concerted private industry sector and Government effort designed to develop this portion of the frequencies. I believe it is in the public interest. I think all of my colleagues agree.

I mentioned subscription television. We are talking here about over-the-air pay television, Senator Cannon. I will just skip over that and say that this is a coming development.

I will also mention FM, which is becoming more successful every year.

Finally, let me get to the AM broadcast band. It is clear that this broadcast band is intensively used in most parts of the country. There is a special characteristic of the AM frequencies which makes channel allocation problems quite different from the ones raised in the other frequencies we have discussed. At nighttime, the AM signal is reflected from the ionosphere and returns to earth at a great distance from the originating station. Many AM stations are authorized to operate only during daytime hours when this nighttime or "skywave" phenomenon does not occur.

If a large number of those stations were permitted to operate at night, the interference situation could be chaotic. While we have attempted to get as much AM service to individual communities as is consistent with good engineering practices, there are severe limits which must be recognized.

By international agreement, certain AM channels are set aside for exclusive nighttime use in the United States. Until 1961, 25 so-called clear channels existed on which no more than one station was permitted to operate at night. In a proceeding concluded at that time, 12 of those channels were changed so that an additional station on each channel could be operated with a directional antenna at night. Currently underway is a study aimed at seeing whether it would be in the public interest to continue the present pattern of clear channel stations, or increase the power available for use by some or all of those stations, or permit additional stations to use those channels at night by breaking down some of the clears.

This has been a proceeding that has been going on for about 20 or 30 years in the Commission. I have stated, and the Commission agrees, I believe, that we are going to resolve this longstanding proceeding once and for all within the next year or so.

Let me turn to another important function. We just covered allocation. Let me turn to licensing. Of course, this is a basic

commission function. We have to assign stations in each of the radio services with a specific location, frequency, and power. While the chief consideration in this process is to avoid interference with other channels, many of the Commission's policies are promoted through the licensing function. For example, the Commission promotes diversification and avoidance of undue concentration of control in the broadcast media through its rules prohibiting the licensing of more than one AM, FM, or TV station in one community to the same person or group, and through its limit on the total number of stations in the same service that can be commonly owned.

Broadcast stations are licensed to serve the public interest, convenience, and necessity, and they are granted a 3 years' license period. Every 3 years we have to make a determination of whether their overall performance has lived up to their obligations to the public. We have to look at whether their service is in the public interest.

Accordingly, we have to look at the degree to which licensees have been responsive to problems, needs, and interests of their community. We require the broadcaster to ascertain these problems and needs.

Senator CANNON. Let me go back just a minute to where you say "through rules prohibiting licensing of more than one AM, FM, or TV station in one community." There are areas where one owner owns a radio station and TV station. Is that permitted now on new license applications?

Mr. WILEY. No; not in the future.

Senator CANNON. Is it grandfathered for those people who had them?

Mr. WILEY. That is right. The Commission made that decision.

Senator CANNON. Is there a time limit on that?

Mr. WILEY. No.

Senator CANNON. So they are grandfathered in perpetuity so long as it remains under the same owner?

Mr. WILEY. Yes, sir, with one exception. If they sold, they would have to break up. Similarly, with a newspaper-broadcast located across ownership. The concept, of course, in the newspaper area was that we originally thought that newspapers were needed to develop broadcasting in the journalistic tradition. But as years have gone by, of course, this is no longer true, so the Commission decided it would not permit any future coownership situations to occur. But we did not find the kind of abuses that would require divestiture in these areas.

The court of appeals in Washington, of course, has decided that differently. We are appealing it to the Supreme Court.

Senator CANNON. What is the status now? Say a man has a radio station, TV station, and newspaper, where does he stand?

Mr. WILEY. Under the decision, if the court of appeals is affirmed, he is going to have to sell either the newspaper or television or his broadcasting properties. He cannot have a colocated situation under that court of appeals decision.

We disagree with that decision, and are appealing it to the Supreme Court. The court of appeals has stayed its mandate. So for right now the Commission's rules are still in effect. They can

retain that operation unless they sell, in which case they have to break up.

That is true for television and aural facilities and newspaper broadcast facilities.

I have been discussing license renewal. As you know, Senator, we require broadcasters to ascertain problems, needs, and interests of the local community in order to serve those problems and needs.

In the past, the ascertainment procedures required by the Commission were quite formal. Specific guidelines for such things as interviews with leaders of community groups and for a survey of opinion of the general public were set forth by the Commission.

As part of its deregulatory program, the Commission undertook a comprehensive study of the ascertainment procedures for renewal applicants. That study revealed that much of the formality and paperwork associated with the ascertainment procedures was unnecessary. Accordingly, the Commission has adopted new, simplified, and more flexible procedures for renewal applicants.

Senator CANNON. I hope you do something simplifying those procedures because one of the big areas of complaint that I have had, and from my constituency, is the undue burden placed on the small operator, to comply with your regulations, to go through the procedural steps and go through the paperwork.

I have been shown the volumes of paperwork that has been required in the past, and to me, it seems to be an absurdity.

Mr. WILEY. I think much of that has changed in the last several years. If you were to talk to broadcasters today, you will know there are still areas in which we have not reached the millenium, but there have been substantial changes. For example, in ascertainment. We no longer require the broadcasters every 3 years to go through one single ascertainment procedure. It's now a continuous process going on throughout their license term consistent with the way they really run their business as they have told us. They don't have to send a lot of material to Washington any more. They simply have to have the interview forms put in their public file for the public to consider.

They no longer have to make every ascertainment themselves. Fifty percent of the interviews with community leaders can be done by nonmanagement personnel. They can do it by telephone or group ascertainment.

This is a much more flexible process. More importantly, in communities under 10,000, Senator Cannon, we have taken the broadcaster at their word in those communities that they know that community by living in it and interacting, and we have taken off all formal recordkeeping requirements.

We are going to study that and see whether or not we can get away from the formal recordkeeping and simply look at the bottom line, what is the programing responsive to the 10 top problems and needs and interests that they ascertain.

There may be a great possibility in moving in that direction and I have spoken out personally in that area. The Commission, however, has limited their decision to less than 10,000 as an experiment, so I think the Commission is moving.

I might say in other areas as I get into this, we also have a short form radio application which has cut down the burden in filing

renewal applications for radio stations markedly. It's down to a two-page document. So the Commission has been in the forefront in trying to get rid of unnecessary and overly burdensome regulations and trying to have less time spent on paperwork and more time on serving the local community.

I agree with your view on that all the way.

Senator CANNON. All right, sir.

Mr. WILEY. If I can move to the contested renewal application, we would like to see, Senators, if possible, the problems between broadcasters and the public solved at the local level.

We believe broadcasters are public trustees and we hope that there can be a resolution of citizen complaints through dialog, continuous dialog with broadcasters. Sometimes, however, these efforts fail, in which case, the citizen has a right to contest the renewal of a station. Typically, he can file a petition to deny. Contested renewal applications require considerably more review than uncontested. Accordingly, a great backlog developed in the past.

I'm pleased to say that backlog has been cleaned up over the last several years. We are now very current on renewals, we only have about 20 petitions now being worked on, and the idea of 200- or 300-petition backlog is a thing of the past. We have cleaned that up in the last 2 years.

Senator CANNON. What is the position of the Commission when a contested application is filed and, assuming that the broadcaster has done a reasonably good job in the community, there haven't been a lot of very outstanding complaints against that broadcaster, what position does the Commission take? Do you go in there with the idea that someone who comes in and promises they can do a better job serving the community is entitled to a crack at it, rather than demonstrate performance on the part of the man who has had the license?

Mr. WILEY. We have to understand that we are talking about two kinds of protests. One is the petition to deny. The second one that you are now referring to is the petition that says not only don't renew it, but give me the license. In that area, I have taken the position, and the Commission has taken the position that a comparative renewal involving the incumbent licensee simply doesn't make sense. We have recommended to Congress that you abolish the comparative renewal process altogether, because what you are comparing, as you are suggesting by your question is, the incumbent's performance against a challenger's promise. You are comparing an apple and an orange and we simply say it can't be done. Instead, we recommend that the Commission at renewal time should make a searching review of the licensee and find out whether he's doing a good and faithful job of serving his community without serious deficiencies. If he's doing that, I say he should be renewed no matter what the challenger promises.

Senator CANNON. In other words, there ought to be a presumption in favor of the man in there and performing, and based on his past experience, there certainly ought to be a presumption that he's doing a good job if you haven't had a lot of complaints against him other than complaints on the part of the person who's trying to get the new license.

Mr. WILEY. I think there has to be a reasonable renewal expectancy, or otherwise we aren't going to have the kind of stability you need in the broadcasting area to attract financial and manpower resources to give people quality broadcast service. Yes, I agree with you.

Senator CANNON. I saw, personally, one situation where a group of people got together solely for the purpose of contesting a license application. It wasn't based on the fact that the licensee wasn't doing a good job, it was based on the fact that they wanted to come in and contest him and get that license. I was very disturbed to find out the type of situation that could occur under those circumstances.

Mr. WILEY. That is still the law. We have made this recommendation to Congress, but in the meantime, until such a law might be passed, we are continuing, of course, to go through the process of what many times are expensive and very prolonged proceedings. We tried to cut that down through reform of our administrative procedures, adjudicatory procedures. I'm frank to tell you they are still going to be very long, protracted and expensive procedures. I don't think ultimately the Commission can come out with a rational decision in many of those cases. We have tried to put out a new policy statement which simplifies our process, but I think it's an area which requires and needs Congressional guidance and attention.

Senator CANNON. When you say you only have 20 petitions unresolved on a petition to deny—

Mr. WILEY. Right.

Senator CANNON. Is that a situation where someone is just objecting, they are not trying to get a license?

Mr. WILEY. That's right.

Senator CANNON. They are just saying, "We want you to deny the license to this applicant because they haven't performed their duties"?

Mr. WILEY. That is exactly right. We had in 1974, when I became Chairman, about 250 petitions to deny pending, and many times the citizen and broadcaster would have to wait until the next renewal period and still we hadn't made the decision of the last renewal period. That is unacceptable and through a lot of hard work on the part of our staff and through new procedures, we have cleaned up that backlog and, in fact, many of the 20 are still in the pleading stages, so we are current now.

Senator GRIFFIN. You were commenting on some of the reasons these groups got together and contested a petition. I recall a concern that I had last year about the fact that in some situations the contesting groups really don't hope to get a license. What they are really angling for is some special interest arrangement with the broadcaster whereby he will alter his programming in their interest, their special interest, as a tradeoff for dropping their contest.

There have actually been agreements entered into in order to get this dissident group to drop their contest—that they would do this or that, would put so many people on the air or would have certain programs. I don't know whether you cover this later in your statement.

Mr. WILEY. No.

Senator GRIFFIN. If you don't, will you bring me up to date on that? You recall my interest in it.

Mr. WILEY. I do. We have had a number of discussions on this.

Senator GRIFFIN. That is a form of blackmail, I would say.

Mr. WILEY. I would say this. The broadcaster has a nondelegable duty, obligation and right to make the programing decisions independently. He cannot simply say to a citizen group, that is pushing him for a certain result, that we will do whatever you want unless he truly believes that is in the public interest. We do permit citizen-broadcaster agreements because we think if local disputes can be resolved locally, that generally proves to be in the public interest, rather than bundling it all up and sending it to Washington and making it a Federal case. But we have looked at those and, in some cases we have refused to approve them because they have involved a delegation of the broadcaster's independent judgment and programing functions to a special interest.

Sometimes they have not. Sometimes the broadcaster has recognized through citizen input and dialog that perhaps he hasn't been serving for example the Spanish community in his area quite as sufficiently as he should. I think that is in the public interest.

On the other hand, if he yields to a special interest that he doesn't think is serving the public interest, he may be in more trouble with the Commission than the citizen group.

Senator GRIFFIN. I agree the whole question is what is in the public interest. The concern I had when the subject came up before was the extent to which the FCC does exercise responsibility. Are these agreements required to be filed with the FCC, and does the FCC review them?

Mr. WILEY. Dick, can you respond?

Mr. SHIBEN. Generally speaking, they are filed with the Commission—

Senator GRIFFIN. Why do you say "generally speaking"?

Mr. SHIBEN. All agreements are not required to be filed.

Senator GRIFFIN. I see. There are no Commission regulations requiring that.

Mr. WILEY. But they have been put in the public file if they are not filed with us. They are filed with us, I think, Dick, isn't it true, where there is a dismissal of a petition?

Mr. SHIBEN. Where there is a petition to deny, or something pending, and they are seeking dismissal.

Mr. WILEY. Otherwise we require they be put in the public file so that everyone can take a look at whether or not, for example, they made an agreement with some particular female group, let's say, that another group might disagree with. They are all in the public file for public consumption.

Senator CANNON. Mr. Chairman, would you identify your assistant for the record?

Mr. WILEY. That is Mr. Shiben, Chief, Renewal and Transfer Division of the Broadcast Bureau, and he has primary responsibility in this area, so I think the system is working much better than when you and I talked about it before. We clarified our policies; we are seeing fewer petitions to deny today than in the past, and maybe that is because there is this continuing dialog going on between broadcasters and citizens.

But, I think we have made it crystal clear to the broadcast industry that they are not to delegate their independent programming function to any group or person.

Frankly, I have seen relatively few instances of that.

Senator GRIFFIN. Thank you.

Mr. WILEY. I would like to make one point clear. I oftentimes hear the Commission renews everybody and we look at statistics, 99 percent of all broadcasters get renewed and there is sort of a feeling that the Commission simply rubber stamps every renewal application.

I would like to say that does not comport with reality. The facts are that within the limits of our resources, which are rather limited, we do make a real effort to review every renewal application carefully. We engage in considerable correspondence with the stations involved and, ultimately arrive at an informed determination as to whether the license should be renewed.

Senator CANNON. You don't try to lean over backwards because of that charge and deny a few applications when really they ought to be approved to you.

Mr. WILEY. I don't think we do. I will say this. We have gotten tough on taking away more licenses in the last several years than anytime in the Commission's history, but if you looked at those individual cases, you would agree that those are cases which frankly do the broadcast industry a lot of harm, where you have had fraudulent conduct and they have cheated the public and the Commission has justifiably taken strong action.

In many of the other areas, we recognize it is a service provided to the public and if there is no complaint by the public and there is a general good faith job being done by the broadcasters, I don't see any reason to take the license away and we don't do it.

I don't think the fact that 99 percent of the broadcasters get renewed in a significant service shows that the Commission is not doing its job or that the broadcast industry is not doing its job. It may be quite the reverse, that the public is being well served.

Senator CANNON. It may be that you are doing your job very well in seeing that they do adequately perform the service they should be performing.

Mr. WILEY. Yes, the fact is that the ultimate decision on renewal may come after there has been considerable work by our renewal branch in working with the stations to try to determine what problems exist and see if those problems can't be solved short of the ultimate sanction of taking the license away.

We are not in the job or business of trying to grab all the licenses we can. We are in the job of trying to see that the broadcast industry serves the public interest. That is the bottom line it seems to me.

One of the things in the renewal process, we probably spent more time on than anything else in the last few years has been equal employment opportunity portion of the application. Let me say that EEO is the law of the land. It is right both morally and legally and the Commission was, the first and only regulatory agency to adopt EEO regulations for its licensees.

Frankly, the broadcast industry has responded well to those regulations. We hear a lot of criticism, but if you look at statistics,

there has been a general increase in improvement in the overall equal employment profile of the broadcast industry. Based on the data available to us, job opportunities for minorities and women are continually increasing and the actual employment figures reflect the fact that many broadcasters are making an affirmative effort to open the doors of opportunity to those for whom they previously have been closed and I support that concept.

Unfortunately, not all licensees comply with our requirements as fully as they should. In such cases, the Commission has taken strong and positive action to effect compliance and we are going to continue. Licensees who are not living up to the letter of the law in our regulations—who are not making opportunity available—I am not talking about quotas here—I am talking about making opportunity available for ethnic and racial and sexual minorities, are going to run into problems with the Commission.

Senator CANNON. I fully support that concept, but I hope you don't get carried away as an example I saw yesterday, not with the FCC, but a contractor who had been notified by compliance division that he was not in compliance because he hadn't taken adequate steps for employment of minorities and the man only had two employees, two employees and he was being cited because he hadn't taken adequate steps to insure the employment of minorities.

Now, I don't know how far you are going to carry this sort of thing. I hope it doesn't—if I get a complaint like that about the FCC, you are sure going to hear from me on it.

Mr. WILEY. Well, you won't. Let me say this. In a rather controversial action, we have raised the level of the stations which are required to file affirmative plans, from five to ten, because we recognize there is a burden on the smaller station that has to be balanced with the social goods that we are trying to foster through our EEO program.

Smaller stations sometimes don't have the resources to engage in training programs and to engage in other things which will foster EEO. We do place our requirements on them, but we are trying to lessen some of the paperwork burdens on the smaller stations.

So we are going for a balanced program. My view is that broadcasters are making the effort to give these people opportunity. We are not going to look at quotas. But we are going to look at the broadcasters statistical performance. If we find it falls below the statistics in his work force, we are going to question it and we will then look to see what the broadcaster can show us as to what he is actually doing to provide opportunity.

That is really what we are looking for. This is a difficult area. Many broadcasters are finding themselves being questioned by the FCC today. We send them letters requiring more information and explanations. Sometimes we put reporting conditions on them, to show us how many people they have hired and how many minorities have been hired.

Sometimes we condition the license: sometimes we set it for short term renewal and finally sometimes we designate licenses for evidentiary hearing.

EEO is the law of the land and we intend to carry out our responsibilities in this regard. I do think we have to recognize that

there is progress being made in the broadcast industry and sometimes all the criticism obscures that fact.

Senator GRIFFIN. Before you go on. You refer to conditional renewals. Are those renewals without hearings?

Mr. WILEY. Yes.

Senator GRIFFIN. Haven't you had some cases in the Court of Appeals for the District of Columbia that affect the practice of authorizing renewal without hearing?

Mr. WILEY. We have had several recent cases come down just in the last several weeks, which have suggested that in some cases it may be necessary to give discovery rights to citizens, petitions to deny or people who have brought complaints against broadcast stations prior to the Commission making a decision on the petition.

Now, I happen to feel that where the station is below the zone of reasonableness perhaps that kind of effort might be required. I question when a station is within the zone of reasonableness whether that kind of procedural remedy should be required of licensees who are doing an effectively good job because, let's face it, that is going to take time and cost money.

So, we will be looking at this in deciding whether or not we want to appeal those decisions or seek rehearing.

Senator GRIFFIN. Another embarrassing question—Last year Commissioner Hooks was quite concerned about what kind of a job the FCC was doing in its own house in the area of equal employment opportunities.

Mr. WILEY. I think we are doing a much better job. We have formed an internal EEO unit; we have an internal EEO officer. When I came in, we had never had a black supergrade. That has been changed. I hope in the next month to be able to recommend to the commission the first Hispanic supergrade position. We are making a real affirmative effort to try to get more minorities and women, and in all of our areas. We find better success in the legal area, more difficulty in the economic and engineering areas, which have not traditionally attracted minority members as much as they perhaps should.

The Commission has not reached the millenium either in its own house, but we are working on it because we think certainly if we require it of our licensees, we have to expect if of ourselves.

Senator GRIFFIN. I was wondering if you might be entitled to some sort of conditional renewal as a Commission.

Mr. WILEY. Well, I think that is well stated. We have our own affirmative EEO plan, as a matter of fact, that we are moving toward and we have expressed that. I think we should bear witness the same way as we expect licensees to do.

Senator GRIFFIN. I think we as a committee have an obligation to ask you to provide us with real information and statistics: Where were you 2 years ago; where were you 1 year ago; where are you now in these areas?

Mr. WILEY. Fine. I would be pleased to do that. The important thing again is not only statistics, but the opportunity that is made available. In other words, the fact that we are going out and seeking these people and taking actions to get them. Sometimes we find we have difficulty just like private broadcasters, because a good minority graduating from law school, with an excellent record

is in demand today as he should be and sometimes we are not as successful as we would like to be in the ultimate job of catching him and acquiring him. But equal opportunity is the important thing and we expect it of ourselves and of broadcasters.

[The following information was subsequently received for the record:]

TABLE V.—BUREAU AND STAFF OFFICE COMPOSITION BY NONMINORITY/MINORITY GROUP MEMBERSHIP MARCH 1975¹

Organization	Black	Spanish American	American Indian	Oriental	Nonminority
Commissioners	10				35
Opinions and review	4				25
Administrative law judges					27
Office of plans and policy					8
Office of executive director	162	1		1	196
Office of chief engineer	35		1	4	129
General counsel	9			1	49
Field operations bureau	39	9		7	397
Common carrier bureau	50	2		1	171
Safety and special radio services bureau	34	5		1	156
Broadcast bureau	89	3	1	4	209
Review board	4				26
Cable television	19	1			73
Others					2
Totals	456	21	2	19	1,503

¹The FCC employs no Aleuts or Eskimos.

MINORITY CODES AND SEX BY PAY PLAN—GRADE—A/O 03/14/76—Continued

Pay plan—Grade	Total number			Negro			Spanish surnamed			American Indian			Oriental			All others			
	All	M	F	All	M	F	All	M	F	All	M	F	All	M	F	All	M	F	
	WG-09	3																	
WG-08	4			1	1														
WG-07	1						1	1											
WG-06	2																		
WG-05	6			3	3														
WG-03	3			3	3														
WG-02	3			3	3														
Total WG	22			10	10		2	2											
WP-24	1			1	1														
WP-18	1			1	1														
WP-16	1			1	1														
WP-15	1			1	1														
WP-14	1			1	1														
WP-13	1			1	1														
WP-12	2			2	2														
WP-09	7			6	6														
WP-08	2			1	1														
WP-06	2			2	2														
WP-05	1			1	1														
Total WP	20	19	1	18	17	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Total FCC	2,077	1,227	850	458	138	320	21	11	10	3	2	1	20	12	8	1,574	1,063	511	

Senator GRIFFIN. Chairman Wiley, I understand that this is the kind of information that would ordinarily be expected to be reflected in the annual report of the FCC. But the Commission, I am advised, hasn't been issuing the annual reports required by law.

Mr. WILEY. Yes, I think we have been very dilatory in this respect and I have spoken to the Executive Director and Public Information Officer and expressed my displeasure at the tardiness of that and we have not got one of the reports to the Government Printing Office and we are going to get that up to date. There is no question about it, that has not been one of our bright spots.

Senator GRIFFIN. Would that be the 1975 report?

Mr. WILEY. Yes.

Senator GRIFFIN. Because you haven't filed one since 1974; is that correct?

Mr. WILEY. That is correct. My understanding is—and I don't have the most recent information, but I understand that the 1975 report will be submitted to the Government Printing Office in late June. There are delays there, too, I want to point out, and actual printing often takes up to 5 months. There is no question, we have not done an exceedingly good job in getting the annual report out. It has not been an area, frankly, which I have spent any individual time on until I found out that we were so much in arrears and I have spoken to our staff people and expressed the fact that Congress and the public is entitled to getting those reports at an early time. So, let me acknowledge that that is not one of our bright spots. But I hope to clear it up.

Senator GRIFFIN. Right.

Senator STEVENS. Mr. Chairman.

Senator CANNON. Senator Stevens.

Senator STEVENS. Because the full committee is meeting in just a few minutes, I wonder if I could request if Mr. Wiley would jump over to the question of family viewing and violence and obscenity on TV for just a minute, it is two or three pages ahead, and come back to political and fairness doctrine, if you would.

Senator CANNON. Sure.

Senator STEVENS. If I may do that, having read your statement, I would like to ask you and other members of the Commission if they wish to comment on whether in view of the district court's decision on family viewing you feel it would be improper for the Commission to go forward with any further action on this matter until the court of appeals has reviewed your appeal and if you have the same feeling I do, that it would be improper, if you have a feeling as to whether Congress should not set up an independent Commission to review the question of violence and obscenity and indecency in terms of the broadcast media and make recommendations to us as to what, if anything, the Congress ought to do about this subject.

Mr. WILEY. Well, my answer is yes and no.

Yes, I think you are correct in saying that we probably can't take any action while that case is pending, but no, I don't think that an independent agency ought to be set up.

Senator STEVENS. I am talking about an ad hoc commission as we had on other matters. We had one once before as I recall; the Eisenhower Commission dealt with a similar problem.

Mr. WILEY. I have personally spent more time on this issue than practically any other since I have been chairman. It reflects the great concern that I have.

I do think there is too much violence on television, there has been traditionally too much gratuitous excessive violence.

There will be some kinds of violence on television because it reflects life, but it seems to me that television which is such a pervasive force that enters the American home so ubiquitously, it seems, it does place some higher standards on broadcasting and television.

I never thought the FCC could regulate in this area, I felt we were dealing with sensitive first amendment values, I thought we were dealing with very subjective questions: for example, what is too violent to you might not be too violent to me.

I don't think it is an area in which the Federal Government can operate constitutionally or practically.

I did think, however, I could express my viewpoints publicly and directly to the broadcast industry and that was Senator Pastore's view when he said in one of these hearings, why don't you talk to the broadcasters directly.

I called them in and discussed it with them and the response I got was very affirmative and positive. They all testified as such.

I think it is rather interesting that they are all appealing this decision with the FCC. The National Association of Broadcasting continues to appeal it, and the networks are continuing the family viewing hour as a matter of complete voluntary self-will, because certainly it was never the concept that the FCC would enforce family viewing.

I believe we are going to see some positive response by the industry. Certainly there will always be programs some of us will object to. My solution was that we think about intelligent scheduling, that maybe if you are going to have a more difficult program that you have it later in the evening hours when fewer children are watching.

Certainly in homes where parents let their children stay up late in the evening they are going to see some programing which perhaps would offend others, but I think these are decisions that have to be made in the American home by individual citizens.

But I do feel that the industry has a responsibility and with all due respect to the court I believe it was incorrect in saying that the NAB code might be a violation of the first amendment.

If we don't have self-regulation in this area and we can't have Government regulated, I don't know what the solution is.

So we are going to appeal that decision and I hope some parts of the decision can be reversed.

Senator STEVENS. If you hold the power of renewal it seems to me that the court is right, there is an ultimate threat if there is not some movement toward the views of the Commission. That is the problem; isn't it?

Mr. WILEY. There is no yes in all these programing areas. We are in a difficult area. Congress has told us to regulate in the public interest but not to censor.

In other words, when it comes to renewal time you are reviewing a broadcaster's performance, and obviously programing is one of

the most important decisions as to whether he is serving public interest.

If you look at it too deeply you may well be entering proscribed areas. So we are on a tightrope throughout this area.

The traditional view of the Commission has been to set up general guidelines for affirmative duties and place the individual responsibilities in specific areas, in the hands of the broadcaster, who is the man who must make programing decisions.

Senator STEVENS. Perhaps we are different, but we have gone through a period with cooperation of the industry and the Commission and the military and we are now extending the television into very remote areas of Alaska.

The comments that I am getting from parents and from some of the children, many of whom have never been exposed to television before, indicate to me that there is a real, overwhelming reaction to change in their culture as a result of the programing and there are comments about violence and obscenity and their values as far as cultural values are concerned.

That is a unique problem I know, but if we have got that among people who are first viewers, whose overwhelming reaction is gratitude for coming into the 20th century then I think it must be even more acute in the suburbs of the megalopolises of the country.

Mr. WILEY. I agree with you.

Senator STEVENS. Something ought to be done and if you can't do it then we ought to find, I think, through some form of government interaction what we can do to bring it about.

I don't think the family hour is sufficient if there is just 1 hour and there are three to four channels all on the same hour. I don't think that is sufficient.

I think somehow or another there has to be some scheduling of these family hours so there will be an hour on one network and subsequent hours on another and subsequent hour on another, and that involves some difficulty.

I see people shaking their head, I know we can't do that. But somehow or other the result has to be that there ought to be viewing for children and for those people who don't want to be exposed to this on the networks so that they can participate and not have just the alternative of turning off the TV.

Mr. WILEY. I think the family hour concept is one of the most least understood concepts despite all that has been written about it that I have ever seen. It is not my concept.

I will continue to say that as long as I am around, but I do support it. First it is 2 hours, the first 2 hours of prime time.

My view is that if the networks had been given encouragement and the broadcast industry had been given encouragement instead of being attacked by all sides, attacked by those who wanted more, attacked by those who thought this was a terrible affront to the first amendment, it might have worked. I think it may still work.

The point is that programing that goes into those 2 hours may be quite different depending upon whether the station is a network affiliate or independent. Many of the syndicated programs which are yesterday's network programs will be run by independent stations in those 2 hours.

If they are excessively violent they are going to have difficulty in selling them into syndication and that has been proven to be true.

I think that will affect the way programs are made in their inception and we will find a challenge in the program industry, broadcast industry to do a lot of diverse programing without the unnecessary concomitant of gratuitous violence.

It can be done, and without an affront to the first amendment, but I don't think the Government can make those overall judgments.

Senator STEVENS. Don't misunderstand me——

Mr. WILEY. There are however, some encouraging signs in this regard. Industries are working more together with the public. The broadcast industry has had discussions with the National PTA, the Hollywood program production community, I have hopes that there are some lasting and meaningful solutions on the horizon in the private sector.

I think that is a far more fertile area for improvement than to set-up another Government agency.

Senator STEVENS. I am not suggesting an agency.

Mr. WILEY. Well, I think oversight is important but I don't think you can ultimately make those programing decisions in any kind of a government forum.

Senator STEVENS. I am not attacking you or the industry. I think there has been a great deal of volunteerism as you indicated and an attempt to solve the problem. It is not necessarily violence, it is the whole cultural concept of some of the programing as it hits various parts of the country that I think is important.

Mr. WILEY. I agree with all that.

Senator STEVENS. In terms of obscenity or indecency.

Mr. WILEY. Obscenity and indecency is a little different situation. There you do have a specific statute which forbids it. We have construed obscenity and been upheld by the courts. We did it primarily on the presence of children in the audience.

Along came a program up in New York City in which the seven most basic obscene or indecent language was utilized, four letter words so to speak. We ruled, using the same concept there, that the presence of children in the audience should control and we tried to put out a declaratory order.

The court of appeals reversed us and we are seeking a rehearing so we can come back to you and tell you what the law appears to be and then you can decide whether Congress wants to take further action in this area.

Senator STEVENS. Are you still interested in the legislation submitted last year on the definition of obscenity?

Mr. WILEY. Yes, we will revise that in light of the court of appeals decision. I might say this was introduced only by one Senator on the last day of the session. It never was introduced on the House side.

The question I would ask is whether Congress is interested in that legislation because frankly, during oversight hearings there was a lot of talk in this area and the Commission has tried to fulfill the will of Congress as we understood it, but I am not quite sure what the will of Congress is.

It would be helpful for the Commission to receive that guidance. Is Congress concerned about obscene and indecent programing, do they want the Commission in this area? Or do they feel this is an affront to the first amendment?

I don't know and I would welcome your guidance.

Senator STEVENS. Are you sure about your separation of obscenity and indecency from violence? You seem to have the two compartmentalized as far as the Commission's reaction.

Mr. WILEY. First, there is a criminal statute in the obscene and indecent area. The Supreme Court has upheld restrictions on obscene programing.

In the indecent area, we tried to make a distinction on the concept that broadcasting is different than any other media. It seems to me if you want to buy Hustler magazine or go in and watch an X rated film and you are adults, it is a free country. You can make that decision.

I wonder about broadcasting, however, in which it directly enters the American home, is readily accessible to your children and mine. I am wondering if there aren't different standards that should be placed on the broadcast media.

I question whether or not that is the law in light of the court of appeals decision. We are trying to find out what it is because we have a lot of people coming in arguing both sides of the issue, and we are in the middle.

I would like to know what the law is.

Senator CANNON. I, certainly, for one, hope you have success in that field.

Senator STEVENS. I share your feelings about the success in the field, Mr. Chairman, but I don't share the Commission's feeling about the Commission's continuing role and ability in the area in view of the original court decision. I think you have been constrained no matter what happens on the appeal.

Mr. WILEY. You are, no doubt about it, depending on what the appellate court says. There is even a question today now whether we can have any kind of jawboning, if you want to use that term, and say, "Hey, I think you ought to clean up your act."

I think it is very questionable that that kind of action should go, and the Commission basically is going to be out of this area. That's right.

Senator STEVENS. That raises to me, again, the question of whether something—someone involved in the Government ought not to be at least reviewing if not jawboning—at least reviewing it on a continuing basis and not leave it totally to a voluntary arrangement.

I will be frank with you. I have got a resolution or bill drafted, to create such a Commission. I will let you know if I get any support in Congress on the thing.

Mr. WILEY. That is fine.

Senator STEVENS. It deals with all three subjects. You compartmentalized them into two separate areas because of the existing statute, I assume.

Mr. WILEY. Yes. Also because of the first amendment values involved, because the court has upheld the ban as far as obscene programing is concerned. You can set up commissions, continue to

study it—and I think we all should. I think Congress should continue to look at it as well as the Commission.

But you are going to come down ultimately to the difficult question of what do you do about it. I am saying that there are first amendment questions.

If the FCC can't even talk to the broadcasters, if we can't even make suggestions without the overhanging threat of or possibility of threat of license revocation or whatever the court saw, I don't know where the Government is going to go in this area.

Senator STEVENS. We also have to address the first amendment questions of libel and slander and those involved in the public arena one of these days, too. That is going to take a little fortitude and probably is just as nebulous an area.

But I think you are correct that Congress hasn't taken the full reins that we should have., But I don't see how we can do it without someone examining the area totally.

If we directed you to do that, as I understand the district court, first thing we would do is have another appeal.

Mr. WILEY. Suffice it to say that I think we are going to continue our interest in this situation, but I don't think the Commission is in a position to be able to take any regulatory actions.

Senator STEVENS. Thank you very much, Mr. Chairman.

Senator CANNON. Thank you.

All right, sir.

Mr. WILEY. Let me skip back. I think we are entering the area of programing here.

I have covered pretty much the renewal area, licensing area, with one exception. We do support a 5-year license renewal term for broadcasters with Commissioner Hooks dissenting on that point.

Senator CANNON. Is the Commission unanimous on that?

Mr. WILEY. We were before. We have had two new Commissioners join, but when the Commission voted it was 6 to 1. Commissioner Hooks was the only one—I don't know how the two new Commissioners stand on that area.

The theory on our part is that while the length of the license term is not the most important question—the most important question concerns standards for renewal at license time—it does seem to me a longer license period would provide some needed stability to broadcasting that would give us a better chance, more time to zero in on the relatively few broadcasters who really need attention.

Now we have to look at about 3,000 license applications every year. We could spread that out over a longer period of time and do a better job, frankly. The savings in paperwork time would rebound to the public benefit all the way around.

Senator CANNON. I completely agree with you, I might say, on that point.

Mr. WILEY. Now, programing, page 15.

Here we are once again on the tightrope, that is, trying to balance the interests of the listening public against those of the broadcasters, and it is a tough, tough job.

We have looked at it in the violence area. I don't have any big solution in that area. I thought our actions served the public inter-

est in trying to get the broadcasters' attention and making them aware of public concern in this area, and indeed, congressional concern.

I still feel that way.

Senator CANNON. I thought the networks made a good presentation yesterday in showing the improvement that had been made in that particular area. I was impressed by it.

Mr. WILEY. Yes, I think there have been improvements and I hope there will be more. I hope family viewing principles are implemented with reasonableness and good sense, and with respect for the public—that is assuming the broadcaster decides to continue the family viewing hour, which is their decision.

The fairness doctrine, of course, is one of the most important aspects of program regulation. What it involves basically is this, Senator. Broadcasters have to devote a reasonable amount of time to discussion of controversial issues of public importance, and they have to give a reasonable opportunity in their overall programming for contrasting points of view.

In that process—necessarily and appropriately—we give a lot of discretion to the broadcasters. We don't want the Government going in and deciding what we think are the controversial issues, who we think are the appropriate spokesmen, and what we think should be the division of time.

We want the broadcasters to do that. Only where they are arbitrary and unreasonable under all circumstances should the Government step in. If you have more Government intrusion, you will get blander and more insipid programming.

Generally, the Commission has done this: In some instances, we have intervened where the broadcaster has been clearly unreasonable.

I think the fairness doctrine is working as Congress intended in this area. When we get to the question of equal time—as you know, Congress, when it first passed the equal time law, which applies only to legally qualified candidates, it applied in all instances. Then in 1959, Congress passed four exemptions to equal time statute: bona fide newscasts, news interviews, documentaries, and finally, on-the-spot coverage of a bona fide news event.

In 1962, in a series of decisions, the Commission narrowly defined that fourth category, on-the-spot coverage of bona fide news events, to exclude debates between candidates covered live and remote from the studios, and candidates' press conferences.

In September 1975, the Commission overruled these decisions. This decision was upheld by the U.S. court of appeals and resulted in the League of Women Voters sponsored Carter-Ford debates, which I think served the public interest.

Just last week, the Commission voted to recommend to Congress, that it revise section 315 by exempting coverage of Presidential and Vice Presidential candidates. In other words, those two areas should be totally exempt from the equal time law.

We will also recommend that Congress consider an exemption that would apply the law only to major parties or candidates who have demonstrated substantial support among the electorate, either through voting percentages in the last election or signatures on petitions.

This is, of course, a decision for Congress to make. We have made our recommendations accordingly.

Another area of concern and interest to the Commission, the Congress, and the general public is the matter of children's television programming and advertising.

Some would dictate that there should be so many hours a week or no advertising on children's programming. The Commission refused to do that. Instead, it put out a children's television report and policy statement which provides general guidelines which, among other things, state that stations must devote a reasonable amount of time to programming for children and that a significant portion of this programming should be educational or informative in nature.

The report also provides guidelines for children's television advertising practices, and cautions stations to take particular care to avoid overcommercialization on programs designed for children.

We are going to continue to study, along with the FTC, where the primary responsibility for advertising rests. We worked with the FTC, for example, in recent hearings concerning over-the-counter drug advertising, and probably will do so again in the future.

I mentioned family viewing, obscenity, and indecency.

I don't think I have to go into payola and plugola. I think that is spelled out for you. Let me turn to networks. Under the Communications Act, the Commission has always held that it is the individual broadcast licensee who has the right and responsibility to make programming changes, not the networks.

The rise of networks in the development and distribution of programs has brought with it a concern that in some cases individual licensees may have delegated their responsibilities to the network.

In January, we instituted a wide-ranging inquiry of alleged "network dominance" of the television industry. This is the first overall study of the networks by the Commission in some 20 years, and it is going to examine the relationship of networks, on the one hand, with their affiliated stations and on the other hand, networks with their program suppliers.

It is going to be a very important study. We are going to be asking Congress for additional resources in the nature of \$350,000 to do this job appropriately.

I won't try to make any judgments at this point. One of the other areas we have looked at in the whole area of network dominance has been the prime time access rule.

Senator CANNON. Before you go into that, go back on this payola and plugola issue you skipped over.

Mr. WILEY. In late 1974, we resumed our inquiry into this area. Under the act, the taking of money by a station employee for playing a certain record or plugging a specific concern over and above what the station receives is strictly prohibited. It is against the law.

We are looking into specific cases where employees may have been using station facilities to further their private interest. For example, a disc jockey taking money to run a certain record.

We are hopeful, that by holding public hearings relating to certain stations we will encourage citizens to give us information about these practices and perhaps inhibit them at the other stations.

We aren't trying to single out certain owners or disc jockeys alone, but we are trying to educate the broadcast industry and public about the pitfalls of payola. After all, if a disc jockey is paid to play a certain song, the public isn't receiving what would be in the public interest. He is receiving what that disc jockey's private interests dictate.

So we want to try to work with the Department of Justice in an effort to bring these pernicious practices to a halt. We hope the broadcasters will take an active role in working with us and do it as a matter of self-regulation. In any event, we are going to see the law is upheld.

We have had good cooperation with the Department of Justice and we have certainly tried to cooperate with them. I have covered network inquiry, mentioned the prime time access rule which limits basically network programming to 3 of the 4 prime time hours. We are trying to give the rule a full and fair test. I am not sure whether it will ultimately serve the public interest or not, but we will give it the full test it deserves.

In the area of technical regulation, we believe the American people should receive a clear, interference-free signal. While insuring this objective, the Commission along the lines of your comments, Senator Cannon, has also tried to lessen some of the unnecessary regulatory burdens in this area.

We found, for example, that broadcast equipment has changed over the years; it's become much more modern, more stable. Therefore, our regulations ought to change. Instead of requiring broadcasters to read the meters every 30 minutes when they don't change as frequently as they used to, when you had different kinds of equipment, we have extended it now to every 3 hours.

I think we are going to go, frankly, even further. With the advent of the automated transmission system, something the Commission has been pushing for a long time—this may bring about a whole new revolution in our technical regulation where we go to the bottom line, a broadcaster is told what his frequency and power is and how he gets there, how he stays within the limitation; it may be more up to him. I think that will ultimately serve the public interest and save resources.

The automated transmitter has been approved only for FM stations and nondirectional AM stations. A couple other areas of technical broadcast regulations we will be looking at, involve possible new services which I hope the Commission will be exploring within the next month or two: AM stereophonic broadcasting and quadrasonic FM. I think notice of inquiry in both of those areas will be presented to the Commission next month.

In December of 1976, the Commission voted to amend its rules to permit closed captioning of television programs for the benefit of the hearing impaired. Closed caption is a technique by which coded data signals are transmitted along with a regular video signal enabling decoder-equipped TV receivers to display visually the information contained in the aural segment of TV programs.

If this can be economically harnessed it certainly would be a great service to those many millions of Americans who have a hearing impairment.

We also think that uses for traditional captioning may be expanded to include weather information, news releases and other informational services. We are very interested in this area and I hope that the industry will be able to work to make this program a reality.

I have mentioned broadcasting regulation. In a 1972 study, the Commission established a reregulation task force to look at all our regulations. I think you would be pleased to know that over the last 5 years we have succeeded in modifying or eliminating some 500 rules in the broadcast area, particularly those rules which affect a small broadcaster.

I agree with you very much and the efforts you have always made to try to lessen unnecessary regulatory burdens on small licensees.

I have mentioned short form radio renewal. I might also say that in the radio network area, we practically deregulated the entire area.

Let me finally turn to one segment of my statement, citizen participation. I happen to think that citizen and public participation is very important. We have got to have an informed and aware public if they are to participate fully in the broadcast media, and the Commission has developed an extensive program designed to stimulate such public contact and interaction with our agency.

Let me mention the areas in which we have been active. When I became chairman, I thought it would be helpful to the Commissioners themselves and to the public to put out a calendar of meetings, so throughout my term, we have had 3-month calendars stating exactly the date on which the Commission would take up a particular item. Sometimes we missed but more often than not, we have stuck with those deadlines.

With open meetings, we now have an obligation to put out a public notice. So we have dispensed with those 3-month quarterly calendars. We have also initiated a weekly Actions Alert publication in which we have told the public what is coming up before the Commission, what the filing dates are on certain rulemakings, and what questions they might want to address themselves to.

There has been a good reaction from the members of the public on this publication and we have improved that Actions Alert publication recently. We also published a "Procedural Manual" which attempts to explain in layman's language the Commission's processes and policies.

Senator, you come from a State far removed from Washington, D.C. I think many Americans out where you live and where you come from, the Middle West, think the Federal Government is a very remote agency far from where they live and work. Many citizens don't understand the processes of Government. We have tried to take Government out of Washington and I think uniquely among Federal regulatory agencies, we have held a series of regional meetings in which many Commissioners, myself and top staff people, have gone out, held workshops for broadcasters and cable operators and have had open public meetings for the public.

On one 2-hour television program out in the Bay area, we had 47,000 phone calls to the station which shows there was a real interest in communications out there among the public. I think this effort has helped the American people to better understand what our policies and rules are, what our authority is and what it is not.

We supplement these regional meetings with a monthly meeting of the full Commission in which citizens groups or industry groups can make an appointment and come before the Commission and say whatever they want to the Commission about interests of their own. We have had black groups, Hispanic groups, female groups, homosexual groups, industry groups, appear before the Commission in these meetings.

Perhaps most importantly has been the formation, a little over a year ago, of a consumer assistance office. I think the average citizen, senator, when they come to a department or agency is rather confused. There is a bureaucratic maze there. We have formed this consumer assistance office so the consumer would have some place to go within the Commission to find some responsive people who would tell him look, go to the, this particular office, see this particular publication, it will answer your question.

I have received good feedback about that consumer assistance office. We plan to continue it.

In 1976, November, we adopted on an experimental basis an assistance program designed to facilitate participation of impoverished citizens in our Commission's proceedings. We don't encompass in this proceeding reimbursement of attorneys' fees. We don't pay people for commenting on our rulemaking proceedings. We have suggested—that is, the majority of the Commission—that we need specific funding in this area and we hope the Congress will take a look at this on an overall basis.

I will finish with one last point, and that is, about 2 weeks ago we held a conference on minority ownership in the broadcast industry at the Commission. We brought together minorities, members of the broadcast industry, brokers, financial industry representatives and we talked about the problems of getting more minorities owning broadcast stations and cable systems within the free enterprise system. We plan to follow that up.

I think of course, that such ownership would enrich the broadcast industry and ultimately enrich the cable industry as well.

That concludes my statement. I would be glad to take any questions you might have.

Senator CANNON. Do any of the other Commission members have anything they would desire to add?

I wonder if you would address yourself to the question of pay cable?

Mr. WILEY. Yes. For many years the Commission has felt the development of pay television, pay cable would be in the public interest providing more options for the American people. At the same time we have been concerned that certain programming that the American people have been used to receiving over the conventional television system allegedly for free might be siphoned off free television.

So we established some rules to limit the movies and sports events that would be available to pay television.

Senator CANNON. How do you provide that limitation?

Mr. WILEY. We had rulemakings and made decisions based on the comments that we received. We basically held that in the movie area, pay cable could get any movie that was less than 3 years old. Basically all the new movies have been made available to cable or most all, through that process.

We said that thereafter, such movies would be made available only to cable if they were also available to a broadcaster in the same market. The court of appeals overruled that judgment about movies and we have acquiesced in the court's decision.

We have found through experience that our rules probably aren't needed to protect the broadcaster and have not really inhibited cable in getting its product. They basically haven't done much of anything in this area, in our opinion. We feel less certain about sports.

Senator CANNON. Wait a minute. On that point now, are you saying that there really is no regulation in the field?

Mr. WILEY. In movies, that's right.

Senator CANNON. Insofar as movies are concerned, do they have to be made available to the public television as well as the cable?

Mr. WILEY. It is up to the owner of the movie now. There is no regulation now. It is up to the producer; it is a free market situation.

Senator CANNON. He can sell to the highest bidder or sell to both if he were able to find a purchaser?

Mr. WILEY. That's right. They have claimed in the past that the marketplace would handle this. They would go first to theaters, then perhaps to pay cable, then perhaps to free television. Sort of like a hard cover, soft cover in books.

I think you may ultimately see some delay in some of the films on television, but what the movie producers and pay cable interests have argued is that they will all get there eventually, therefore there is no siphoning. Therefore, the Commission has decided to go along.

In the sports situation it is a little different. You can see "Casablanca" many times and still enjoy it. I have seen it many times and will continue to want to see it. However, I am not sure I would want to see yesterday's ball game. The Commission is concerned that some sports attractions may, in fact, be siphoned off of free television and onto a pay form and the Commission is going to appeal the court's ruling.

Let me say that I don't think we are bound to the precise formulation of our complicated sports rules. The Commission may, if it gets the power someday to look at this again, want to reform those rules in light of continuing experience in this area, but we are concerned that ultimately there could be some harm to the public interest.

Senator CANNON. What was the Commission's regulation with respect to the sports and then what happened on appeal?

Mr. WILEY. We could basically divide that into two sports events. First of all specific events, World Series, Super Bowl, something that happens only once. We held if that had been on conventional

television in the last 5 years it would not be available to pay television. To protect the public interest associated with that service they have been providing.

In the area of a nonspecific event, let's say a season of 162 games of a baseball team, we have a somewhat complicated formula which would provide that a certain amount of those programs would be available to cable, certain would not be available, based primarily on what the broadcaster has brought in the past over the last 5 years.

Those rules were designed—I want to make this very clear, to protect the public interest associated with receiving a product to which it has become accustomed. I don't think the Commission was trying to protect network profits or trying to protect broadcaster profits; that isn't our job. We are concerned about what people have to pay, particularly people who don't have the money to pay for those products in ghetto areas and rural areas where they may not have the service available to them.

The court overruled us. We are going to appeal the sports end of those rules leaving open the question of whether or not if we had the power to have such rules, we would reformulate them with additional experience in the marketplace.

Senator CANNON. Did the court consider both of those matters at one time?

Mr. WILEY. Yes.

Senator CANNON. You're just going to appeal that portion?

Mr. WILEY. Just the sports rules, that's right.

Senator CANNON. Do any of you have anything further to add?

[No response.]

Senator CANNON. Thank you very much. It's been very, very helpful to the committee. I think you made a very fine record.

Mr. WILEY. Thank you very much, Senator Cannon, we appreciate it as always.

Senator CANNON. We will have some questions to submit to you and you can supply answers for the record. Senator Williams wanted to be here, but he hasn't arrived yet, so we won't hold you up, but he wanted to ask some specific questions about the New Jersey coverage. We have already addressed that to a degree and he may submit some questions.

Mr. WILEY. We will be pleased to respond to any questions you submit. Thank you very much,

Senator CANNON. Thank you very much, all of you.

[The statement follows:]

STATEMENT OF HON. RICHARD E. WILEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and members of the Subcommittee:

Thank you for this opportunity to present this overview of broadcasting from the perspective of the Federal Communications Commission. I would like to begin today with a brief outline of what the Commission's regulatory responsibilities are and how it operates, and then move on to discuss in more detail our regulatory program for broadcasting.

Congress created the Federal Communications Commission in 1934 for the purpose of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, as far as possible, to all the people of the United States a rapid, efficient, nation-wide, and world-wide wire and radio communications service. . . ." Thus, the Commission regulates not only all broadcast stations

in this country, but also all interstate and foreign telephone, telegraph, communications by satellite as well as public safety, industrial, transportation, amateur and citizen services. The Commission also regulates certain aspects of cable television (CATV) although the franchising or licensing of such systems is a matter for determination by state and local government.

At present, more than 9,150 radio and television broadcast stations are on the air, and several hundred more have been authorized. Most of these are licensed for commercial operation, and are supported by advertising revenue. However, there are approximately 860 noncommercial FM stations, 25 noncommercial educational Standard (AM) stations, and about 255 noncommercial television stations operating. With regard to these broadcast services, the Commission's major activities involve consideration of applications for construction permits and licenses; assignment of frequencies, power and call signs; modification and renewal of licenses; inspection of transmitting equipment and regulation of its use; control of technical interference; and the licensing of individual radio operators.

The Commission has a staff of approximately 2,100 employees. About one-sixth of them work in our Broadcast Bureau which has the primary responsibility for the day-to-day operations of our broadcast regulatory program.

ALLOCATION OF BROADCAST CHANNELS

One of the basic responsibilities of the Commission is the allocation of portions of the radio frequency spectrum to civilian uses in various locations. On the international level, we participated in the 1977 World Administrative Radio Conference (WARC) concerning satellite broadcasting and are deep into preparations for the 1979 WARC which will set the international pattern of frequency use for the balance of this century. Domestically, the Commission continues to follow a general plan in which television and commercial FM channels are allocated to communities through a rulemaking process and AM frequencies are allocated on the basis of applications for the use of specific frequency space. In recent months, we have considered several issues concerning the allocation of channels within the broadcast service.

VHF drop-ins

Several parties, including the United Church of Christ and the Office of Telecommunications Policy, petitioned the Commission to make a general reduction of the number of miles required between VHF stations operating on the same or adjacent channels. It was argued that the increased levels of interference should be tolerated so that as many as 96 additional VHF stations could be added in the top 100 markets. After conducting an inquiry and performing additional studies, the Commission decided that it would not serve the public interest to make a general reduction in the separation standards.

We did find that, in four markets (Charleston, W. Va.; Johnstown-Altoona, Pa.; Knoxville, Tenn.; and Salt Lake City, Utah), the potential benefits of new television service for a large number of people appeared to outweigh the harm caused by adding a "short-spaced" or "drop-in" station. Early in 1977, we issued a Notice of Proposed Rule Making proposing that one additional VHF channel be allocated to each of those cities.

In a separate proceeding, the Commission considered and rejected the possibility of a VHF drop-in for New Jersey. Such a station had been one of the proposals presented by groups concerned about the difficulties of getting local news, public affairs and political coverage in New Jersey when all of the commercial VHF stations serving that area are licensed to the adjoining cities of Philadelphia and New York. The Commission found that a preferable means of dealing with the problem could be found without changing the existing channel allocations structure. The Commission has placed a special New Jersey service obligation on the television stations in the area and has already received from the larger mass-audience stations statements of commitment of equipment and personnel to New Jersey coverage.

UHF television

It is apparent from our study of VHF drop-ins that any substantial further growth in the number of television stations must come in the UHF frequencies. The problem here has not generally been one of channel availability, but more one of technical difficulties and competitive disadvantage. The Commission is working toward a master plan for the full development of UHF television. Elements of that plan include efforts to improve the accuracy of UHF tuners, to reduce the front end noise level in UHF receivers, to foster development of improved antennas, and to encourage better public understanding of how to receive a good UHF signal. At the same time, we have studies underway which may make it possible to increase the

number of UHF channels available for television use in those market where current allocations are occupied.

Subscription television (STV)

This Spring, the first two stations authorized under the Commission's 1962 STV decision, WBTB-TV, channel 68, Newark, New Jersey, and KBSC-TV, Channel 52, Corona, California, began broadcasting programming to customers who pay a single, monthly per-channel charge. The programming on these stations consists primarily of first-run movies and sports programs. Additional STV operations have been authorized—but have not yet commenced—on stations in Boston, Milwaukee, Los Angeles, and San Francisco. Applications for STV authorizations in 15 other communities are presently pending before the Commission.

Noncommercial FM service

The rapid growth in use of FM channels over the last several years has led to new questions being raised about channel availability. We have outstanding at the moment a set of proposals (several of which were suggested to us by the Corporation for Public Broadcasting) affecting the FM channels reserved for noncommercial educational use. Among the possibilities under consideration are a change from a demand system of allocation to a table of allocations, the establishment of an additional FM channel and the possibility of treating very low power stations on a secondary basis.

AM broadcasting and clear channels

The AM broadcast band is intensively used in most parts of the country. There is a special characteristic of the AM frequencies which makes channel allocation problems quite different from the ones raised in the other frequencies we have discussed. At nighttime, the AM signal is reflected from the ionosphere and returns to earth at a great distance from the originating station. Many AM stations are authorized to operate only during daytime hours when this nighttime or "skywave" phenomenon does not occur. If a large number of those stations were permitted to operate at night, the interference situation could be chaotic. While we have attempted to get as much AM service to individual communities as is consistent with good engineering practices, there are severe limits which must be recognized.

By international agreement, certain AM channels are set aside for exclusive nighttime use in the United States. Until 1961, 25 so-called "clear channels" existed on which no more than one station was permitted to operate at night. In a proceeding concluded at that time, 12 of those channels were changed so that an additional station on each channel could be operated with a directional antenna at night. Currently under way is a study aimed at seeing whether it would be in the public interest to continue the present pattern of clear channel stations, increase the power available for use by some or all of those stations, or permit additional stations to use those channels at night.

LICENSING

Basic to the Commission's responsibilities is the licensing function. It assigns stations in each of the radio services with a specific location, frequency and power. While the chief consideration in this process is to avoid interference with other channels, many of the Commission's policies are promoted through the licensing function. For example, the Commission promotes diversification and avoidance of undue concentration of control in the broadcast media through its rules prohibiting the licensing of more than one AM, FM or TV station in one community to the same person or group, and through its limit on the total number of stations in the same service than can be commonly owned.

Initial licensing

Broadcast stations are licensed to serve the public interest. Since they are trustees of a scarce national resource, the limited radio spectrum, the Communications Act requires applicants to be legally, technically, and financially qualified, and to show that their proposed operation will be in the public interest. Licenses are normally granted for a three year period.

License renewal

The commission periodically reviews the overall performance of stations, usually when they apply for renewal, to see if they have lived up to their obligations to the public. Since the basic requirement in serving the public interest is the duty to program in a manner responsive to the "problems, needs, and interests" of the licensee's community, the Commission requires that the broadcaster "ascertain" those problems and needs. In the past, the ascertainment procedures required by

the Commission were quite formal. Specific guidelines for such things as interviews with leaders of community groups that reflected the composition of the community and for a survey of opinion of the general public were set forth by the Commission.

As part of its "reregulatory" program, the Commission undertook a comprehensive study of the ascertainment procedures for renewal applicants. That study revealed that much of the formality and paperwork associated with the ascertainment procedures was unnecessary. Accordingly, the Commission has adopted new, simplified, and more flexible procedures for renewal applicants.

Most important is a new provision which requires that each broadcaster continuously keep informed of community problems throughout the license period instead of conducting a single survey every three years. These new procedures also provide for an exemption from all record keeping and filing requirements for broadcast facilities located in communities of less than 10,000 persons and not within a Standard Metropolitan Statistical Area (SMSA).

Contested renewal applications

Continuous citizen input into the operations of broadcast stations, and our renewal process, is one of the most important factors in insuring that licensees fulfill their public trusteeships. The Commission's policies are designed to promote resolution of citizen complaints through dialogue with the broadcaster. However, where these efforts fail, our rules allow the filing of a petition to deny.

Because contested renewal applications require considerably more review by the Commission than do uncontested ones, a considerable backlog developed in the past. For example, as of January 1, 1975, the Commission had on file 216 unresolved petitions to deny. Additionally, 83 new petitions to deny have been subsequently filed.

Clearing this backlog was of considerable concern to me and to the Commission, and a number of steps such as reallocation of personnel and development of streamlined renewal procedures have been taken since January, 1975. I am pleased to report to you that his problem has essentially been solved and that, to date, there are only approximately 20 petitions unresolved. I am also pleased to say that there appears to be a decreasing number of petitions to deny being filed against broadcast license renewals today. This may well be a result of the actions we have taken to encourage and promote citizen-broadcaster dialogue.

There is one other point I would like to make with regard to these contested renewal applications. I am aware that some people have contended that our reregulatory efforts in this area have resulted in the Commission simply "rubber stamping" renewal applications. I must disagree with this contention. The facts show that the Commission carefully reviews each renewal application, engages in considerable correspondence with the stations involved and, ultimately arrives at an informed determination as to whether the license should be renewed. In this connection, we have issued more short-term renewals, have attached conditions to more applications requiring remedial efforts, and have refused to renew more licenses in the past two years than during any other time in the Commission's history.

Equal employment opportunity

A station's equal employment opportunity program receives detailed scrutiny from both citizens and the Commission when a renewal application is filed. In fact, the Commission may spend more time on this portion of the renewal application than on any other.

The FCC was the first—and to this date, the only—federal regulatory agency to adopt EEO regulations for its licensees. As far back as 1968, the Commission expressed the view that discrimination in employment by broadcasters was incompatible with operation in the public interest. Since then, the Commission has adopted a number of rules designed not only to prohibit discrimination but also to require that licensees develop affirmative EEO programs.

The Commission has taken other significant steps to eliminate racial and sex discrimination from the broadcast industry. For example, in 1973, we established an Industry Equal Employment Opportunity Unit to review the effectiveness of our rules and policies in this area. In addition, the agency established an EEO unit in the Renewal and Transfer Division of the Broadcast Bureau to insure that broadcast licensees understand and comply with the Commission's rules.

In all, our efforts have resulted in definite improvement in the overall equal employment profile of the broadcast industry. Based on the data available to the FCC, job opportunities for minorities and women are continually increasing—and actual employment figures reflect the fact that many broadcasters are making an affirmative effort to open the doors of opportunity to those for whom they previously may have been closed.

Unfortunately, not all licensees comply with our requirements as fully as they should. In such cases, the Commission has taken strong, positive action to effect compliance. In fact, since January of 1973, we estimate that more than 1200 stations have come under concentrated examination at the FCC, and more than half of these have received letters from the Commission asking for information and explanation about their employment practices. At the same time, we have developed an adjudicatory standard (the so-called "zone of reasonableness") for measuring EEO compliance by stations—a standard which has been judicially approved. Last year, in an effort to strengthen and clarify our policies and requirements, the Commission issued a model EEO program which, for the first time, shows broadcasters what is expected of them. Finally, and most recently, the Commission adopted new processing guidelines which ensure closer scrutiny of stations with relatively low percentages of minorities and women.

Since 1972, the Commission has conditioned the renewals of 260 stations on the requirement that the broadcaster involved (1) submit a list of community sources for job referrals of minorities and women; and (2) report periodically—more frequently and/or in greater detail than required by annual employment reports—on the results of recruitment efforts, specifically identifying minorities and women hired or promoted thereby. It is worth noting that 189 of these "conditional" renewals were ordered on our own motion, rather than as a result of a petition to deny. In this same period and as a result of EEO deficiencies, we also have (a) refused to grant (i.e., continued on deferred status) applications until we had received and analyzed detailed information on job candidate flow and utilization of protected-group employees; (b) renewed applicants for less than the full balance of their terms; and (c) designated licenses for evidentiary hearing.

Newspaper-broadcast cross-ownership

For many years, the Commission encouraged newspaper-broadcast cross-ownership because of the important contribution it believed such owners would make to the development of radio and, later, television broadcasting. The Commission repeatedly found that licensing broadcast stations to newspaper owners in the same community was in the public interest and otherwise consistent with agency policy. However, a broad examination was initiated in 1970 to determine whether the Commission should continue to sanction such ownership. After a review of all comments submitted and facts of record, we concluded that changed circumstances now warranted a different policy with respect to newspaper ownership of new broadcast facilities, but found no specific abuses by existing owners which would warrant an across-the-board divestiture of existing newspaper-broadcast combinations.

At the time of this action, there were approximately 79 newspaper-broadcast combinations, most of which the Commission permitted to continue. However, we did order divestitures in 16 "egregious" situations where communities were served by only one media voice.

Several parties sought appellate review of these amendments to the Commission's rules. On March 1, the U.S. Court of Appeals for the D.C. Circuit affirmed the Commission's prospective ban on the formation or transfer of new newspaper-broadcast combinations. The court, however, held that the Commission must break up all co-located newspaper-broadcast combinations, even in the absence of specific abuses by present owners. The Commission has sought and been granted a stay of the court's order pending review in the Supreme Court.

Five year license term

I think it is clear, even from this brief discussion, that the licensing process is one of the Commission's most important functions, and that many of the Commission's resources must be devoted to it. This is particularly true in the renewal area. For this reason, the Commission has supported legislative proposals which would extend the license term from three years to five years.

An increase in the license term from three to five years would reduce the number of renewal applications annually processed by the Commission from approximately 3,000 to 1,800. This 40% reduction in the number of applications per year would permit a more thorough review of each application and allow the Commission to give closer and more expeditious consideration to those applications which raise serious questions concerning the licensee's overall qualifications.

We believe that such an increase in the license term would not diminish a licensee's responsiveness to the public interest. However, should any serious deficiency or question arise during the five-year term, various administrative remedies are available to the Commission, including revocation proceedings and calling for an early renewal of license.

Comparative renewal hearings

One final and particularly difficult regulatory problem is presented when the renewal application of an existing station is opposed by an applicant who proposes to replace the existing station with its own new station. The Commission then must choose which applicant would better serve the public interest, based upon a comparison of the best available indicators of probable future performance. In November 1976, we recommended to Congress the elimination of comparative renewal hearings. It is our view that the renewal process will serve the public interest more effectively if renewal applicants are evaluated on their past broadcast records, including compliance with all applicable Commission Rules, Regulations and policies. We feel that the comparative renewal process has failed because the essential element in determining whether renewal is in the public interest—the broadcaster's record of service—is not comparative in nature. No competing applicant will have developed a record to compare to the incumbent's. It is therefore totally unrealistic to compare the broadcaster's actual record to a challenger's mere paper promise. Moreover, the traditional comparative criteria, which have been developed in comparative hearings for new facilities, are inappropriate in a renewal proceeding. Pending congressional amendment of the Communications Act, however, these comparative renewal cases will continue to be resolved through the traditional lengthy and expensive hearings. However, we have attempted to simplify this process through a recent clarification of these policies.

PROGRAMMING

Once it was established that it was necessary for the government to limit entry into the field of broadcasting through a system of licensing, a question arose which has confounded and perplexed serious thinkers ever since: how deeply should the regulatory agency engage in supervising and overseeing the program service of licensees? Congress decided that broadcast licenses were not intended for the operator's private interests but, instead, for the interests of the public. Basic to this Congressional determination was, and still is today, the so-called "scarcity factor"—that there are more people who want to broadcast than stations and air time available to cover them. Accordingly, those privileged to receive a license to operate must do so as "public trustees" for the entire community—a standard which has been upheld by the Supreme Court.

At the same time, it has been recognized that the First Amendment does protect broadcast speech, that the government's regulations must be carefully limited, and that the broadcaster—not the FCC—has primary responsibility for the assurance of fairness, balance and objectivity.

This balancing of the interests of the listening public against those of the broadcaster is, as you might imagine, a matter of considerable complexity and difficulty. It is obvious that perfect fairness or equality is neither possible nor desirable. No broadcaster can be expected to present all shades of opinion on all matters of public concern and controversy, and it would be unrealistic for the Commission to attempt to force such a result. Indeed, it has been said that, in applying the public interest standard to programming, the Commission walks a tightrope between saying too much and saying too little. In most cases it has resolved this dilemma by imposing only general affirmative duties * * * The licensee has broad discretion in giving specific content to these duties.

[*Banzhaf v. FCC*, 405 F. 2d 1082, 1095 (D.C. Cir. 1968)]. Over the years, the Commission's involvement in programming matters has been carefully limited, but it has touched on important matters ranging from the assurance of fairness in the discussion of public issues to the enforcement of a Congressional ban on obscene programming.

The fairness doctrine

One of the most important aspects of program regulation concerns the matter of fairness in the presentation of controversial issues of public importance. The Commission's "fairness doctrine" imposes a twofold obligation on broadcast licensees: (1) they must devote a reasonable amount of time to the discussion of controversial issues, and (2) they must be fair in the sense that they provide a reasonable opportunity for the presentation of contrasting points of view. In giving effect to this doctrine, the Commission is mindful of the fact that it is the broadcaster—and not the government—who has the primary responsibility for the selection and presentation of programming material. For this reason, the broadcaster has wide discretion in choosing appropriate spokesmen for various points of view and in deciding upon an appropriate format and method of presentation. Licensee judgments will be upheld by the Commission unless they are found to be unreasonable.

Recently, however, the Commission found that a West Virginia licensee's failure to devote any coverage to the issue of strip mining, which had tremendous impact within its service area, violated the fairness doctrine. In another major case, the Commission found that advertisements by the Pacific Gas and Electric Company supported one side of a controversial issue (the construction and use of nuclear power plants) and that a number of California radio stations which broadcast the announcements had failed to comply with the fairness doctrine by not affording a reasonable opportunity for the presentation of contrasting views.

Political broadcasting

In addition to general policies concerning the fairness doctrine, the Commission is responsible for enforcing the Congressional mandate that stations afford "equal time" for all legally qualified candidates for public office. During the last presidential election, the agency issued several important orders interpreting the equal time requirement, which is set out in § 315 of the Communications Act. Before addressing these rulings, it might be useful if I briefly outlined some earlier opinions which strictly construed the equal time principle.

In the 1959 "Lar Daly" case (*Columbia Broadcasting System*), the Commission interpreted the statute to mean that the equal time rule applied even to the appearance of a candidate on a regularly scheduled newscast. Daly, a perennial candidate, had complained to the Commission that several stations presented newsclips showing the major candidates in the two primaries, but refused to afford him equal time. The Commission ruled that the presentation of these film clips were "uses" within the meaning of § 315 and that, consequently, Daly was entitled to equal time. The Commission's position on this matter created a national furor. The practical effect of this implementation of the law was the opposite of Congress' intent; it discouraged broadcasters from providing news coverage of any candidate. In order to achieve its original objectives, Congress in 1959 adopted amendments to the Communications Act. These amendments provided that an appearance by a candidate on any one of four types of news coverage (a bona fide newscast; news interview; news documentary and on-the-spot coverage of a bona fide news event) should not be deemed to be a "use" of the station by that candidate.

In 1962, two important Commission rulings concerning § 315, *National Broadcasting Company, Inc. (Wyckoff)*, and *The Goodwill Station, Inc.*, narrowly interpreted the "on-the-spot coverage of a bona fide news event" exemption. In *The Goodwill Stations, Inc.*, the Commission ruled that a debate staged between political candidates was not a "bona fide news event" within the meaning of § 315. The Commission reached a similar conclusion with respect to a debate in California between Governor Brown and his Republican opponent, Richard Nixon, at an annual convention of the United Press International in San Francisco. *NBC (Wyckoff)*. The Commission reasoned that it was not sufficient for purposes of defining on-the-spot news coverage that a broadcast licensee in good faith concluded that an otherwise non-exempt debate program constituted a bona fide news event which it wished to cover. Instead, the Commission said that formalized debates could not be exempt from the equal opportunities requirement because the appearance of the candidates was the event itself and not merely "incidental to" some other news event.

In April 1975, the Aspen Institute filed a petition attacking the Commission's opinion in *NBC* and *Goodwill* as "a narrow, niggardly construction" of the statute. In September 1975, the Commission overruled these decisions holding that the broadcast of debates and news conferences, under certain circumstances, constituted "on-the-spot coverage of bona fide news events" within the meaning of the Act. This decision, which was upheld by the U.S. Court of Appeals, permitted the broadcast of the League of Women Voters sponsored Carter-Ford debates. Through *Aspen*, the Commission thus sought to effectuate Congress' objective of promoting the right of the public to be informed through the broadcast of political events.

Just this past week the Commission voted to recommend to Congress that it revise § 315 by exempting coverage of Presidential and Vice Presidential candidates from those provisions. The Commission will also recommend that Congress consider an exemption that would apply the law only to candidates who have demonstrated substantial support among the electorate, either through voting percentages in the past election or signatures on petitions.

Children's television

Another area of concern and interest to the Commission, the Congress, and the general public is the matter of children's television programming and advertising. Our 1974 Children's Television Report and Policy Statement provides general guidelines which, among other things, state that stations must devote a reasonable

amount of time to programming for children and that a significant portion of this programming should be educational or informative in nature.

The Report also provides guidelines for children's television advertising practices, and cautions stations to take particular care to avoid overcommercialization on programs designed for children. Questions have been added to the renewal form requiring that licensees report past and proposed commercial practices in children's television programs. The Report also indicates disapproval of such questionable commercial practices as host-selling and tie-ins, and encourages broadcasters to assist children in distinguishing program content from advertising content.

Primary responsibility for the regulation of advertising rests not with this Commission but with the FTC. In this area, the two agencies work closely together. For example, the Commission and the FTC, in an attempt to gather information on an issue of interest to both agencies, jointly sponsored panel discussions last May to examine televised over-the-counter drug advertising. After a thorough exploration of the issues, we declined to adopt a requested ban on over-the-counter drug advertising in the early evening hours.

Family viewing

In response to the serious concerns expressed by the scientific community and the American people, Congress, in 1974, directed the Commission to report on specific actions taken or planned by the Commission to protect children from excessive programming of violence and obscenity. In our Report on the Broadcast of Violent, Indecent and Obscene Material to the Congress, released on February 19, 1975, the Commission concluded that industry self-regulation was preferable to the adoption of governmental standards. This conclusion was based upon the agency's belief that adoption of such rules would involve government too deeply in program content, raising serious First Amendment questions. In addition, it was felt that judgments regarding the suitability of particular programs were so highly subjective that to develop government rules would be difficult if not impossible.

I believed at that time, as I do today, that it was possible for the Commission to play a constructive role through focusing increased industry attention on the violence issue and encouraging the consideration of self-regulatory reforms. With these considerations in mind, I met with the presidents of the three major networks and other industry leaders to examine and discuss this difficult and important subject. Following these meetings, the Family Viewing Policy was suggested by CBS in a December 31, 1974 letter to the Chairman of the National Association of Broadcasters' Code Review Board. The policy ultimately incorporated into the NAB Code called for the airing during the early evening of programs suitable for viewing by all members of the family.

Following the implementation of Family Viewing by the three networks, litigation arose in a U.S. District Court challenging the initiation and development of the family viewing concept. The Writers Guild, among others, alleged that my discussions with network officials regarding various course of action to reduce violence and sex in television programming amounted to threats of governmental action and were a prohibited interference with program decisionmaking. District Court Judge Ferguson, in a November 4, 1976 opinion, held the family viewing principle invalid and unenforceable by the Commission, declaring that its actions had gone beyond mere suggestions and constituted an attempt to alter the content of entertainment programming in the early evening hours. Suffice it to say that Judge Ferguson's characterization of the origin and adoption of the Family Viewing concept differs from ours at the Commission and we, together with the networks and the National Association of Broadcasters, have appealed the decision.

While the two-hour Family Viewing period clearly is not a perfect device for protecting children from objectionable programming, I am convinced that the standards outlined in the NAB Code strike a reasonable balance between two conflicting objectives. On the one hand, they act to protect children, or at least to aid concerned parents in providing that protection. On the other hand, they permit television to continue to present, in a tasteful manner, sensitive and controversial themes which are appropriate, and of interest, to an adult audience. All in all, I believe that this reform, if implemented in a responsible manner, can represent a major accomplishment in industry self-regulation.

Obscenity and indecency

In recent years, the Commission has become increasingly involved in the enforcement of the Congressional ban on "obscene" and "indecent" programming, 18 U.S.C. § 1464. In this regard, we have taken action to prevent the broadcast of obscene language and have been sustained in the courts. We have encountered more difficul-

ty, however, in our efforts to interpret what Congress intended when it legislated a ban on "indecent" programming.

Responding to a complaint that an educational station in New York City had broadcast offensive material, the Commission, in February 1975, issued a Declaratory Order interpreting this statutory provision. The Commission, recognizing that the statute had never been authoritatively construed, issued a declaratory order rather than a forfeiture or some other sanction. We held that certain types of "gutter" language, even though not actually obscene, had no place on the nation's airwaves, at least during time periods when large numbers of children are in the audience.

The Commission's order was reversed by the Court of Appeals for the District of Columbia in March 1977. In the opinion of the Court, the Commission's declaratory order was "vague and overbroad" and in violation of § 326, the no-censorship provision of the Communications Act. However, the three-judge panel was sharply divided and issued three separate opinions. Judge Tamm, writing for the Court left open the possibility that "obscene and indecent" have distinct meanings in the broadcast medium. Chief Judge Baselon, on the other hand, argued that indecent does not have a separate meaning from obscene. Finally, Judge Leventhal, in his dissent, supported the Commission's finding that the two terms do have distinct meanings, at least in the broadcast medium, and that some special measures should be taken to protect children.

The Court's opinion, as it now stands, poses a dilemma for the Commission. While it suggests that the prohibition of indecency in the criminal code may have a meaning independent of the prohibition against the broadcast of obscenity, it fails to provide any indication of the meaning of that Congressional prohibition. The Commission therefore has sought rehearing en banc before the Court of Appeals. I want to make clear that the Commission, in seeking rehearing before the full Court, hopes to obtain some clear understanding of what the present state of the law is with regard to the broadcast medium. We believe that such judicial clarification will be helpful to the Commission in implementing the will of Congress.

Payola-plugola

In late 1976, the Commission resumed its inquiry into "payola," "plugola" and other related practices. Under §§ 317 and 508 of the Communications Act, the taking of money by a station employee for playing a certain record or plugging a specific concern, over and above that received by the station itself, is strictly prohibited. Our recent inquiry was specifically directed to situations where employees were using station facilities to further their own private enterprises or to plug activities for others. The Commission is hopeful that the publicity associated with these public hearings will encourage citizens having information about these practices to step forward. I have been advised by the Commission's staff that, to date, our hopes have been partially realized. We are beginning to receive information on the nature and scope of these problems, which appear to be very widespread. The goal of this inquiry is not merely to make a case against a few station owners and disc jockeys, but rather to educate ourselves and, in turn, the broadcast industry, about the problems and pitfalls of payola and plugola. These practices, as a general rule, do not benefit the broadcaster directly. However, it is the broadcaster—not the Commission or the Department of Justice—who is in the best position to bring these practices to a halt. We intend to help and, if necessary, to prompt the broadcaster to take a more active role in ending these illegal activities.

NETWORKS

Under the Communications Act, we have always held that it is the individual broadcast licensee which has the right and responsibility to make programming judgments. The rise of the networks to a prominent place in the development and distribution of programs has brought with it a concern that, in some cases, individual licensees may have delegated their programming discretion to the networks with which they are affiliated.

Network inquiry

In January, the Commission instituted a wide-ranging inquiry into the alleged "network dominance" of the television inquiry. The inquiry, which is the first overall FCC study of the networks in some twenty years, will examine the relationship of networks with their affiliated stations and with the program suppliers. Under the Communications Act, it is the individual licensee which has the right and responsibility to make independent programming judgments, and we will analyze whether any practices of the networks are improperly restricting licensee

discretion. Such discretion can be effectively exercised, of course, only if the entire television market is in a healthy and competitive state, one which is in a position to offer alternative sources of programming. For this reason, our inquiry will encompass the question of whether the networks have engaged in anticompetitive policies which restrict the development of these other program outlets.

As to the network-affiliate relationship, the inquiry includes a review of station clearances of network programs, expansion of network schedules, previewing of network programs by the affiliates and, finally, the relationship between station compensation plans and the independent judgment of the affiliated licensee. Concerning the issue of network-supplier relationships, we will analyze such diverse subjects as the following: network interests in syndicated programming produced by independent suppliers; network in-house program production; the allegation of tying arrangements concerning the use of production facilities; exclusive network exhibition rights for program pilots; and finally, the relationships between network owned and operated stations and program suppliers.

Initial comments, which are due June 1, will be analyzed by our Task Force which, thereafter, may investigate on its own areas which need independent exploration. On the basis of the record compiled, the staff will then submit its report to the Commission. It is anticipated that this process will be completed within a year from the time that comments are filed, or by mid-1978.

Prime time access rule

Another network issue which has received a great deal of attention in recent years is our "prime time access rule". That rule provides that network-owned and affiliated stations in the fifty largest metropolitan markets may devote no more than three hours of the four hours of prime time each night—7 p.m. to 11 p.m. Eastern Time—to network programs or so-called "off-network" programs (those formerly shown by the network). PTAR had as one of its primary objectives the reduction in network control over station time, giving station licensees a substantial amount of prime time in which to present those programs which, in their independent judgment, best meet the needs and interests of viewers. The rule's other basic objective was to promote alternative sources of new non-network programming by making available valuable prime time for such programming.

Additionally, it was expected that the rule would lead to an increase in local programming activities and it was hoped, in the long-term, that the rule would increase diversity of programming. In practice, stations have generally designated the first hour of prime time, e.g., 7 to 8 E.T., as "access time," during which they air non-network material or syndicated programs which have not been on a network.

The prime time access rule has been the subject of considerable controversy during its short life, and was the subject of a rulemaking proceeding from 1972 to 1975 to consider its modification or repeal. It was determined at that time to retain the rule but in a relaxed form with various modifications. The most significant of these was to permit broader opportunities for the presentation of programming designed for children, and public affairs and documentary programs. This rule has undergone a number of significant changes in recent years and the Commission believes that it is appropriate to let the rule operate for a fair period in order to ascertain its true impact on television programming.

TECHNICAL REGULATION

As part of its regulatory activities, the Commission requires that its broadcast licensees adhere to certain technical standards. These standards encompass both equipment type-acceptance and operational requirements in order to maintain a quality broadcast signal and prevent serious electrical interference with other stations. Through its Field Operations Bureau offices in various parts of the country, the Commission monitors broadcast licensees in order to detect technical rule violations such as, for example, operation at an unauthorized power level or on a frequency other than the one assigned. The Commission is also engaged in the development and testing of new equipment and broadcasting techniques.

Automatic transmission systems

In December 1976, the Commission adopted rules which permit the use of automatic transmission systems for the operation of FM and non-directional AM broadcast stations. This action is the most significant revision of broadcast transmitter operating requirements since the use of remote control was first authorized 25 years ago.

With an automatic transmission system incorporating advanced electronics technology, all routine operating functions are monitored, controlled, and completed

automatically without assistance of a skilled duty technician. The automatic transmission system also includes an alarm to alert licensees of malfunctions that would require attention by a maintenance operator. Serious uncorrected malfunctions which would result in harmful interference to other stations will cause transmission to automatically terminate, or to switch to an alternate transmitter. Use of this system also eliminates the need to keep certain operating logs and records, and to conduct frequent inspections of the transmitter facilities.

Studies are currently underway regarding similar procedures for automatic operation of television stations and AM stations equipped with directional antennas. This performance-related approach should result in substantially reduced governmental involvement with licensees' day-to-day activities while at the same time improving the quality of broadcast service. Indeed, the time, money and employee resources made available to broadcasters under this technique could and should be put to better use in overall service to the American people.

AM stereophonic broadcasting

In 1976, the Electronics Industries Association (EIA) formed the National AM Stereophonic Radio Committee to test the feasibility of various AM stereo systems. This association has two petitions currently pending before the Commission requesting establishment of new rules and standards to permit AM stereophonic broadcasting. The Commission plans to institute a formal proceeding within the next two months to explore the public benefits and technical considerations of AM stereophonic broadcasting. This proceeding will be scheduled to insure that the results of existing on-going technical studies by the National AM Stereophonic Committee, as well as other interested parties can be submitted and considered before the Commission acts in this area.

Quadraphonic FM broadcasting

The EIA, in 1972 also sponsored the National Quadraphonic Radio Committee ("NQRC"), whose purpose was to report to the Commission its conclusions regarding four-channel FM broadcasting standards. NQRC submitted its conclusions to the Commission in November 1975 and, since that time, we have been conducting additional FM quadraphonic tests at our Laboratory Division.

The Commission has before it at this time three petitions requesting amendment of its rules to permit quadraphonic FM broadcasting. These petitions involve several different broadcasting techniques that would permit four channel FM signals to be transmitted and received. It is clear, both from the NQRC submissions and from our own tests, that the issues raised in this matter are complex and will require extensive comment by all interested parties before a decision can be reached. In this light, the Commission plans to institute formal proceedings early this summer to consider this new broadcasting technique.

Captioning for the deaf

In December 1976, the Commission voted to amend its rules to permit "closed captioning" of television programs for the benefit of the hearing impaired. Closed captioning is a technique by which coded data signals are transmitted along with the regular video signal, enabling decoder-equipped TV receivers to display visually the information contained in the aural segment of TV programs. The Commission noted that Public Broadcasting's captioning proposal could, with the widespread use of special decoders, significantly enhance TV viewing for hearing-impaired persons without interfering with unimpaired viewers' picture or audio.

The Commission also indicated that uses other than traditional captioning, such as weather information or news releases, might be permitted in the future. Expansion of the scope of available visual information during non-captioning periods presents both a rapid and economically feasible method of expanding service to the hearing-impaired. Given the growing informational and entertainment dominance of television in our society, development of these and other captioning services would enable the hearing-impaired to lead a fuller and more enriched life.

BROADCAST REREGULATION

In April 1972, the Commission established a broadcast Reregulation Task Force to determine if its regulatory authority is being exercised in a meaningful and pragmatic manner consistent with the public interest. To this end, each of our broadcast rules is being analyzed to determine its current validity and whether it should be continued, modified or deleted. In addition, this task force has proposed from time-to-time new rules which more accurately reflect the present state of the broadcast art.

In the past five years, we have succeeded thus far in modifying or eliminating some 500 rules in the broadcast area. Moreover, the development of revised and more readily understandable rules has been extended into almost every facet of our jurisdiction, including the emerging cable television industry. Some of the more significant deregulatory actions which have been taken by the Commission have been discussed under other topical areas: the automatic transmission systems, our new ascertainment rules, UHF development, and clear channel allocations. However, there have been additional developments which I would like to briefly outline for the Subcommittee.

Network radio

In 1941, when our original network radio rules were established, the networks played a tremendous role in broadcasting. Networks in radio today are for the most part engaged in providing rather brief news programs, commentary, and other features. Despite these changed circumstances in radio and the emergence of television, our rules have remained the same. The Commission recently completed, however, a general deregulation of its rules regarding radio networks and their affiliated stations. In this proceeding, the Commission concluded that the existing network radio rules have had a restrictive effect on possible new developments in this field and should be substantially modified or repealed.

New radio renewal form

The Commission has also undertaken a complete examination of its radio renewal application, and adopted a new two-page "short form" radio application. This form eliminated many questions from the prior application, and revises several others so as to require more extensive information regarding a licensee's programming performance. The revised form also eliminates the need for submitting documentation of a licensee's ascertainment effort at renewal time, and, instead, permits a licensee to certify that such documentation has been placed in the station's public file.

The Commission views this new radio renewal application as a significant step towards eliminating extraneous information from the renewal process, while at the same time focusing our review on areas of special concern such as ascertainment, past and proposed programming and equal employment opportunities.

CITIZEN PARTICIPATION

Let me turn now to the matter of public participation in agency decision-making. At the outset, it is important to understand that in order to have effective public participation, it is necessary to have an informed and aware public. Accordingly, I believe that regulatory commissions have an affirmative obligation to inform citizens of their rights and how they may be exercised, and to notify them of pertinent matters and controversies pending before the agency. These obligations require programs which permit public access to information and to Commission personnel (including the Commissioners themselves) for guidance on specific issues. The FCC has recently developed an extensive program designed to stimulate such public contact and interaction with our agency.

In the area of information, and prior to the advent of the notices required under the Sunshine Law, quarterly FCC meeting calendars were publicly released throughout my tenure as Chairman. They have provided a means by which citizens can be made aware of upcoming agency activities. Additionally, we have initiated a weekly "Actions Alert" publication setting forth summaries of Commission decisions of interest to the general public. These Alerts are sent without charge to many public interest groups to enable them to keep abreast of Commission activities. The Commission has also published a "Special Feedback Edition" of Actions Alert as a further effort to increase public participation in the Commission's rulemaking procedures. The release of a Feedback Edition has the advantage of calling for public comments on major rulemaking proposals by highlighting specific questions involved and suggesting ways in which the proposed rules might affect the public. The Commission has also published a "Procedural Manual" which attempts to explain, in layman's language, the Commission's processes and policies.

FCC regional meetings

The Regional Meetings program was created to take the FCC out of Washington and to the people throughout the nation. These meetings were designed to foster a better understanding between the general public, broadcasters, and the Commission and to improve the public's awareness of its rights under the Communications Act. At each of the nine meetings held to date, my colleagues under the Commission and myself, along with key Broadcast Bureau staff, have met face-to-face with the public and with broadcast licensees.

The Regional meetings are supplemented by monthly "en banc" meetings of the full Commission. At these meetings, public interest groups and industry organizations have appeared and aired their views on FCC activities and policy.

Consumer assistance office

Perhaps our most important action towards involving the public has been the formation, a little over one year ago, of a Consumer Assistance Office. The primary purpose of this office is to establish a point of contact within the Commission for the average citizen who may phone or visit us—a means by which the public can cut through the bureaucratic maze to secure the right information from the right person within the FCC. In addition, it provides procedural assistance to facilitate greater public participation in our processes. Finally, the Office helps to educate the public about our policies and procedures by producing simple, easy to read and unbureaucratic informative material.

Assistance for participation in Commission proceedings

In November 1976, the Commission adopted, on an experimental basis, an assistance program designed to facilitate the participation of citizens in Commission proceedings. Under this rule, motions to proceed *in forma pauperis* will be considered by the Commission if the participant is an intervenor in a hearing case with testimony of probable decisional significance or a respondent in a revocation or renewal proceeding who could not carry on his livelihood without the license at stake. One important objective of this experiment is to facilitate participation after designation for hearing by an intervenor who is in a position to make an important contribution but who cannot be expected, in light of his purely noneconomic interest, to bear the full cost of effective participation. While this program does not encompass the reimbursement of attorneys fees (something on which we would need specific funding), the Commission is hopeful that this measure will encourage otherwise reticent individuals or groups to contribute to the Commission's regulatory process.

TTY phone

The Commission recently installed a TTY phone for the deaf and hearing impaired in its Consumer Affairs Office to further enhance the availability of government processes to the hearing impaired. This teletype phone enables persons otherwise unable to use the telephone to communicate directly via regular telephone lines with the Commission and its staff concerning both specific matters which are of great importance to the hearing impaired and general inquiries regarding Commission forms, procedures, or regulations.

Commission conferences

The Commission frequently holds conferences with members of the broadcast industry, interest groups and the public to discuss various topics of mutual interest and concern in the broadcast area. A recent example is the Minority Ownership Conference held at the Commission this past month to explore possible methods of improving the extent of minority participation in ownership of broadcast stations. The Conference included various speakers and panels on financing, access to and use of professional help, operational problems of station ownership and public policy issues.

A Commission task force is now preparing a conference work statement based upon the materials developed during the two-day conference and written proposals submitted by the conferees. This work statement will form the basis for a Commission-funded study on minority ownership which will include a discussion of the barriers to such ownership and how they might be removed.

Mr. Chairman, that concludes my prepared testimony. I would be pleased to respond to your questions.

[The following information was subsequently received for the record:]

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., July 26, 1977.

HON. ERNEST F. HOLLINGS,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR HOLLINGS: This is written as a response to six questions posed by Senator Harrison A. Williams concerning, primarily, the Commission's New Jersey television service proceeding (in Docket 20350). These inquiries also relate to a current Commission renewal proceeding involving station WNET, Newark, New

Jersey, and the recent newspaper-television cross-ownership decision of the United States Court of Appeals for the District of Columbia Circuit.

The first three questions are stated as follows:

1. The Communications Act of 1934 requires that the Federal Communications Commission distribute broadcast licenses "among the several states and communities" so as "to provide a fair, efficient, and equitable distribution to each of the same." Yet, not one commercial VHF television station is located in New Jersey, the eighth most populous state in the nation. *How can you reconcile this fact with the Commission's statutory mandate to allocate stations equitably?*

2. In 1974, the New Jersey Coalition for Fair Broadcasting petitioned the Commission to order better service for New Jersey. In March, 1975, the Commission determined that additional locally oriented television program service was required, including a local "presence" in New Jersey. *Why did the Commission oppose the reallocation of an existing VHF station to New Jersey? Why did the Commission oppose the licensing of an existing station to two communities, both its present community and a city in New Jersey? Why didn't the Commission at least require that New York and Philadelphia stations establish studios in New Jersey?*

3. In July, 1976, the Commission asked New York and Philadelphia stations to submit plans for covering New Jersey. In December, the Commission ratified these plans, many of which propose little more than what the stations are already doing. *Why didn't the Commission set minimum standards for New Jersey coverage? How does the Commission plan to ensure that the stations carry out the minimal commitments they did make to increase New Jersey coverage?* [Emphasis in original.]

These matters were all carefully considered by the Commission in the three decisions in the New Jersey television service proceeding, Docket 20350, and the complete answers to your questions can be found in these documents.¹ In essence, it was the Commission's conclusion that Section 307(b) of the Communications Act of 1934, as amended, to which you refer in question 1, does not require the assignment of a commercial VHF station to each state. Rather, the UHF and VHF bands are considered as constituting a single television service and the Commission endeavors to utilize these channels to provide effective service to all people residing in a particular area or region. Parenthetically, it should be noted that New Jersey receives as many as 37 "Grade B"² or better television signals and that New Jersey residents in most areas are capable of receiving 15 or more television stations off-the-air. Residents in most other parts of the nation generally receive far fewer stations over-the-air.

As described fully in the above-referenced Docket 20350 decisions the Commission found, on economic and related technical grounds, that a VHF station reallocated to New Jersey would not in all probability be viable. It concluded also that the transfer of one VHF station to New Jersey would not significantly increase New Jersey's television program service. The Commission's concern in this proceeding was the assurance of adequate television program service for the residents of New Jersey—a goal which the Commission believes could best be met by the service efforts of not just one or a few stations but by all the television stations in the area, UHF and VHF, in-state and out-of-state. In rejecting the proposals made for "dual-licensing" and "hyphenation" the Commission found that those schemes were not necessary for assuring adequate New Jersey television service, that a hyphenated joint ID would be only cosmetic, and that dual-licensing would create inflexible service obligations. The Commission did acknowledge, however, that out-of-state licensees could use a non-official promotional ID highlighting the stations' New Jersey service obligations and activities. It was the Commission's judgment that a New Jersey studio requirement, placed on out-of-state licensees, would be inefficient, is unnecessary to the realization of adequate television service for New Jersey, and might constitute an unwarranted intrusion into licensee business operation. It is the Commission's view that mobility and flexibility are the keynotes to coverage of such a diverse and densely populated area such as New Jersey. Rather than require the construction of static studio facilities, the Commission has taken the position that more responsive and efficient New Jersey coverage can be achieved through the area licensees' New Jersey service commitments (in terms of personnel and equipment) and their adherence to special New Jersey service obligations.

The Commission did not establish fixed New Jersey service requirements for particular classes of stations in recognition that licensees must have the flexibility

¹ See *First Report and Order and Further Notice of Proposed Rule Making*, FCC 76-262, 58 FCC 2d 790 (1976); *Second Report and Order*, FCC 76-634, 59 FCC 2d 1386 (1976); *Third Report and Order*, FCC 76-1024, 39 R.R. 2d 137 (1976).

² A signal intensity measurement.

to assign both resources and personnel and produce programming in a manner consistent with their business and journalistic discretion. We plan to review carefully, in the license renewal process, the area stations' implementation of their New Jersey service commitments. As the Commission set forth in its *Third Report and Order*, and as I and other Commissioners have stated publicly, if these licensees do not live up to their commitments the Commission should take appropriate remedial action in the renewal process and, if necessary, may be required to reopen the broader proceeding.

Question 4 deals with Station WNET, Newark, New Jersey, and states the following:

4. Channel 13 is licensed to Newark, but in 1961 it was allowed to move its main facilities to New York City. It now has no physical plant facilities in New Jersey, and only broadcasts one-half hour a week of New Jersey-oriented programming. *Why hasn't the Commission required the one VHF licensee allocated to New Jersey to serve its community of license?* [Emphasis in original.]

Insofar as Station WNET's service responsibilities are concerned, I can only inform you that these matters are being examined separately in an ongoing renewal proceeding. While I cannot speculate as to the Commission's ultimate ruling in this proceeding, it appears that a decision will be reached in the very near future. I might add that Station WNET does maintain office facilities in New Jersey and utilizes Essex College (Newark, New Jersey) facilities for program production. It also appears that, in the fall, Station WNET will be producing, in conjunction with your own New Jersey Public Broadcasting Authority, a half-hour nightly New Jersey newscast.

Question 5 reads as follows:

5. A recent decision by a United States Court of Appeals held that ownership of a newspaper and broadcast station in the same market is illegal. If this decision is upheld, certain stations in New York and Pennsylvania may have to be divested. If this occurred, or in the event that a station is voluntarily divested, *what criteria would the Commission apply for awarding the licenses of these stations? Given the special needs of New Jersey, don't you think that New Jersey should receive preference in awarding these stations?* [Emphasis in original.]

The Court of Appeals' decision to which you refer did not hold that newspaper-broadcast cross-ownership in the same market is *per se* illegal. Rather, the Court stated its opinion that divestiture should be required except in those cases where the evidence clearly discloses that cross-ownership is in the public interest. As you may know, the Commission has sought certiorari in the Supreme Court in this matter and assuming certiorari is granted, oral arguments hopefully would be scheduled later this year. Because no final judicial decision likely will be reached for several months, it would be premature and speculative to give any extended discussion concerning required divestiture in these cross-ownership cases. In any case, the Commission has recognized New Jersey's service needs and has established a mechanism designed, it believes, to assure adequate service—a mechanism which, at present, does not appear to require a change in either allocations or station licensees. If it becomes evident that this mechanism does not provide adequate service for New Jersey, the Commission may consider reallocation or licensee transfer regardless of any judicially-mandated cross-ownership divestiture.

Final question 6 asks the following:

6. *Do you think that legislation will be necessary to insure that New Jersey receives adequate television service?*

This question must be answered in the negative. The Commission believes that it has devised a mechanism which will assure that New Jersey receives adequate television service. Should this approach fail to achieve adequate New Jersey service the Commission is fully prepared and fully empowered by statute to take appropriate additional steps. In the event such further action is required, the Commission will be able to choose from among a variety of alternative courses. No supplemental legislation would be necessary.

I trust that the foregoing has been responsive to your inquiries. I will be happy to reply to any follow-up questions you may have or further discuss any of these matters with you or your staff.

Sincerely yours,

RICHARD E. WILEY,
Chairman.

Senator CANNON. Our next witness will be Vincent Wasilewski, president, National Association of Broadcasters.

STATEMENT OF VINCENT T. WASILEWSKI, PRESIDENT,
NATIONAL ASSOCIATION OF BROADCASTERS

Mr. WASILEWSKI. Good morning, Mr. Chairman.

Senator CANNON. All right, sir, you may proceed.

Mr. WASILEWSKI. Mr. Chairman, my name is Vincent Wasilewski, president of the National Association of Broadcasters. We appreciate the invitation to appear before the committee at these hearings.

As you know, our association represents a wide range of broadcasters from the networks to the smallest commercial radio station. For this reason, we are vitally interested in virtually every phase of broadcasting, and are structured to provide service to our members in areas such as engineering, labor-management practices, financial practices, research, and other areas.

We also have developed a code of good practices for broadcasters, which we believe to be a preferable alternative to Federal regulation. In addition, our government relations and legal departments work with the Congress, the FCC, the FTC, and other Federal agencies to make known industry positions on the rules and regulations and legislation that affects broadcasters. Over the years, we have had an excellent relationship with this subcommittee, which we believe has been beneficial to all concerned.

As you know, all commercial broadcasters are licensed by the FCC for periods of up to 3 years. In order to obtain a license, one must meet a number of legal, technical, and financial obligations and must agree to operate in the public interest.

Licenses are granted for a particular frequency and a particular community, and the broadcaster is expected to serve that community and the surrounding area. The licensee is responsible for everything programed on his station. This responsibility cannot be delegated, nor can it be contracted away through negotiation.

Broadcasters ascertain the needs and interests of their communities by maintaining regular contact with members of the general public and leaders of the community including public officials, businessmen, educators, community groups, and minority groups.

At one time or another, virtually all structured groups in most communities have some involvement with the local broadcaster, ranging from the retailer, who wishes to advertise his product, to the citizens association, which may want to complain about some part of the programing.

Broadcasters are businessmen, and are in business to make a profit. The sole means of doing so is through advertising sold throughout the program day. Charges for advertising vary as to the audience that a broadcaster can attract, and the greater the audience, the greater the revenues.

For this reason, in most areas, our members are quite competitive with each other and try to program to meet the needs and interests of the many audiences that make up the public. Some broadcasters make substantial profits. Others have substantial losses—according to the most recent FCC financial data, 2,268 or 41.8 percent of the commercial radio stations filing 1975 annual financial reports (FCC Form 342) operated at a loss for that year; 48.2 percent of the UHF and 13.9 percent of the VHF stations also

reported financial losses for 1975. None of them, we are pleased, to say, is subsidized by the taxpayer.

All things considered, we believe our broadcasting system is the finest in the world and provides full and varied service at a very low cost. While we do have our shortcomings, we believe that the Congress made a wise decision many years ago to allow broadcasters to operate within the free enterprise system rather than provide for greater government involvement.

I have divided the remainder of my testimony into three parts: short-range concerns; long-range concerns; and, the NAB code.

As to our short-range concerns, let me begin with an item which is also in the long-range category—overregulation. As with most industries, broadcasting is concerned about coping with increasing amounts of Federal regulation and its effect on the broadcaster's ability to carry out essential programing duties.

Let me make it clear that we are not here to point fingers, but just to emphasize that in our evermore complex world, the broadcaster is entwined in the paperwork tangle that seems to make life so unpleasant and each task a little more difficult and frustrating.

I think I should, at this point, give recognition to the FCC for its interest in deregulating wherever possible, and express my hope that the Commission will continue in the future to explore areas where less regulation is feasible. We fully understand that some regulation of our industry is necessary and in the public interest and, of course, we accept that. But most broadcasters are small businessmen who find that time spent filling out forms is time better spent working to provide better service to the public.

Discussion of overregulation leads us naturally into license renewal and the need for legislation in this area. Perhaps the one piece of legislation that could do more to alleviate paperwork, both for the broadcaster and the FCC, than any other is a license renewal bill.

As you will recall, Mr. Chairman, you helped with the renewal bill in 1974 as did Senator Hollings. But that failed to be enacted into law when no conference was held to resolve the differences between the House and Senate bills. We were pleased to see that renewal legislation is on your committee agenda for this summer, and we would urge that a bill similar to the one passed before be considered. An increased term of license is needed and would help to reduce the paperwork burden while still allowing for a periodic review.

We believe that such a bill should also provide for a renewal procedure that would grant some preference to the broadcaster who has been doing a good job of programing to meet the needs and interests of the community.

A third item that has both short and long range implications is the problem of "siphoning" and the recent court decision which overturned FCC pay-cable regulations. Broadcasters are most concerned over this development, not because we are opposed to pay cable, we are not, but because we see the real possibility that the public may lose some prime programing to pay television as a result of the court ruling.

Our deepest concern is that some sports events that have been appearing on commercial television may no longer be available. Let

me make it clear that in the immediate future, we are not talking about the world series or the super bowl, but the local sporting events that are contracted for on a yearly basis by local broadcasters.

If the local professional basketball team or baseball team finds that it can derive more revenue from selling its game to pay-cable interests than to local broadcasters, the result will be a gradual loss of local sports events from commercial television. We do not believe this would be in the public interest since many Americans will not have pay-cable available or, if it is available, will not be able to afford it.

Since this will most likely happen at first on a piecemeal basis rather than via a sudden withdrawal from a network's offerings, it will be difficult to perceive and only be readily visible after it has reached a critical stage. At that point, it might be difficult, if not impossible, to reverse the trend. We are urging the committee to look at this situation with a view toward legislative action in the immediate future.

Senator CANNON. Do you have any specific suggestions as to what type of legislative action you think the committee might take that would be upheld by the courts?

Mr. WASILEWSKI. Yes, sir, we don't have it in draft language, but there was a bill introduced by Senator Beall some time ago that was S. 2283 in the 93d Congress.

But, basically, I think that legislation should include an express grant of power to the FCC to regulate pay-cable television, since the FCC has always felt that some legislative authority was desirable, and I think this would be the opportunity to provide it.

I think that it should contain a positive statement identifying pay-cable as a supplement to commercial television with the potential to supply new and unique programming for the specialties of varied audiences that choose to pay for that programming. Senator Beall's bill essentially provided that.

Senator CANNON. This would be one area where you would depart from your original testimony when you say you want less regulation. Here you want more regulation in this particular area.

Mr. WASILEWSKI. Yes; I think there is a great distinction here because the regulation applied to broadcasting is there, not for the benefit of broadcasting or its disadvantage, but for the benefit of the public. I think I am talking, here, about regulation that is for the benefit of the public because I don't think you are dealing with the normal competitive situation, Senator.

I think there is a distinction here between this situation and the airlines, for example, and I think that there is a basic distinction here because pay-cable has not developed in an independent, free, and open competitive situation. It's developed based upon utilizing the product of over-the-air advertiser supported broadcasting to make its economic base.

Now, it's going ahead and using investment, that the television-set owner has placed in his television set, using that investment which the television-set owner bought principally and primarily and solely initially for the purpose of getting over-the-air free advertiser supported television. Now, they want to change that and use that same investment both on the part of the broadcaster and

on the part of the viewing public and change that to a pay-cable and change the free view to pay view.

So, there is a distinction in my judgment. Then I think that legislation ought to contain a statement of policy or guidelines giving to the FCC clear direction as to future regulation in the pay-cable area. It must be made clear that Congress has decided it would not be in the public interest to allow pay-cable to have exclusive rights to programing presently appearing on commercial television, when the public would only view that programing by paying a per program or per channel charge.

Another short range concern is forfeiture legislation. Last year, the Senate passed a bill recommended by FCC that would put cable operators on a par with broadcasters as to monetary fines for violations of the FCC rules and regulations.

Under present procedures, the Commission is limited mainly to the institution of long and cumbersome cease and desist proceedings to enforce its cable TV rules. We believe the Commission should have the same power to fine cable operators who violate the rules as it does to fine broadcasters, and we urge the Senate to again consider this legislation.

We would also urge the committee to consider radio all-channel legislation. Such legislation would accomplish in radio what the Congress did in television receivers to have both VHF and UHF reception capability.

We feel that all radio sets should be capable of receiving both AM and FM signals. Again, in this case, the Senate passed all-channel legislation in 1974, but the bill never made it out of the House Rules Committee.

We were encouraged to see that the agenda for this committee includes all-channel hearings and we urge its early passage.

Now another short range item, that is the "rewrite" of the Communications Act that is now proceeding in the House. Certainly we are most interested in the outcome of any rewrite since it could drastically change our entire communications system. While we believe there are some areas where change is needed and desirable, we also believe that the basic Communications Act is a sound one, and has served this Nation well, and would hope that the Congress would proceed with caution in amending this law.

Now, as for long range concerns, we have several. As I mentioned earlier, the possible "siphoning" of popular television programing to pay-cable is one major concern for the future. As pay-cable continues to grow—it's estimated that the subscribers will double for the second consecutive year—it will become more financially secure and be increasingly able to bid against broadcasters for sports and entertainment programing that they now carry.

In the sports area, particularly where many teams are now in financial trouble and athletes' salaries continue to soar, the dollars offered by pay-cable will become increasingly attractive and irresistible.

As a result, the prime events on first a local and then a national basis will begin to slip away from free television. The broadcaster, if faced with what's left, may decide that the sports leftovers are not attractive enough to continue to broadcast. And the cycle will repeat itself again and again.

We are fully aware that cable interests state that they are not interested in the broadcasters' product but, if that's the case, one must wonder why the cable industry has spent such vast sums of money to fight antisiphoning restrictions.

We would hope we are wrong about cable's intentions. But if we are not, then the viewers who do not have cable television 10 years from now will find many of their favorite programs missing from broadcast television. That would not seem to us to be in the public interest.

On another front, we continue to be puzzled at the explanations of the first amendment that somehow always end with the proposition that the print media has full rights but the broadcast media does not. The Constitution still reads that "Congress shall make no law * * * abridging the freedom of speech, or of the press * * *". There is no footnote saying "unless the speech is broadcast" or "unless the press is the electronic media."

We do not argue that we should not be regulated, but we recognize this as a necessity in the orderly use of the spectrum. Nor do we disagree that the Federal Government has the right to make certain that our use of the spectrum is for the public good. But we continue to object to laws that tell us what we can advertise—no cigarettes—how we can treat controversial issues—fairness doctrine—and what we may charge for selling some of our time—lowest unit rate.

I would like to end my testimony today with some comments on the NAB code, and how it fits into this overall discussion of broadcasting. Actually, there are separate codes for radio and television, but they are both administered by the code authority so, if I may, I will simply refer to the code.

I believe the NAB code is unique. We are not aware of any other medium whose members—in any significant number—have voluntarily subscribed to standards and guidelines which apply to both commercials and programs.

The concept of a code of good practices is certainly not new; the first radio code was adopted 40 years ago, in 1937. Today, 2,699 radio stations and four radio networks subscribe to the code.

The television code came into being in 1952 and, as of this morning, 457 television stations and the three television networks are code subscribers.

The code, since its inception, has been subjected to criticism. Some say it is too restrictive, just as others say it is not restrictive enough. In any case, it is an honest attempt on the part of the broadcasting industry to discipline itself in the marketplace, and to reflect the constantly changing tastes and standards of our society.

The work of the code authority is monitored and supervised by two separate boards, one for radio and one for television, whose members are appointed by the president of the National Association of Broadcasters. Their work, in turn, is monitored, supervised, and either ratified or vetoed by the respective radio and television boards of directors, whose members are elected by the general membership of the NAB.

We have endeavored to build certain mechanisms into what we believe is an orderly, democratic system of checks and balances. Part of this system is a process which enables advertisers as well

as spokespersons for defineable segments of the public to appear before either—or both—of the code boards to make their views known.

In this way, the two code boards and the code authority are able to monitor and react to the demands of the marketplace and reflect the constantly changing standards of society.

The code and the apparatus which make it run may not be perfect for the simple reason that it is made up of imperfect human beings. But we happen to believe that it does represent a conscientious effort, on the part of the broadcasters who subscribe and adhere to it, to best operate in the public interest, convenience, and necessity.

In short, the code is the conscience of our industry and, as such, is infinitely preferable to any other system of which we are aware.

Thank you very much, Mr. Chairman.

Senator CANNON. Thank you for a very fine statement. Mr. Wasilewski.

Recently your broadcast section referred to the code board a recommendation that the code be revised to improve its approach to violence. Why did the code board reject that recommendation?

Mr. WASILEWSKI. Well, the Television Code review Board initiated discussions, pursuant to that request from our board, with interested parties late last year and in an effort I think to be responsive to the—what I would call the television board's direction, the code board met with—representatives met with writers and producers in the Hollywood community. And after doing so—I am reflecting their viewpoint to you, because I am not a member of that code review board—as I understand their position, they felt they were encouraging developments that were occurring on a voluntary basis by programmers in Hollywood.

They felt the networks were taking positive steps to reduce the amount of violence on programs and the amount—the number of programs of the adventure, violent type. And then I think over and above that, they felt that it was just impossible to draw specifically definitive guidelines to outline what is or what is not violent, because they felt that an attempt to reach an objective determination of guidelines, which are so subject to subjective interpretations, that they were just dealing in a never-never land, and felt that what they had at the present time was as good as they could come up with.

And I think that—as you know at the present time—there is within the industry disagreement relative to the conclusion taken by the Television Code Review Board and this will be ironed out, I think, between our Television Board of Directors and our Television Code Review Board come June of this year at the Television Board meeting.

Senator CANNON. Do you think the members are taking adequate steps on their own now to meet this particular problem?

Mr. WASILEWSKI. Well, I think again that would be a subjective determination as to what is and what is not an adequate step.

Senator CANNON. That is what I am asking you, what you think.

Mr. WASILEWSKI. Yes; I do believe that they are. They are taking honest—making honest attempts to reach the issue of violence, to deal with it. And I was heartened, I know, yesterday to hear

network representatives talking about reduction in violence as they would see it coming in the fall season.

Senator CANNON. I must say, I was pleased with the presentation of the networks. I thought that was a very marked improvement.

Mr. WASILEWSKI. I think there is a greater awareness of the issue, the problem—however you want to refer to it—in what I would call the writing and producing community.

Senator CANNON. Do you have any nonbroadcaster members of the code group?

Mr. WASILEWSKI. No, sir; we do not.

Senator CANNON. Any private citizens or church groups, or this sort of thing?

Mr. WASILEWSKI. No; but we do have such groups that come in and make appearances and presentations to the respective code boards. I think last year we had some 47 different entities making an appearance.

Senator CANNON. So you give them an opportunity to appear and present their views even though they are not members of the board?

Mr. WASILEWSKI. Yes, sir.

Senator CANNON. I already asked you somewhat about the over-regulation; but you were complaining about increasing regulations, and at the same time Mr. Wiley said that the board is drastically cutting back on its regulatory burdens.

Do you agree with his assessment?

Mr. WASILEWSKI. I would say this: That the FCC has made an honest attempt to cut back on its regulation. My comments, I think, went to the overall—my comments were specifically directed not so much to the FCC but in the overall context of Government itself. Not only are we subject to FCC regulations but we are subject to other types of regulation businesses deal with, namely the FTC, and many others.

Mr. Wiley said that they cut back to a two-page radio application blank; but oddly enough, after cutting back to the two-pages, there are 30 pages of directions as to how to fill it out. And so on the one hand, I know one of our broadcasters reduced that two-page application blank to one page by reducing it by Xerox and then we had a one-page application blank. But it's not just the size, it's how much added information you have to supply.

I think they have been trying to cut back, though. I really do.

Senator CANNON. You made the recommendation for all-channel legislation and pointed out that the Senate acted on that last year. If I remember correctly, I think I voted against it because of the cost involved. But I would like to have your cost estimate as to the requirement that all cars be equipped with AM/FM.

What is the best estimate as to the cost, the added cost to the purchaser?

Mr. WASILEWSKI. Sir, I don't have that answer readily available. I can respond this way, however. We have just budgeted an amount of money to work with the public radio entity and to do a survey of the costs involved in the manufacture of automobile radios, to see exactly what would be the answer to your question; namely, to find out what is the actual cost of putting together AM and FM in an automobile.

There have been various estimates, which I can't pull out of my memory right now, but we are engaging in a research study to come up with that answer.

Senator CANNON. When do you expect to have the results of that study?

Mr. WASILEWSKI. May I turn to one of my colleagues and see if anybody has that answer?

Probably about 2 months, sir.

Senator CANNON. Will you supply the Committee with the results of that study when you get it?

Mr. WASILEWSKI. Yes. I know this is a study done in concert with another organization, but I don't think they would have any hesitancy. It's a jointly financed operation.

Senator CANNON. Recently the NAACP, NOW, and the Latino coalition petitioned the FCC to investigate the hiring practices of 295 television and radio stations. That is a major complaint, and we understand several of the stations involved have no women or minority employees.

Do you have any comments on that point?

Mr. WASILEWSKI. Well, I think that if they have no women or minority employees, that under the present situation—unless there are unique circumstances exempting them from that requirement—that they are not operating very wisely. That would be my first comment.

I think, on the other hand, in distinction to that, I think the broadcasting industry has perhaps one of the best records of any industry in the pursuit of equal opportunity for women and minorities. I think that the statistics that have been filed with the FCC by these various groups would so indicate. But on the other hand, that doesn't make us perfect, and that is their point.

Senator CANNON. Could you furnish us with the figures as to what percentage of station management employees are minority and what percentage are women? If you don't know that off hand, I am talking about your association.

Mr. WASILEWSKI. I don't believe we have that in our files, but the FCC may. We could work with them and get it.

Senator CANNON. See if you can get that information and supply us for the record, if you would.

Mr. WASILEWSKI. All right. The percentage of—

Senator CANNON. Percentage of station management employees that are minority and the percentage that are women.

Mr. WASILEWSKI. All right, sir.

Senator CANNON. We are talking about station management.

Mr. WASILEWSKI. Yes, sir.

Senator CANNON. Thank you very much for a very fine statement. We appreciate you being here.

Mr. WASILEWSKI. Thank you, Senator.

[The following information was subsequently received for the record:]

The percentages of women and minorities who held positions as managers or officials in commercial television in the United States during 1977 were as follows: women, 19.6 percent; total minorities, 8 percent; Negroes, 4 percent; Orientals, 0.8 percent; American Indians, 0.4 percent; Spanish Americans, 2.9 percent. Source: Federal Communications Commission, Equal Opportunity Trend Report, February 11, 1978.

Senator CANNON. Our next witness, Mr. Herman W. Land, president, Association of Independent Television Stations, Inc.

STATEMENT OF HERMAN W. LAND, PRESIDENT, ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC., ACCOMPANIED BY LEAVITT J. POPE, PRESIDENT, WPIX, NEW YORK, N.Y.

Mr. LAND. Thank you, Senator.

Mr. Chairman, I'm fortunate to have our chairman with us this morning, Mr. Pope, president of WPIX, New York, who can answer some of the questions I may not be able to field.

Senator CANNON. Good.

Mr. LAND. I'm Herman W. Land, I'm president of the Association of Independent Television Stations, Inc., or INTV, which is located in New York City.

I appreciate the opportunity to be here and tell you something about the independent segment of the television industry.

We have three functions: One: To voice the independent station interests and concerns in the legislative-regulatory area. Two: To present the independent station point of view within the industry. Three: To represent the independent stations to advertisers and advertising agencies.

We have 48 station members in large and small markets—26 UHF and 22 VHF stations.

May I ask the Chairman to accept the material in the back for the record?

Senator CANNON. It will be made a part of the record.

Mr. LAND. My main purpose in these remarks is to heighten this committee's awareness of the independent television station, in the hope that when you consider national communications policy, among the many questions you ask, you will ask one more: How will this affect the independent television stations and the public they serve?

Within the television system, the independent station represents the network alternative, the added choice and diversity. Its contribution to American society grows daily in quality and significance. Any serious consideration of the future of our communications system must, I submit, take into account the role and potential of the independent segment of the television industry.

As you know, an independent station is one that does not have what is called a "primary" affiliation with one of the three networks, ABC, CBS, NBC. It may carry an occasional network program when the primary affiliate of the network in the market fails to clear and the network and its advertisers seek another local outlet as a consequence. But, for the most part, the independent station operator, unlike his affiliate counterpart, is directly responsible for his total program schedule, sign-on to sign-off. This is a fateful distinction which conditions competitive life in the marketplace.

Despite the obvious disparity of resources between independent station and network, the independent segment has been advancing steadily. The Nielsen Co. tells us that the independent stations reach an average of 34,168,000 different, that is, unduplicated, television households per week. That's as of last November. That

represents a 10 percent increase over 1975. To that we must add millions more who view the independent stations by means of cable's distant signal importation. In short, independent television broadcasting is a very substantial undertaking and is making a major contribution to American society.

There is still a tendency in many places to think almost exclusively in network terms when discussing audiences and programs. Yet, the fact is that more people are watching the independents than ever before and that in the major markets, in particular, the independent station share of the audience can equal or even surpass that of the networks in certain day parts.

For example, in New York City there are three network owned-and-operated and three independent stations. Between the hours of 5 and 8 p.m., this past February, the three independents together enjoyed a 42 percent share of viewing, according to the Arbitron rating service. New York, it may be noted, is the home of the network flagship stations.

In Los Angeles, where four independents compete with each other and three network owned-and-operated stations, aggregate viewing of the independent stations totaled 58 percent. In other words, during this 3-hour period, substantially more than half the viewing audience of Los Angeles was watching the independent stations.

Equally significant is the rapid progress of the Chicago independents, where three of them compete with three network owned-and-operated stations. Two of the independents are UHF stations, only one a VHF. Yet, the three together managed to achieve a 46 percent share of viewing during the same period. Again, almost half of the total available audience!

The big challenge, of course, remains prime time, where we meet the network schedules head on. But here, too, progress is being made. This very week we are seeing the most ambitious program project ever undertaken by the independents come to fruition—Taylor Caldwell's "Testimony of Two Men." This is a six-part mini-series dramatizing a best-selling novel. Within the industry, the project is known as "Operation Prime Time." Its significance stems from the fact that this expensive series is being directly financed by the stations, both independent and network affiliate. Indeed, there are many more affiliated stations than independents in the 92-station lineup.

Senator CANNON. Who produces that particular product?

Mr. LAND. MCA, the largest television production company in the country.

Senator CANNON. You buy directly from them for the independents or just ones who want it, or what?

Mr. LAND. This series is financed up front with production money coming from a group of 92 stations which are financing the project on a cooperative basis. There is a steering committee made up of five managers of independent stations. They are the spearhead of the project; the program is available to the total industry. More affiliates are involved than independents because there are more affiliates. But the program itself is produced by MCA.

Senator CANNON. Basically, you have about the same kind of a structure then as the networks, they produce their show and make it available to their affiliates.

Mr. POPE. The difference, sir, is that in this instance, the stations bought the programing by collectively agreeing to pay MCA what it cost to produce it. Then each station sold the programing independently in its own market. There were a couple of exceptions in which we offered national advertisers the opportunity to buy advertising on all the stations, but in general it was sold locally in each market by the member stations.

Senator CANNON. But there are some instances where the advertising is sold nationally and that advertising goes to the independent, as a part of the product; is that right?

Mr. POPE. That's correct, yes.

Senator CANNON. In case the advertising isn't sold nationally, then the independent must provide his own advertising revenue for that product?

Mr. LAND. Correct.

Mr. POPE. We actually decided we did not want to sell very much of it on a network basis but reserve it largely for local sale and did so, deliberately selling only 2 minutes on a network basis and the remaining time for local sale.

Senator CANNON. All right.

Mr. LAND. As I said, the series is produced by MCA, the largest television production company in the country, which thus joins the Norman Lear organization in making a serious effort to develop a fourth market, distinct from the network market.

Paramount recently announced that it was setting up a division to develop fourth market programing on a major league scale. Other important Hollywood organizations are similarly exploring the possibilities of creating fresh programing for this burgeoning fourth market.

It's interesting to ask what accounts for this new producer interest in working with the independent stations. The producers tell us that we offer them the only serious remaining opportunity within the system to go beyond three national customers, to expand their own marketing opportunities.

A second pressure working toward the development of the fourth market stems from growing network constraints that advertisers say are making life more difficult for them. They too, in many instances, would like to find new programing and scheduling opportunities for their advertising.

The third pressure arises from the independent station itself. In the past decade we have witnessed a growing professionalism in all areas of station operation. In the past few years, in particular, the independents have realized that if they were to make serious progress in building audiences in prime time, they would have to venture far beyond their customary program areas and offer first-run programing challenges to the networks. We are just at the beginning of that process.

What is important to understand is that any fourth market development must rest on the independent stations as the cornerstones.

Just as our stations are learning to work together to create new entertainment programming, so they have proved capable of cooperating in the development of an independent news service. The major obstacle to the development of full-service news operations among the independent stations has been a virtual impossibility of obtaining national and international coverage in any way comparable to that enjoyed by the networks. TVN, a bold noble effort at setting up such a service to stations failed, largely because of long lines cost.

A year and a half ago, the independent stations created by ITNA, the Independent Television News Association. It provides a full national and international news service to its members. Each member station serves as a regional news bureau feeding the system. A small national staff is maintained in Washington. International news is obtained through Visnews, the British company. What makes the news system possible is the satellite, which allows for economical news distribution.

Three of our members now own earth stations. Other members are making use of the existing earth stations in major markets. What we foresee is a growing use of satellites as earth stations proliferate in the broadcast industry. Not only are they important for the distribution of news, but for sports and other special events. There is an enormous cost advantage over long lines. Moreover, as you are undoubtedly aware, earth stations' costs are coming down. A national earth station grid will make possible the economical formation of ad hoc networks on a national and regional basis. This progress is by no means inevitable. Much depends on maintaining a legislative and regulatory environment hospitable towards this kind of forward movement. That is why I should like to add my voice to those who are opposing the Bell bill, the Consumer Communications Reform Act. Creating a telephone company monopoly over new technology is tantamount to removing the competitive pressures that have made it possible for independent stations to find new ways to receive and transmit their programs. Not only satellite, but microwave transmission is involved. We have learned the hard way how important it is to have competitive signal carriage services available.

We have had a continuing battle with A.T. & T. over long lines costs. Our problem stems from our unique position in the Bell System. The networks, and their affiliates through them, can enjoy cost savings as contract users. We are classified as occasional users. The occasional rate is always disproportionately high when compared to the contract rate. This gives the network and its affiliates important built-in cost advantages over the independents.

It is our hope that the committee will take a dim view of the Bell bill and act accordingly.

There is another potential obstacle to our full development that I'd like to call to this committee's attention. As you know, a very important part of the independent stations' service to the public is the broadcasting of sports. If you examine exhibit B, you will see some very substantial independent station sports schedules, covering baseball, hockey, basketball, tennis, local high school football, et cetera. With the recent court decision vacating the pay cable rules, we face the prospect of potential loss of some or most—

certainly the most popular—of the sports programs we carry. Given a box office condition it's easy to see how only a limited number of paying customers is necessary to make it financially attractive for a sports club operator to shift from over-the-air to pay cable.

I don't think there can be much argument over the statement that the American sports fan takes his sports very seriously. Indeed, the American public has a running love affair with sports.

Individual Members of the Congress have stated that, in their opinion, Congress would not permit the public to lose major sporting events to pay cable. Usually, you hear references to the world series and the super bowl in this connection. I should like to emphasize very strongly to this committee that the sports fan does not distinguish between national and local where sports are concerned. He views both with the same passion.

Whether it will take a congressional resolution or legislation to express the congressional will and intent on the sports question, I don't know. Whatever form that expression takes, I would urge, on behalf of the sports public and the local stations that it be all-embracing, that it emphasize local sports.

The pay cable issue is part of a larger question: Whether a communications system which makes appropriate use of technological innovation is best achieved through an orderly process characterized by constraints geared to the public interest, or through a market place free-for-all. We come down on the side of an orderly process which respects the social values involved. In this discussion, the independent stations enjoy a rather curious distinction: Ours are the signals which are imported by cable systems. Thus, we are cast in two roles: As instruments of diversity in distant markets, and as local broadcast institutions in our own markets.

When we examine the broadcast-cable complex that is developing, we find ourselves, in the main, concluding that whatever the presumed value of distant coverage may be, a station's first obligation is to its own community. Our starting point, then, is that regardless of how the communications system is to advance, the social priority must go to preserving the local station as a viable institution.

The threat of unrestricted signal importation is most serious in the case of the UHF independent station, particularly in the smaller market, with its smaller economic base. Furthermore, it is generally agreed by students of the subject that television's future expansion will largely take the form of independent UHF stations. This expansion will be limited if cable and pay cable go their unrestricted ways. Such an outcome would represent a significant social loss to the communities concerned.

The cable argument will go on for a long time, I'm sure. At this point, I merely wish to suggest that the vision of an unfettered cable system ushering in a communications millenium contains within it the potential of much media mischief and social damage.

Clearly, we think there is much potential left in the UHF allocation of the spectrum, and we therefore frown on efforts to wrest portions of it away for other uses where social values have yet to be proved anywhere near the equal of broadcast television's.

The local broadcast institution has achieved a remarkable presence in American life through its news, public affairs, and entertainment service. This service continually advances in depth and quality.

I suggest that as you look to the future, you take into account the expanding role of the independent station; that, as I said earlier, when you are considering national communications policy, you ask one more question along with the others you will be asking—how will this affect the independent television station and the public it serves?

Thank you.

Senator CANNON. Thank you for a very fine statement.

What about the question of license renewal? Do you believe that the current FCC licensing and renewal procedures are too burdensome and do you think license renewal legislation is a compelling issue, more so than cable TV?

Mr. LAND. I have to give you a purely personal opinion since that question is a broad industry question rather than a specialized independent television question, I am sure you can see that.

I think that Mr. Wasilewski's statement pretty well sums up the way I feel about it. We need some stability in the system, whether it is 5 years, 6 years or whatever it may be. I think at some point a decision will have to be made to give some stability to the system. Whether it is as burning an issue as pay cable—I don't think it is from the standpoint of our specialized interest at this point.

Senator CANNON. Yesterday the question was raised in our discussions about the networks policy of providing programs in advance of airing for review. Do the broadcasters you represent generally object to the short leadtimes they have for prescreening?

Mr. LAND. Our stations are independent. As a rule they don't get many programs from the networks. There is an occasional secondary clearance, as it is called, when a network affiliate in the market does not provide the primary clearance for the program. So most of our programming has nothing to do with the network.

The bulk of independent station programming consists of off-network reruns, feature pictures, original programs, talk shows, and sports. So the problem as a practical matter doesn't arise.

Senator CANNON. Take the program you said started last night, your MCA program. Did the stations have the opportunity to rescreen on that?

Mr. LAND. Oh, yes. We can get the testimony of one man here, Mr. Pope, on that.

Mr. POPE. That program of course came to the station and each station saw it and decided what it wanted to do with it before it put it on the air.

Senator CANNON. How far in advance?

Mr. POPE. Well, we got the first episodes of that about 2 weeks before its play date.

As a matter of fact, we showed it widely to writers in the papers and so on and tried to get advance publicity about it before it ran.

Senator CANNON. What percentage of the persons employed by your members are minorities and women?

Mr. LAND. I don't have that information.

Senator CANNON. Do you have it available or you just don't have it here?

Mr. LAND. I don't have it at all.

Senator CANNON. What proportion of the programing by your members is directed at children and what kinds of programs and what times of day?

Mr. POPE. We don't have any specific figures for the 48 members of the association, sir.

Senator CANNON. That would be up to each individual member, he would have his own particular result on that question; is that it?

Mr. POPE. Yes, the one general thing is that the independent stations in general tend to program a higher percentage of programs directly to children than do most other network affiliated stations.

Mr. LAND. But each has a different schedule. There is no overall schedule, therefore we can't give you—

Senator CANNON. Do the broadcasters you represent feel the networks unreasonably dominate prime time programing?

Mr. POPE. I think the answer is yes, sir.

Senator CANNON. Well, are there sources readily available for alternative programs to what the networks provide?

Mr. LAND. Not really and that is the big problem. There are sources, there are first the networks themselves, which provide what we call the off network reruns. That is, a program series will run 4 or 5 years, build up a backlog of 100 programs or more and then go into what is known as syndication, being sold to the stations. That becomes perhaps the major source of programing for independent stations, which must fill up a total schedule from sign-on to sign-off. You can see them right here in Washington.

Then you have motion picture film libraries which are also a very important source, but there has been a decreasing supply of suitable films in recent years.

Then you have sports which become especially important in markets where there is more than one independent station. Where you get two and three you begin to get a more specialized type of emphasis.

Then you have talk shows, original programs like the "Merv Griffin Show" for example, which are created for the purpose of syndication, or Mike Douglas. These will play also on affiliated stations which may be able to carry them.

But the big challenge which arises from the economics of the system is to create programing of a very exciting kind, with high quality and also with sufficient volume—to compete directly with network system.

It is very difficult. There is actually not a sufficient supply of first-rate programs available. It is a tremendous scramble, especially in the multiindependent station markets. Anything you could add to that?

Mr. POPE. No.

Senator CANNON. You talked about the Consumer Communications Reform Act, and you advocate competition.

You are opposed to the so-called Bell bill. Yet when you talk about cable you worry about damaging the existing excellent system. Isn't that kind of an inconsistent position?

Mr. LAND. It may be, I don't know. But I don't think so.

Senator CANNON. It sounds like it to me. I would just like to have your reaction.

Mr. LAND. I don't think so. We are talking in one case, in the telephone company's case, as I understand it, about creating a monopoly. Complete monopoly, which would put the telephone company in the position of controlling all new communications developments.

Being the only source, that seems to me quite different from the pay cable situation.

Independent stations are not against pay cable or against competition with pay cable on a straight-forward basis. If pay cable can come up with its own programming and sell it, fine. But what you have here is an unequal economic battle in the long run where only a handful of homes that have the means to pay and the interest in paying can enjoy a semimonopoly, let's say, on sporting events.

And thus the rest of the public, the majority of the public, lose those programs.

Something is amiss there. That is not to say that the rules created by the Commission to handle this problem are ideal or that we subscribe to them completely. But it seems to us that there was at least some reasonable attempt made to come to grips with a difficult question and with conflicting values and conflicting interests and rights here.

The overriding right has to be the right of the public to view, we think—maybe because we have a self-interest in it, and that is obvious—but we think there is a public interest here in maintaining that service to which the public feels entitled and for which there is no direct charge.

I think there is a real difference, but as I said earlier, I am not actually certain.

Senator CANNON. In exhibit A, at the bottom of the page, you show interim members. What is an interim member?

Mr. LAND. That is probably a member who is not yet on the air, but waiting to go on the air. We have just a nominal fee for them and we try to help them.

Senator CANNON. I see. So they are really not broadcasting yet.

Mr. LAND. Or else they have just started and they are so poor, you know, and will be for a long time, that we will carry them for a while.

Senator CANNON. Thank you very much for your fine testimony. We appreciate it. Thank you.

[The attachments referred to follow:]

EXHIBIT A

INTV ACTIVE MEMBERSHIP ROSTER

KBHK—San Francisco, KBMA—Kansas City, KCOP—Los Angeles, KDNL—St. Louis, KHJ—Los Angeles, KHTV—Houston, KMPH—Fresno, KPHO—Phoenix, KPLR—St. Louis, KPTV—Portland, KSTW—Seattle-Tacoma, KTLA—Los Angeles, KTTV—Los Angeles, KTVT—Fort Worth-Dallas, KTVU—San Francisco-Oakland,

KTXL—Sacramento, KVVU—Las Vegas, KWGN—Denver, KXTX—Dallas, KZAZ—Tucson, WCIX—Miami, WDCA—Washington, D.C., WDRB—Louisville, WFLD—Chicago, WGN—Chicago, WGNO—New Orleans, WHAE—Atlanta, WKBD—Detroit, WKBS—Philadelphia, WLVI—Boston, WNEW—New York, WOR—New York, WPGH—Pittsburgh, WPHL—Philadelphia, WPIX—New York, WRET—Charlotte, WTAF—Philadelphia, WTCG—Atlanta, WTCN—Minneapolis, WTOG—St. Petersburg-Tampa, WTTG—Washington, D.C., WTTV—Indianapolis, WUAB—Cleveland, WUTV—Buffalo, WVTV—Milwaukee, WXIX—Cincinnati, WYAH—Norfolk-Portsmouth, and XETV—San Diego.

Interim Members: KWIC Communications Corporation, Salt Lake City, Quadrus Communications Corporation, Rockford, Illinois.

TYPICAL SPORTS CARRIAGE OF INDEPENDENT TELEVISION STATIONS, 1977

Station	Sport	Team	Number of events
KBMA—Kansas City	Baseball	Royals	40-45
	do	Kings	20
	Football	Chiefs	
KDNL—St. Louis	do	College bowls	5
	Hockey	Blues	21
	do	NHL	9
KTLA—Los Angeles	Basketball	Pizza Hut tournament	
	Baseball	Angels	30
	Football	UCLA	10
	Basketball	UCLA	25
	do	Pizza Hut tournament	
KTTV—Los Angeles	Various		
	Baseball	Dodgers	24
	Tennis	World TV championships	10
	Football	High School All Stars	
	do	Bowls	5
KTVT—Ft. Worth-Dallas	Various	Hughes Network Feeds	
KTVU—San Francisco-Oakland	Baseball	Giants	20
	do	Golden State Warriors	20
	Football	College bowls	5
	Soccer		1
	Tennis	World Team Tennis	2-6
KWGN—Denver	Basketball	Nuggets	16
	Hockey	NHL	9
	Football	College bowls	5
	Hockey	Colorado Rockies	6
	Basketball	Colorado State High School—(boys)	5
	do	do	3
	Horse racing		3
KXTX—Dallas-Ft. Worth	Hockey	NHL	13
	do	Stanley Cup playoffs	9
	Football	College bowls	5
	Baseball	Cubs	142
WGN—Chicago	do	Bulls	13
	do	Illinois High School	12
	Gymnastics	do	1
	Basketball	Pizza Hut tournament	
	Football	College bowls	5
WKBS—Philadelphia	Basketball	Philadelphia 76'ers	22
WOR—New York	Baseball	New York Mets	120
	do	do	25
	do	New York Knicks	32
	Hockey	New York Rangers	28
	do	NHL playoffs	25
	do	New York Islanders	25
	do	Monday night game of week	13
	Horse racing	Various local tracks	104
	Wrestling	Syndicated	
	WPHL—Philadelphia	Baseball	Phillies	76
Tennis		Tournament of Champions	14
Basketball		College	20
do		NIT	1
WPIX—New York	Football	College bowls	
	Baseball	New York Yankees	80
	Tennis	New York Apples	4
	Football	New York Giants	8
	Soccer	New York Cosmos	12

TYPICAL SPORTS CARRIAGE OF INDEPENDENT TELEVISION STATIONS, 1977—Continued

Station	Sport	Team	Number of events
WSBK—Boston	Hockey	Boston Bruins	60
	Baseball	Red Sox	100
	Hockey	All Stars	1
	.....do	NHL	9
	.....do	Stanley Cup playoffs	10
	Basketball	College All Star Classic	1
	Football	Bowl games	5
WSNS—Chicago	Baseball	White Sox	125
	.....do	College	40
	Hockey	Stanley Cup playoffs	10-14
	Tennis	World TV championships	26
	Hockey	NHL game of the week	14
WTAF—Philadelphia	Hockey	Philadelphia Flyers	50
	Boxing	World TV championships	24
	Football	College	
	Wrestling		
WTCG—Atlanta	Bowling	Two hours weekly	
	Baseball	Atlanta Braves	77
	.....do	Hawks	25
	Hockey	Flames	25
	Soccer	North American Soccer League	5
	Basketball	NBA game of the week	25
	Football	Bowl games	
	Basketball	College	13
	.....do		
	Wrestling		
WTCN—Minneapolis	Boxing		
	Karate		
	Motorcycle racing		
	Hockey	Minnesota North Stars	30
	.....do	Stanley Cup playoffs	5
	.....do	University of Minnesota	3
	.....do	Minnesota State tournament—(boys)	7
	Basketball	Minnesota State tournament—(girls)	8
	.....do	University of Minnesota	5
	Baseball	Minnesota Twins	50
	Football	Minnesota Vikings	
WUTV—Buffalo	.....do	Bowl games	5
	Hockey	NHL	29
	Basketball	NIT	1
	Football	Notre Dame	16
	.....do	Bowl games	5
	Tennis	World TV championships	2
XETV—San Diego	Basketball	NIT	1
	Baseball	Padres	14

INDEPENDENT TELEVISION STATIONS ON AIR AND AT CP STATUS AS OF JULY 15, 1976

Call letter and channel number	VHF	UHF	Market	Specialty
INDEPENDENT TELEVISION STATIONS ON AIR				
KBHK-TV—44		×	San Francisco, Calif.	
KBSC-TV—52 ^{1 2 4}		×	Corona-Los Angeles, Calif.	Daytime: kids programing; prime time: multiple ethnic.
KBMA-TV—41		×	Kansas City, Mo.	
KCOP—13	×		Los Angeles, Calif.	
KDNL-TV—30		×	St. Louis, Mo.	
KDOG-TV—26		×	Houston, Tex.	
KDTV—60 ¹		×	San Francisco, Calif.	Spanish.
KEMO-TV—20 ¹		×	do	Do.
KFTV—21 ¹		×	Hanford-Fresno, Calif.	Do.
KGSC-TV—36		×	San Jose, Calif.	
KHJ-TV—9	×		Los Angeles, Calif.	
KHOF-TV—30 ¹		×	San Bernardino, Calif.	Religious.
KHTV—39		×	Houston, Tex.	
KIKU—13 ^{1 2 3}	×		Honolulu, Hawaii	Japanese.
KLOC-TV—19 ¹		×	Modesto, Calif.	Spanish.
KLXA-TV—40 ¹		×	Fontana, Calif.	Religious.
KMEX-TV—34		×	Los Angeles, Calif.	Spanish.
KMPH—26		×	Fresno-Tulare, Calif.	
KMUU-TV—31 ^{1 2 5}		×	Sacramento-Stockton, Calif.	Spanish/Religious.
KMXN-TV—23 ¹		×	Albuquerque, N. Mex.	Spanish.
KPAZ-TV—21 ¹		×	Phoenix, Ariz.	Religious.
KPHO-TV—5		×	do	
KPLR-TV—11		×	St. Louis, Mo.	
KPTV—12		×	Portland, Oreg.	
KSTW—11		×	Tacoma-Seattle, Wash.	
KTLA—5		×	Los Angeles, Calif.	
KTTV—11		×	do	
KTVT—11		×	Fort Worth-Dallas, Tex.	
KTVU—2		×	Oakland-San Francisco, Calif.	
KVOF-TV—38 ^{1 2}		×	San Francisco, Calif.	Religious.
KTXL—40		×	Sacramento-Stockton, Calif.	
KVVU—5	×		Las Vegas-Henderson, Nev.	Spanish.
KWEX-TV—41 ¹		×	San Antonio, Tex.	
KWGN-TV—2	×		Denver, Colo.	
KWHY-TV—22 ¹		×	Los Angeles, Calif.	Financial/multiple ethnic.
KXTX-TV—39 ¹		×	Dallas, Tex.	Religious.
KZAZ—11	×		Tucson-Nogales, Ariz.	
WANC-TV—21 ¹		×	Asheville, N.C.	Religious.
WBFF—45		×	Baltimore, Md.	
WBTV-TV—68 ¹		×	New York-Newark, N.J.	Financial/multiple ethnic.
WCFC—38 ¹		×	Chicago, Ill.	Religious.
WCUI-TV—26 ¹		×	do	Spanish.
WCIX-TV—6	×		Miami, Fla.	
WDCA-TV—20		×	Washington, D.C.	
WDRB-TV—41		×	Louisville, Ky.	
WFCB-TV—45 ^{1 2}		×	Hollywood-Miami, Fla.	Religious.
WFLD-TV—32		×	Chicago, Ill.	
WGGS-TV—16 ¹		×	Greenville, S.C.	Religious.
WGN-TV—9	×		Chicago, Ill.	
WGNO-TV—26		×	New Orleans, La.	
WGPR-TV—62		×	Detroit, Mich.	
WHAE-TV—46 ¹		×	Atlanta, Ga.	Religious.
WHCT-TV—18 ¹		×	Hartford, Conn.	Do.
WHKY-TV—14 ¹		×	Hickory, N.C.	Do.
WHMB-TV—40 ¹		×	Indianapolis, Ind.	Do.
WJAN—17		×	Canton, Ohio	
WKAQ-TV—2 ^{2 3}	×		San Juan, Puerto Rico	Spanish.
WKBD-TV—50		×	Detroit, Mich.	
WKBS-TV—48		×	Philadelphia, Pa.	
WKID—51 ¹		×	Fort Lauderdale, Fla.	Financial/Spanish.
WKBM-TV—11 ^{1 2 3}	×		Caguas-San Juan, P.R.	Spanish.
WLTV—23 ¹		×	Miami, Fla.	Do.
WLVI-TV—56		×	Boston, Mass.	
WNEW-TV—5	×		New York, N.Y.	

INDEPENDENT TELEVISION STATIONS ON AIR AND AT CP STATUS AS OF JULY 15, 1976—Continued

Call letter and channel number	VHF	UHF	Market	Specialty
WNJU-TV—47 ¹		×	New York-Newark/Linden, N.J.	Spanish.
WOLE-TV—12 ^{1 2 3}	×		Aguadilla-Mayaguez, P.R.	Do.
WOR-TV—9		×	New York, N.Y.	
WORA-TV—5 ^{1 2 3}	×		Mayaguez, P.R.	Spanish.
WPGH-TV—53		×	Pittsburg, Pa.	
WPHL-TV—53		×	Philadelphia, Pa.	
WPIX—11	×		New York, N.Y.	
WRET-TV—36		×	Charlotte, N.C.	
WRIK-TV—7 ^{1 2 3}	×		Ponce, P.R.	Spanish.
WRIP-TV—61		×	Chattanooga, Tenn.	
WSBK-TV—38		×	Boston, Mass.	
WSMW-TV—27		×	Worcester, Mass.	
WSNS-TV—44		×	Chicago, Ill.	
WSUR-TV—9 ^{1 2 3}	×		Ponce, P.R.	Spanish.
WSWB-TV—35 ⁶		×	Orlando, Fla.	
WTAF-TV—29		×	Philadelphia, Pa.	
WTCG—17		×	Atlanta, Ga.	
WTCN-TV—11	×		Minneapolis-St. Paul, Minn.	
WTOG—44		×	St. Petersburg-Tampa, Fla.	
WTTG—5	×		Washington, D.C.	
WTTV—4	×		Indianapolis, Ind.	
WUAB—43		×	Cleveland, Ohio	
WUTV—29		×	Buffalo, N.Y.	
WVEO—44 ^{1 2 3}		×	Aguadilla, P.R.	Spanish.
WVTV—18		×	Milwaukee, Wis.	
WXIX-TV—19		×	Cincinnati, Ohio	
WXON—20		×	Detroit, Mich.	
WXTV—41 ¹		×	New York-Paterson, N.J.	Spanish.
WYAH-TV—27 ¹		×	Portsmouth, Va.	Religious.
INDEPENDENT TELEVISION STATIONS WHICH WENT ON AIR SINCE JULY 15, 1976				
WATL-TV—36		×	Atlanta, Ga.	
WCPT-TV—55 ⁷		×	Crossville, Tenn.	
WZTV-TV—17		×	Nashville, Tenn.	

¹ Specialty station, as defined by the FCC.

² Not included in specialty stations listed on page 5 of FCC Report No. 12086, dated July 2, 1976-G (67273), entitled "Reconsideration of Cable TV Specialty Station Rule Denied (Docket 20553)".

³ Hawaiian (1 V) and Puerto Rican (6 V's, 1 U) stations included since these stations were part of the FCC Television Listing dated October 14, 1975, which was the basic document from which stemmed the INTV research analysis.

⁴ KBSC Corona-Los Angeles currently carries kids programming during daytime and multiple ethnic (Japanese/Korean) programming in prime. The transfer of ownership is pending FCC approval; however, the incoming management has indicated future plans for a pay-TV operation for this station.

⁵ KMUV Sacramento changed format from conventional programming in 1975 to Spanish/Religious programming effective June 1, 1976. Sale of station is in transition, but the new management indicates that the same specialty programming will be continued.

⁶ WSWB Orlando, whose sale to new ownership is in transition, is currently operating as a conventional commercial independent. Future programming format is not known at this time.

⁷ Satellite S-2 Station to WZTV-TV Nashville, Tenn.

INDEPENDENT TELEVISION STATIONS AT OR NEAR CP STATUS

Call letter and channel number	UHF	Market
KAIL—53 ^{1 2}	×	Fresno, Calif.
KSCI—18 ^{1 3}	×	San Bernardino, Calif.
KWIC—20 ⁴	×	Salt Lake City, Utah

¹ Quadrus Communications Corp., division of Lloyd Hearing Aid Corp., Rockford, Ill. Management has applied for UHF Channel 39. They advise that, at this point, they are the first applicant on the next cutoff list for determination late summer or early fall for FCC approval of license and construction permit. The station will carry conventional programming.

² Management advises that plans to acquire programming and begin on-air operation are still fairly indefinite. Since they are working from an extremely low economic base, and in an effort to get on the air sooner, they will most likely go with Spanish and/or religious programming.

³ The management describes this station as an "educationally oriented commercial independent." There are no plans to carry any syndicated or conventional-type programming. They want all of their programs to be "positive and upbeat" no matter if it is a cooking show, news or science presentation, or general entertainment (drama/comedy/variety). As a result, they are producing all of their programming themselves. They expect to go on the air within the next six months.

⁴ Management indicates that this station will carry conventional programming.

SUMMARY OF INDEPENDENT TELEVISION STATIONS

	VHF	UHF	Total
INDEPENDENT TELEVISION STATIONS ON AIR			
Conventional independents	21	37	58
Specialty stations:			
(a) Within continental United States		30	30
(b) Hawaiian (1 V) and Puerto Rican (6 V's/1 U) stations	7	1	8
Total	28	68	96
INDEPENDENT TELEVISION STATIONS AT OR NEAR CP STATUS			
Conventional independents		2	2
Specialty stations		2	2
Total		4	4
Projected totals: 1976-77	28	72	100

¹Includes 36 full-service stations and 1 satellite S-2 station.

Senator CANNON. Mr. Richard C. Block, chairman, counsel for UHF Broadcasting.

**STATEMENT OF RICHARD C. BLOCK, CHAIRMAN, COUNCIL FOR
UHF BROADCASTING**

Mr. BLOCK. Thank you, Mr. Chairman.

Senator CANNON. Mr. Blake?

Mr. BLAKE. Yes.

Mr. BLOCK. Good morning, Senator, we are very pleased to be invited to testify. My name is Richard C. Block, and I am chairman of the Council for UHF Broadcasting.

I would like to depart from the written text and highlight the points I think would be most pertinent in our discussion. First, I would like to say the Council for UHF Broadcasting which is a unique coalition of public and commercial broadcasters, came about 3 years ago when Hartford Gunn, their president, now vice chairman of Public Broadcasting Service, and I decided that UHF needed an advocate in Washington to deal with the FCC and that it had somewhat taken a position—it lost its prominence because of the more attractive, new technologies that were coming along such as satellites and cable.

However, I think both of us realized, and I think our advocacy is that growth is dependent on UHF, but we need help from the Congress and FCC to accomplish the aims that were established in 1962, almost a generation ago or even prior to that, 1962 was the all-channel bill. We need a reaffirmation for mandate for the full development of UHF.

First, I have been in UHF for 23 years. The first station I worked with was in Stockton, Calif., that was an independent. At that time there was not the all-channel bill. The station was financially a disaster area and went off the air after about 2 years. Subsequently I was with a large industrial company and I was the impetus for it going into seven television markets with UHF, all major markets, the stations, six of which are still on the air, and I believe thriving.

Also, I think it is necessary too, for one to understand that there is no such thing as a UHF station, although quite often we hear

that, at least in what service it provides, because in Hartford, New Haven, a UHF station is the National Broadcasting Co. I watched it last Saturday night. In Sioux City, it's CBS. In Louisville, it is the ABC network; in Philadelphia, it's an independent. In Los Angeles, it's a public television station; in Detroit, it's a black-owned independent television station. In San Antonio and other markets, it's a station primarily broadcasting to the Latino community. So UHF has many personas.

Growth in the UHF, I was somewhat shocked to see the other day that one of the FCC Commissioners mentioned at the NCTA convention that he felt that the time had come for the Commission not to be as protective as it has over UHF, because UHF has had really flat growth over the last few years. In 1965, there were about 129 stations, at the last look we had, there are 359. Additionally there are 43 construction permits awaiting to go on the air which would give us about a 212 percent increase in the 12 years since 1965.

When you go into individual categories, 142 stations are network affiliates. In fact, the ABC television network, I believe, in many ways, its ascension was dependent on UHF. It was something they didn't talk a great deal about because quite often there is a lot of anxiety and prejudice about UHF, unfair prejudice in many respects, but UHF was a very important part of their growth. Twenty-nine percent of all commercial stations are UHF and about 61 percent of public television stations are UHF.

Once again, I would like to reiterate that growth is going to come from UHF. Some say, particularly some of my friends in public television feel that financially UHF doesn't offer much of a promise. I think we might consider Metromedia, Taft, Scripps Howard, Kaiser, Capital Cities Broadcasting, Store, Combined Communications is all, are all publicly held companies, and that UHF, both from the independent standpoint and network affiliates, was profitable in the last year reported by the FCC, that it is a fairly healthy medium.

We have attached to our statement an action plan which in 1975 was submitted to the FCC. We tried in this action plan or white paper to state in clear prose what the problems of UHF were and how they could be solved. For the most part, we have focused on technological problems. Quite simply, we have said, Chairman Wiley—who has been a great help to us—spoke about how antennas are now going to be attached to the set.

There is another problem we focused on, the noise figure, it sounds like some kind of engineering gobbledygook, but in simple terms the noise figure is the sensitivity of the television set. Being able to turn your set and getting a clear picture from channel 20 or 26 with an optimum amount of power from those stations. We have proposed to the Commission that the noise figures be reduced in an orderly way from, the figure now is 18 decibels to 14 in 6 months, from 14 to 12 in 18 months and from 12 to 10.

Senator CANNON. What is required to reduce those noise levels?

Mr. BLOCK. To reduce the first—we dealt very closely with the industry—was merely to tighten up on quality control standards. Many sets are coming out with a better noise figure than those established in 1962.

Senator CANNON. That means if you lower the noise figure, you would be able to get the station easier when you do your fiddling around with the dial?

Mr. BLOCK. Yes, sir, in a dramatic way, for every three points the noise figure comes down the station is doubling its power.

Senator CANNON. Why can't you just switch a number to a specific channel and get a click instead of having to adjust for it?

Mr. BLOCK. The FCC did in 1974, at least it became effective then, phased into a situation where—you're referring to the continuous or radio like tuner, where all television sets now manufactured must now have comparable tuning. Comparable tuning in the main is a click tuner. So that any new set you buy now, in fact, for the last year, will have a click tuner.

We think the technology is going to go far beyond that. There are new sets coming out now where one has a hand calculator and each channel comes up independently with no difference.

Senator CANNON. I have one of the little push button things and that automatically goes through the whole thing. It will go first from VHF, then to the UHF spectrum, but you have to press it each time and that does automatically click. But I have one of the older sets which you have to do that fine dial tuning to get the UHF station.

Mr. BLOCK. It is a definite problem and it was not addressed at the time the all-channel bill was enacted, but we think the comparability factor which the Commission used as its rationale for mandating that, the industry go to the click or detent tuner, effective 1974, does carry through to other things for which we are asking and also for the noise figure.

Let me tell you that there is, and I will close with this point, we are concerned that while—and my statement says this—most of the Commissioners, if not all, support growth of UHF, there is some belief or holding at the staff level that the—bringing the noise level down, increasing the sensitivity, has an effect of foreclosing changes in FCC rules which—which station is closer together at some time in the future. In other words, it affects the spectrum.

We have really tried to keep our focus on the technology. We have had to get into this other consideration because we felt, for example, 2 years ago we came in with our action plan. We felt there has been some delay at the Commission because of a—certainly not any ulterior motives, but a—at the staff level, in particular, that trying to—wonders whether the mandate of Congress or ignoring it at times is for the full development of UHF and being more concerned about allocating the spectrum to other services and kind of foreclosing the growth of UHF.

For example, in this week's Broadcasting, there is a story about the FCC economists saying that some channels in Des Moines, Iowa, should be taken away because he doesn't think there will ever be a viable television station there. I think that is a very wrong kind of thinking, it is—and a very narrow kind and that the growth of this medium is proved over and over again. Some people at the Commission don't see it.

We do feel very strongly and request consideration that the Congress reaffirm its mandate for the full development of UHF for

the Commission, as a priority and that it is necessary for the full development of the telecommunications system in the United States, both public television and commercial television and the fourth network to which Herman Land alluded, all of those things are going to be dependent on UHF. To say that it won't work or that a station in Des Moines, Iowa, will never work, I think is, that has been the kind of thinking broadcasting has had for years.

I certainly, at one time all channels below, above six were thought to be worthless, yet if—the ARB figures just came out happily at the time of the ABC convention in Hollywood and every ABC station, channel 7, in the top 10 market is No. 1.

There was also a time in radio it was thought that the higher part of the band was down in the mud, listen to WTOP or other stations in Washington. It was down in the mud—that just isn't true. Over and over again FM was thought to be nothing more than classical music that would never have a national scope to it. I see now many markets are having more FM listeners than AM.

I think basing the growth of UHF on data from the past is something that is quite dangerous and, I think, risks a precious resource being allocated away from the public. I believe those are the key points. I appreciate being able to divert from my statement.

I do want to say one thing. We have been very pleased with the support we have had from public television, including PBS and Corporation for Public Broadcasting, from the—as well as the National Association of Educational Broadcasters and Joint Council for Educational Telecommunications, from the National Association of Broadcasters and from the Association of Maximum Service Telecasters which played a great role in our being able to be effective over the past 3 years.

Thank you, sir.

[The statement follows:]

STATEMENT BY RICHARD C. BLOCK, CHAIRMAN, ON BEHALF OF THE COUNCIL FOR
UHF BROADCASTING

My name is Richard C. Block. I am Chairman of the Council for UHF Broadcasting.

CUB, as we are called, has worked closely with the following organizations and many, many stations in its efforts to promote the development of UHF television: Corporation for Public Broadcasting, Public Broadcasting Service, Association of Maximum Service Telecasters, Inc., National Association of Broadcasters, Joint Council on Educational Telecommunications, National Association of Educational Broadcasters, and the Association of Independent Television Stations, Inc.

We welcome this opportunity to fill you in on UHF television—its importance, its progress to date and its agenda for further progress, and the obstacles it has encountered in seeking to realize its full potential. UHF is, as you know, Channels 14 through 83. It has suffered severe handicaps in the past in contrast to VHF, Channels 2 through 13. The legacy of those handicaps remains. But you are interested in the present and the future, and so are we.

I. THE IMPORTANCE OF UHF

The development of UHF television is mandated by the public interest. Congress determined when it passed the All-Channel Receiver Act in 1962 that national communications policy must be committed to developing UHF comparability with VHF. Since then Congress, the courts, and the FCC have repeatedly reaffirmed that basic policy decision.

The reason for this policy determination is simple and remains compelling. The VHF channels alone cannot accommodate enough stations to meet the public's need

for more program diversity, more opportunities for minority and female ownership, more networking possibilities, and additional educational stations. These goals cannot be met by pay cable, the wired nation, satellite-to-home broadcasting, optic fibers, or short-spaced VHF drop-ins. They can be met only by a strong UHF.

UHF already plays a vital role in this nation's television service. Nearly two-thirds of the public stations in this country are UHF.

Over one-fourth of the commercial stations are UHF.

There are some 1200 UHF translators now on the air bringing television service to smaller communities and rural areas that they would not otherwise receive. 92% of American homes are equipped to watch UHF television.

UHF's growth particularly in the recent past has demonstrated convincingly that it can be a viable service and that it can meet the policy goals set for it by Congress and the Commission.

II. WAYS OF PROMOTING UHF DEVELOPMENT

There is much that can and should be done to abet UHF's further development in the public interest. Our group developed an Action Plan for UHF improvement which set forth a blueprint of the specific steps that should be undertaken toward this end. We submitted the Action Plan to the Commission in July 1975. There is no single solution, no legislative or agency wave of a magic wand that would create UHF comparability overnight. Progress depends on FCC action and on action by UHF operators and entrepreneurs, receiving and transmitting equipment manufacturers, the service industry, and others.

The FCC can and should enact certain rule changes to further UHF development. But it must take other less formal steps too, such as coordinating technological developments, urging communities to require master antenna systems that serve apartment dwellers and others to carry UHF signals and providing visibility for the enormous strides UHF has achieved. In short, the FCC must assume the leadership role specified for it in Section 1 of the Communications Act.

Let me mention the single most important FCC proceeding for UHF—concerning our proposal to reduce the maximum permissible UHF noise figure in receivers sold in the United States. The maximum UHF noise figure now allowed by FCC regulations is 18 dB, while the average VHF noise figure is less than 7 dB. One doesn't have to know what a dB is to appreciate the significance of this difference, once it is realized that a 3 dB improvement is equivalent to a doubling of power.

Of course, most UHF sets already achieve much lower noise figures than the maximum permitted in Commission Rules. The average is 12.7 dB. In Europe the average UHF noise figure is 9 dB. A 4 dB improvement down to 14 dB is possible in this country immediately, at little or no cost, simply by greater quality control. Subsequent improvements in two steps of 2 dB each can be achieved practically and in the near future.

The proposal is ripe for Commission action after nearly two years of filings and comments. It should be adopted promptly.

III. THE OBSTACLE TO UHF PROGRESS

The biggest obstacle we face in connection with the noise figure proposal and our other endeavors, however, is a two-fold tendency on the part of some to ignore UHF's solid real-world achievements in favor of blue-sky speculations about the potential of other technologies and the demands of other spectrum users for frequencies now allocated for UHF.

With respect to the former I am convinced that most of the Commissioners, if not all, genuinely want to see UHF grow. But UHF is not as glamorous as other issues; it has not competed so successfully for the Commission's attention. Although Chairman Wiley has recently taken an active role, the Commission as a whole has had to rely to a large degree on its staff, and there are some elements in the Commission's staff and elsewhere—most notably the Council on Wage and Price Stability that opposed the noise figure proposal—who are not committed to UHF, who frankly do not accept Congress' commitment of national policy to UHF development. The subcommittee can help overcome this problem by making clear that Congress is not backing away from the national commitment to UHF.

The other part of the obstacle that UHF faces is the demand by other users for frequencies currently allocated to UHF television. The testimony of the Association of Maximum Service Telecasters (MST) with whom we have worked closely addresses this issue in more depth. But let me point out that although our group began by confining its efforts to technological and other improvements to be made in UHF, we soon found that they were impaired by considerations of allocations policy. Thus,

the noise figure proceeding has been delayed because FCC staff members feel that UHF improvements may make it more difficult to give UHF spectrum away to other users. And a very large receiver improvement contract let by the FCC to Texas Instruments seems to be focused more on facilitating reallocation than on better UHF reception.

The goal of promoting UHF development is of course meaningless if there is no UHF spectrum to develop. A commitment to fuller utilization of the UHF band would be seriously undercut by steps looking toward reallocation of part of that band. Here, too, this subcommittee can assist our efforts by reasserting that national policy in favor of UHF must not be thwarted by efforts to give UHF spectrum away to other users on either an exclusive or shared basis.

I have tried today to highlight the most important aspects of the UHF situation and I have purposely avoided listing the myriad proceedings and projects in which we've been engaged. But we will be happy to provide you with more detailed information about any specific topics in which you may be particularly interested. We are also attaching to this testimony the original UHF Action Plan and the cover letter which we submitted to all Commissioners back in July 1975 plus an update which we sent to the Commission on November 23, 1976.

The vigorous support of this subcommittee would greatly assist UHF efforts to realize the public interest goals set for it by Congress back in 1962.

ACTION PLAN FOR FURTHER UHF DEVELOPMENT

SPONSORED BY COUNCIL FOR UHF BROADCASTING, CORPORATION FOR PUBLIC BROADCASTING, PUBLIC BROADCASTING SERVICE, NATIONAL ASSOCIATION OF BROADCASTERS, ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, JULY 21, 1975

Since the enactment of all-channel receiver legislation in 1962, UHF has become an essential factor in American broadcasting. Today more than one-third of the television stations on the air in the United States are UHF stations, including nearly 200 commercial UHF stations and over 60% of the nation's public TV stations. More than 86% of the households using television in the United States have sets equipped to receive UHF, and each week over 30 million viewers in the United States tune to UHF. As audiences have turned to UHF stations, advertising revenues and viewer contributions have increased. In 1973, commercial UHF stations had broadcast revenues of more than \$200 million, and individual viewer contributions to public UHF stations (in the form of subscriptions, gifts, and auction receipts) topped \$10 million in 1974.

Yet despite the advances made by UHF, much remains to be done. UHF still suffers from technical disadvantages as compared to VHF—disadvantages with respect to both home receiving equipment and station transmitting equipment. Fortunately, many of the remaining disadvantages can be cured by means within our grasp—some already in widespread use in other nations.

This Action Plan sets forth a realistic program to sharply lessen the technical disadvantages and make UHF as comparable to VHF as possible. It calls for action by Congress, the FCC and other agencies of government, broadcasters, manufacturers, and organizations interested in the development of UHF. The Action Plan is the cooperative product of five organizations, each firmly committed to the further development of UHF—the Council for UHF Broadcasting, the Corporation for Public Broadcasting, the Public Broadcasting Service, the National Association of Broadcasters and the Association of Maximum Service Telecasters.

The specific actions we propose will result in improved receivers and receiving antennas by:

- (A) Reducing UHF receiver noise;
- (B) Facilitating UHF tuning;
- (C) Improving UHF indoor antennas; and
- (D) Improving outdoor antennas and lead-in wire.

We also propose actions to improve transmitters and transmitting antennas by:

- (A) Increasing efficiency of UHF transmitters; and
- (B) Improving transmitter and antenna installations.

The direct results of the actions we urge here will be improved reception and more efficient transmission, which will inevitably lead to:

Larger audience for UHF,

Improved programming as a result of increased viewer contributions to public stations and increased profitability for commercial stations,

Greater diversity in broadcasting through the utilization of vacant UHF assignments and the upgrading of existing UHF stations,

More public stations,

More opportunities for station ownership by minorities and women.

The benefits to the public from this plan are great. The means are realistic. The time for action is now.

1. Action Plan for Improved Receivers and Receiving Antennas

A. Reduce UHF receiver noise. The UHF noise figure of TV sets sold in the United States today is unnecessarily high—much poorer than the VHF noise figure. Noise figure determines a receiver's ability to extract a usable signal when the signal is weak; the higher the noise figure, the more snow that will mask the picture. A recent study by Hazeltine Research, Inc., indicated an average VHF noise figure of 6.9 db for receivers sold in the United States, but an average UHF noise figure of more than 12.7 db. This difference of nearly 6 db has a tremendous impact on picture quality. Every 3 db improvement in noise figure is equivalent to doubling the transmitter power. Thus, if UHF were to have the same average noise figure as VHF in American receivers, it would cause an improvement in picture quality equivalent to approximately quadrupling the power of every UHF transmitter in the United States.

There is no valid reason why UHF noise figures in American receivers should be so high. Hazeltine found that the average tuner noise of European UHF tuners was only 9 db, and fewer than 7% of the measurements were as high as 11 db.

Within the next three weeks we shall submit to the FCC a petition for an immediate reduction in the UHF noise figure from 18 db, as presently required by FCC rules, to 14 db, which can be achieved at minimal cost through improved quality control. The petition will also call for phased further reductions in UHF noise figure; these phased reductions will be timed to take advantage of technology now well into the development stage that will make possible substantial improvement in UHF noise figure at low cost.

To reduce UHF receiver noise, we urge the following actions:

In response to our petition for rulemaking, the FCC should revise its rules to require an immediate reduction in UHF noise figure to 14 db and further phased reductions in noise figure by specified dates.

The FCC should seek the lowest practicable UHF noise figure in the "receiver of tomorrow" which we understand will be developed under an FCC research and development contract.

B. Facilitate UHF tuning. Although the FCC's requirement of 70-position UHF detent tuners helps close the gap in convenience between the UHF and VHF tuning, UHF detent tuners are still less convenient than VHF tuners in three important respects. First, the UHF tuner requires the viewer to turn through 70 channels rather than the 12 channels on the VHF tuner. Second, it is impossible to turn directly from Channel 83 to Channel 14 or vice versa, whereas VHF tuners have no such impediment. Third, in order to tune to a UHF station, the viewer must set not only the UHF dial, but the VHF dial as well (to U).

The optimum solution is to develop a low-cost integrated UHF/VHF tuner. Some manufacturers have already introduced models with a single tuner; at least one model provides digital random access tuning using a keyboard like that on a hand calculator. Development should now proceed so that integrated tuners can be used on popular-priced models.

In the meantime, a public education campaign is necessary to explain the proper use of UHF tuners—continuous and detent—now in service.

To facilitate UHF tuning, we urge the following actions:

Tuner and receiver manufacturers should undertake programs to develop low-cost integrated tuners that are equally convenient for UHF and VHF.

The FCC should include an integrated UHF/VHF tuner in its "receiver of tomorrow."

Broadcasters and interested organizations should launch a public education campaign explaining how to use UHF tuners now in service.

When inexpensive integrated tuners are developed, the FCC should revise its rules to require their use in new receivers.

C. Improve UHF indoor antennas. In virtually every receiver sold in America with which a VHF indoor antenna is furnished, the antenna is permanently affixed to the set, retractable and conveniently located. The UHF indoor antenna is nearly always a very poor relation to the VHF antenna. The UHF antenna is not permanently affixed. Usually it requires a screwdriver to install, and often it becomes detached after very little handling. The UHF antenna frequently cannot be folded out of the way, and in most cases it is inconveniently located at the back of the set.

Fortunately, the mechanical disadvantages of American UHF antennas can be remedied immediately in new sets. European sets already feature permanently affixed UHF antennas, as conveniently located on the set as VHF antennas. If a

receiver has a permanently affixed VHF antenna, it should also have an effective, permanently affixed UHF antenna. We shall submit a petition for rulemaking to the FCC within three weeks requesting such a requirement.

Despite the salutary effect of mechanically comparable UHF and VHF antennas, we should not be distracted from the task of developing a UHF indoor antenna that is technically comparable to VHF indoor antennas.

Because many sets already in service have UHF antennas that are not being properly used, a public education campaign should explain the right way to use UHF indoor antennas. Advertisers and commercial artists should be careful to show an attached UHF antenna whenever a television set is depicted with a VHF antenna.

To improve UHF indoor antennas, we urge the following actions:

In response to our petition for rulemaking, the FCC should require all new sets with a permanently affixed VHF antenna to have an effective, permanently affixed UHF antenna.

Receiver manufacturers should undertake to develop UHF indoor antennas that are technically comparable to VHF indoor antennas.

A mechanically and technically improved UHF indoor antenna should be developed for the FCC's "receiver of tomorrow."

Broadcasters and interested organizations should undertake a public education campaign on the proper use of existing UHF indoor antennas. Advertisers and commercial artists should be careful to show an attached UHF antenna whenever a television set is depicted with a VHF antenna.

The FCC should prepare a circular and other materials on proper UHF antenna use for public distribution by UHF broadcasters and interested organizations. The FCC through its field engineering offices should mail copies of the circular to all persons who complain to it about UHF reception difficulties.

D. Improve outdoor antennas and lead-in wire. Many so-called all-channel outdoor antennas perform very poorly on UHF, sometimes worse than using no antenna at all. Advertising and carton claims often state that an antenna is all-channel when in fact it provides poor reception or no reception of UHF channels; claims about the ability of antennas to receive distant signals are also frequently exaggerated. The FTC should protect consumers against false advertising claims about antennas, publish findings comparing performance of antennas, and require disclosure of performance capabilities of outdoor antennas on the package in a form easily understandable to consumers. Consumer organizations should evaluate the performance of various outdoor antennas and publish the results. Antenna manufacturers should seek to improve the design of low-cost all-channel and UHF outdoor antennas.

One of the most important causes of UHF signal loss is use of the wrong type of lead-in wire. The most common lead-in is unshielded flat twin-lead. When clean and dry, flat twin-lead wire loses about 2 db per 100 feet for VHF and 3 db per 100 feet for midband UHF. When clean and wet, losses per 100 feet climb to 7.5 db for VHF and 24 db for UHF! When dirty or weathered and wet, losses rise to 15 db for VHF and an incredible 50 db for UHF! In almost every situation the only sensible type of lead-in is 300 ohm shielded lead-in. Although slightly more expensive than unshielded lead-in, shielded wire when properly installed is not subject to dirt and water, and loses only 2 db per 100 feet for VHF and 6 db per 100 feet for midband UHF. Because it is shielded this type of lead-in can be affixed directly to pipes and other metal objects. A campaign should be initiated immediately to educate television servicepeople about the proper type of lead-in.

Improvement is also necessary in many master antenna systems. A large number of viewers rely on these systems, which are used by apartment houses and other multiple dwellings, hotels, hospitals, and the like. Far too often these systems receive UHF badly or not at all. Television viewers have a right to comparable reception of UHF and VHF over master antenna systems.

To improve outdoor antennas and lead-in wire, we urge the following actions:

The FTC should take action against false advertising claims about outdoor antennas, publish findings comparing performance of antennas, and require manufacturers to disclose performance capabilities of antennas on their packages in a form easily understandable to consumers.

Consumer organizations should evaluate the performance of outdoor antennas and publish the results.

Antenna manufacturers should seek to improve the design of low-cost all-channel and UHF outdoor antennas. The FCC should encourage action by antenna manufacturers to improve UHF reception.

Broadcasters and interested organizations should initiate a campaign to educate television servicepeople about the importance of using shielded lead-in wire.

The FCC should provide information for the public on outdoor antennas and lead-in wire and should publicly and effectively support action to provide adequate and truthful information about antenna performance capabilities.

Manufacturers of master antenna systems and those who install and use such systems should provide UHF reception comparable to VHF. The FCC should publicly support the right of all Americans served by master antennas to comparable reception of UHF and VHF.

II. Action Plan for Improved Transmitters and Transmitting Antennas

A. Increase efficiency of UHF transmitters. Because of the higher frequencies in the UHF band, the UHF broadcaster must utilize a higher power transmitter than a VHF broadcaster to provide equivalent service. The higher power transmitter requires greater electric power consumption, a disadvantage which is compounded because UHF transmitters are less efficient in their use of energy than VHF transmitters. The result is that a UHF transmitter consumes ten to twenty times more electric power than a VHF transmitter to provide equal service. The rising cost of energy has therefore had an especially severe impact on UHF stations.

The clear answer is to develop UHF transmitters that are more efficient in their use of electric power. Two areas of improvement seem especially promising. First, it should be possible to develop klystron amplifier tubes with efficiencies of 50% to 60% at sync power, compared to present efficiencies of 35%. Such tubes could result in electric power savings of 15% to 25%. Second, the development of pulse modulation would result in more efficient use of power since peak power would be used only during sync pulses. Pulse modulation could bring about additional power savings of 15% to 25%.

The FCC, HEW and interested organizations should encourage and support research and development by tube and transmitter manufacturers of these improvements and of other means to increase UHF transmitter efficiency.

To improve UHF transmitter efficiency, we urge the following actions:

Tube and transmitter manufacturers should give high priority to the development of more efficient klystron tubes and pulse modulation and should place these improvements in production at the earliest possible date.

Tube and transmitter manufacturers should undertake research into other means of increasing transmitter efficiency.

The FCC, HEW and interested organizations should encourage and support research and development of high efficiency transmitters.

B. Improve transmitter and antenna installations. Despite substantial upgrading of UHF facilities in recent years, many stations still operate with transmitters and antennas that are poorly designed, badly located or inadequate in power or height.

Not surprisingly, the primary reason that this situation exists is lack of funds. Some of the necessary funds can be generated by revenues of the stations, especially in light of the additional advertising revenues and viewer contributions that can be expected to result from the other actions urged in this Action Plan. For public stations, however, the Educational Broadcasting Facilities Program will remain the most important source of funds for upgrading facilities. Congress should increase the funding of the Educational Broadcasting Facilities Program, and HEW should assure that improved transmitters, antennas and antenna location are accorded high priority in the use of such funds. HEW, the FCC, interested organizations and broadcasters should be active in their support of increased funding for this purpose.

A second and less obvious reason why many UHF stations have not sufficiently upgraded or relocated their transmitters and antennas is failure to appreciate the value of these improvements. All broadcasters know of the benefits of increased power and antenna height, but many are not aware that better designed equipment or a new antenna location would benefit them. For example, the beam tilt of some antennas results in poorer radiation over the city of license than over outlying areas. The FCC, HEW, and interested organizations should publicize the benefits of better designed transmitters and antennas and improved antenna location. In addition, specific areas in which improvement is possible should be identified and called to the attention of the station.

A large number of broadcasters do recognize that increased power or height or relocation of their antennas would provide benefits, but they have no means to quantify those benefits to determine whether they justify the costs involved. It would be helpful to have a low-cost analytic tool that could provide information to any interested station on the area and population that would be added to a station's coverage or whose reception would be upgraded as a result of various improvements in the station's facilities.

To improve the design and location of transmitters and antennas and to bring about the upgrading of UHF facilities, we urge the following actions:

Congress should increase the funding of the Educational Broadcasting Facilities Program to upgrade UHF transmission facilities of public stations. HEW, the FCC, interested organizations and broadcasters should actively support increased funding.

HEW should assure that improved transmitters, antennas and antenna location have high priority in the use of facilities grants.

The FCC, HEW and interested organizations should publicize to broadcasters the benefits to be derived from better designed equipment and improved antenna location.

The FCC, HEW and interested organizations should identify specific areas where existing transmitter or antenna design or antenna location could be improved and call these to the attention of the affected stations.

The FCC, HEW, transmitter and antenna manufacturers, or interested organizations should develop the means to provide information to broadcasters on the area and population that would be added to a station's; coverage or whose reception would be upgraded as a result of various improvements in the station's facilities.

Some of the actions we urge in this Action Plan—such as public information campaigns, improved quality control with respect to receiver noise, and protection against false advertising claims—can be achieved immediately. Other actions—such as relocating transmitting antennas, substituting shielded lead-in wire for unshielded twin-lead, and improving master antenna systems—can be begun immediately and be accomplished within one to two years. Some actions proposed in this Action Plan rely upon technological improvements, many of which are now in advanced stages of development. It is reasonable to expect that the technological improvements we propose can be introduced into new receivers and transmitters within two or three years, and that very significant market penetration will be achieved with two to three years after the introduction of improved receivers and transmitters. Accordingly, we believe this Action Plan can result in enormous progress in the further development of UHF within five years.

Our ultimate goal is a system of television broadcasting in the United States in which distinctions between UHF and VHF concern only engineers; for the viewer, the broadcaster, the advertiser and the educator, there will be a single 82-channel system.

To make rapid progress toward that goal, we must all begin now. We note in this connection that recently the FCC initiated an inquiry into the so-called UHF taboos. We support steps to reduce or eliminate UHF taboos, so long as this can be achieved at reasonable cost and without degrading service. But we wish to emphasize that this Action Plan is directed to matters quite distinct from those involved in the taboo inquiry.

The actions we urge in this Action Plan are addressed to reducing the current technical imbalance between VHF and UHF, to provide reception and transmission for UHF that are as nearly comparable with VHF as practicable. Only with respect to UHF noise figure do our recommendations have any relation to technical matters involved in the taboo inquiry, and the actions we suggest to reduce receiver noise are wholly consistent with the goal of eliminating taboos. There is accordingly no reason for the FCC to delay acting on our recommendations while the taboo inquiry is proceeding.

Although this Action Plan is limited to reducing the technical gap between VHF and UHF, we recognize that if UHF is to achieve its full potential, it is necessary to look beyond technical improvements. UHF broadcasters must intensify their efforts to offer programming that is both audience-appealing and responsive to the needs and interests of the communities they serve. Viewers, schools, universities, foundations, and local, state and federal governments must continue their support of public television. The FCC must remain firm in its commitment to UHF and must resist efforts by certain industries and the Federal Government to seize or "share" UHF channels. Requests by equipment manufacturers for waivers of FCC rules concerning UHF must not be granted except on a compelling showing and only after public notice and full opportunity for comment.

For years UHF has been widely regarded as a stepchild to VHF. Now UHF has grown to near maturity and stands on the brink of achieving its promise. Everyone with a stake in UHF, indeed everyone concerned with the future of broadcasting in the United States, should give enthusiastic support to this Action Plan.

COUNCIL FOR UHF BROADCASTING, CORPORATION FOR PUBLIC BROADCASTING, PUBLIC BROADCASTING SERVICE, NATIONAL ASSOCIATION OF BROADCASTERS, AND ASSOCIATION OF MAXIMUM SERVICE TELECASTERS

July 21, 1975.

The Hon. RICHARD E. WILEY,
Chairman, Federal Communications Commission, 1919 M Street NW., Washington, D.C.

DEAR CHAIRMAN WILEY: Largely as a result of the Commission's longstanding commitment to UHF, UHF has become an essential factor in American broadcasting. We are five organizations that share the Commission's commitment to UHF: the Council for UHF Broadcasting, the Corporation for Public Broadcasting, the Public Broadcasting Service, the National Association of Broadcasters and the Association of Maximum Service Telecasters. It is our firm conviction that everyone concerned with the future of television broadcasting in the United States has an interest in the further development of UHF.

In order to promote that further development, we are today submitting to the Commission and releasing to the public the Action Plan for Further UHF Development which is enclosed. The Action Plan notes areas in which UHF suffers from technical disadvantages and sets forth a realistic program to sharply lessen those technical disadvantages and to make UHF as comparable to VHF as possible.

The Plan calls for action by Congress, the Commission and other agencies of government, broadcasters, manufacturers and organizations interested in the further development of UHF. However, the role of the Commission in the future development of UHF is critical. We propose that the Commission take the following specific actions:

(1) To reduce UHF receiver noise, we urge that the Commission respond to our forthcoming petition for rulemaking by revising its rules to require an immediate reduction in UHF receiver noise to 14 db and further phased reductions in receiver noise by specified dates. We also urge the Commission to seek the lowest practicable UHF noise figure in the "receiver of tomorrow" which we understand will be developed under a Commission research and development contract.

(2) To facilitate UHF tuning, we urge the Commission to include an integrated UHF/VHF tuner in its receiver of tomorrow. When inexpensive integrated tuners are developed, we urge the Commission to revise its rules to require their use in new receivers.

(3) To improve UHF indoor antennas, we urge that the Commission respond to our forthcoming petition for rulemaking by requiring all new sets with a permanently affixed VHF antenna to have an effective, permanently affixed UHF antenna. We also urge that a mechanically and technically improved UHF indoor antenna be developed for the Commission's receiver of tomorrow. Additionally, we urge that the Commission prepare a circular and other materials on proper UHF antenna use for distribution by UHF broadcasters and interested organizations. The Commission through its field engineering offices should mail copies of the circular to all persons who complain to the Commission about UHF reception difficulties.

(4) To improve outdoor antennas and lead-in wire, we urge that the Commission provide information for the public on outdoor antennas and lead-in wire and publicly and effectively support action to provide adequate and truthful information about antenna performance capabilities. We also urge the Commission to encourage the design of improved all-channel and UHF outdoor antennas. Additionally, the Commission should publicly support the right of all Americans served by master antenna systems to UHF reception comparable to VHF.

(5) To increase efficiency of transmitters, we urge the Commission to encourage and support research and development of high efficiency transmitters.

(6) To improve transmitter and antenna installations, we urge the Commission actively to support increased funding of the Educational Broadcasting Facilities Program to upgrade UHF transmission facilities of public stations. We also urge the Commission to publicize to broadcasters the benefits to be derived from better designed equipment and improved antenna location. We recommend that the Commission identify specific areas where existing transmitter or antenna design or antenna location could be improved and call these to the attention of the affected stations. Additionally, we propose that the Commission take the lead in developing a means to provide information to broadcasters on the area and population that would be added to a station's coverage or whose reception would be upgraded as a result of various improvements in the station's facilities.

Our goal in the Action Plan can be simply stated: to provide reception and transmission for UHF that are as nearly comparable with VHF as practicable. We

recognize, however, that if UHF is to achieve its full potential, it is necessary to look beyond technical improvements. We call on UHF broadcasters to intensify their efforts to offer programming that is both audience-appealing and responsive to the needs and interests of the communities they serve. We call on viewers, schools, universities, foundations, and local, state and Federal governments to continue their support of public television.

We urge that the Commission remain firm in its commitment to UHF and resist efforts by certain industries and the Federal Government to seize or "share" UHF channels. We also respectfully submit that requests by equipment manufacturers for waivers of Commission rules concerning UHF should not be granted except on a compelling showing and only after public notice and full opportunity for comment.

Our Action Plan for Further UHF Development also cites actions that should be taken by Congress, other agencies of government, broadcasters, manufacturers and organizations interested in the further development of UHF. The Commission's public support and encouragement of these proposed actions by others would hasten the day when UHF achieves its full potential. Accordingly, we urge the Commission to issue a policy statement affirming its commitment to UHF, supporting our goal of UHF comparability with VHF, and encouraging all concerned to take the steps we propose for the further development of UHF.

In order to review and advance the progress of the Commission and others in achieving UHF comparability with VHF, we propose that the Commission establish a committee comprised of representatives of the Broadcast Bureau, the Office of Chief Engineer and the Field Operations Bureau, including one or more persons with responsibility in the area of public broadcasting. This committee could coordinate actions within the Commission relating to the further development of UHF. The committee could also stay abreast of activities relating to UHF in the private sector and in other agencies of Government, encouraging actions to achieve UHF comparability with VHF and serving as a clearinghouse for information. Periodic meetings with broadcasters, manufacturers and interested organizations could be sponsored by the committee to assist in these functions. The committee should keep the Commission apprised of progress toward the goal of comparability and should issue an annual report to the commission describing the progress that has been made and the steps that remain to be taken.

The actions we have urged in this letter and in our Action Plan will go far toward the shared goal of Congress and the Commission: "that UHF be put on a competitive footing with VHF in all respects."

Respectfully submitted,

COUNCIL FOR UHF BROADCASTING.
CORPORATION FOR PUBLIC BROADCASTING.
PUBLIC BROADCASTING SERVICE.
NATIONAL ASSOCIATION OF BROADCASTERS.
ASSOCIATION OF MAXIMUM SERVICE TELECASTERS.

Enclosure.

COUNCIL FOR UHF BROADCASTING,
November 23, 1976.

Mr. ROBERT A. LUFF,
*Office of the Chairman, Federal Communications Commission, 1919 M Street NW,
Washington, D.C.*

DEAR BOB: This is to follow up on the Chairman's suggestion that, in lieu of a Commission task force, we work with you and him to assist UHF development in ways that are in addition to the formal Commission actions requested in our rulemaking and other pleadings of record.

PUBLIC STATEMENT

The Commission should issue a strong public statement that UHF development will be actively encouraged, that the UHF band will be maintained intact for television service, and that UHF and VHF will be made comparable. Such a statement would both encourage potential licensees to implement UHF facilities and erase the myth of "inherent UHF inferiority" which now tarnishes the image of UHF broadcasting. A factor in the "UHF handicap" has been uncertainty in the private sector about the FCC's commitment to UHF. This affects the decisions of lenders, investors, advertisers, agencies, entrepreneurs, talent, management, and the public generally. The Commission should dispel this uncertainty by publicly emphasizing its long-term, unswerving, congressionally mandated commitment to

UHF. It should point out to industry that it is in its interest to play a part in UHF development.

The following are examples of other measures to be taken by the Commission to improve the public image of UHF.

(a) Release of information on Commission measurements of UHF receiving antenna performance.

(b) Release of information on Commission measurements of UHF tuner noise figure.

(c) A Commission policy statement that MATV systems in public accommodations (hotels, motels, etc.) should carry all local UHF channels as well as VHF. Television receivers for use in hotels and motels are currently supplied with the UHF tuners deleted. Moreover, the MATV systems to which these receivers are connected often do not even convert area UHF stations to VHF so that they are blacked out altogether. This is clearly at variance with the spirit, if not with the letter, of the All-Channel Act. As a consequence, for example, visitors to the District of Columbia are not even aware of the existence of some of the finest UHF facilities in the United States, because they are not able to receive these stations on their hotel room receivers.

(d) Commission assistance to groups or individuals with an interest in activating television facilities—possibly in the form of a “how to” handbook, explaining the legal, financial, and technical requirements in layman’s language, and giving references to further information and sources of technical and other assistance.

RECEIVER OF TOMORROW PROJECT

The contract entered into with Texas Instruments offers a unique, unprecedented opportunity to demonstrate that improvements in UHF reception capability are technically and economically feasible. UHF improvement should be a paramount goal of this project, and to that end CUB offers the definition of what improvements are required, and how they should best be implemented. It has long been recognized that the contemporary television receiver constitutes the weak link in the UHF broadcasting chain, and that development of UHF tuners has been virtually stagnant since the Commission’s adoption in 1962 of the lax performance standards which are still in effect, unchanged, today. The intent of Congress as stated in the Senate Committee Report associated with the All-Channel Receiver Act, was that television viewers, “in fact get comparable reception from UHF and VHF stations.” Nearly 15 years later, because of regulatory and industry inactivity, the goal of UHF/VHF performance comparability is still unmet. A significant beginning toward attainment of the goal should be made in the “Receiver of Tomorrow” project by directing the contractor to concentrate its research and development efforts in the following areas:

(a) Developing a UHF tuner which achieves the lowest noise figure consistent with adequate cross modulation characteristics.

(b) Integrating the UHF and VHF portions of the television tuner both electronically and mechanically so that UHF and VHF channels are selected on a common tuning mechanism, and with comparable ease. The distinction between UHF and VHF should be erased in the mind of the television viewer. He should be no more aware that he is making the transition from VHF to UHF when he tunes from Channel 13 to Channel 14, than he is now aware that he is transitioning from low band VHF to high band VHF when he changes from Channel 6 to Channel 7.

(c) Developing a practical built-in UHF antenna with an effectiveness comparable to, or better than, the VHF built-in antennas conventionally supplied with television receivers.

In any event, the “receiver of tomorrow” project should concentrate on developing prompt and practical improvements in UHF reception, rather than on broad theoretical questions or long-term, blue-sky technical proposals. To assist in working toward this goal we suggest that engineers from our group consult periodically with appropriate persons in the Chief Engineer’s Office with responsibility for this project. We believe that this could be done consistent with your Texas Instrument contract, while still assuring the input of engineers who have studied UHF problems in depth and have extensive experience with the practical problems of UHF operations.

PBS BOOKLET ON UHF RECEPTION

Dissemination of accurate information on the characteristics of UHF, and the techniques are hardware necessary for adequate UHF reception, to the viewing public and the service industry is vital if the existing lack of information and

misinformation on UHF is to be countered. PBS has prepared a booklet on UHF reception, written that the Commission Field Engineering offices be provided with copies of these booklets, and that they be supplied to all interested parties, particularly those who contact the Commission's field offices with complaints regarding inadequate UHF reception. The Commission should fund the printing of the booklet to the extent it uses the booklet for these purposes.

COMMISSION AS CLEARINGHOUSE

The Commission is the logical depository and disseminator of information relating to UHF broadcasting, and the goal of UHF improvement will be significantly advanced by the Commission's serving as a clearinghouse for UHF information developed by others. The Commission's New York UHF studies and the more recent laboratory work on UHF taboos stand as examples of the contribution which the Commission can and should make toward advancing the state of the art in UHF. But the Commission's research efforts have been too few and too infrequent. As trustee of the electromagnetic spectrum, the Commission should adopt a position of leadership in research on UHF matters by developing the requisite information on UHF performance in an objective and impartial manner through "in house" research efforts. While there is a substantial dearth of information on almost all matters relating to UHF, the following areas particularly deserve immediate attention from the Commission:

(a) UHF receiving antennas—Accurate information on the gain, bandwidth, and directivity characteristics of UHF receiving antennas is sorely needed. Examination of advertising material on UHF antennas indicates the existence of grossly inflated performance claims extending well beyond the limits of traditionally acceptable advertising "puffery"—e.g., the \$10.00 antenna that "pulls in stations up to 80 miles away". A technically unsophisticated consumer presently has no means of assessing such overstated claims, and when the antenna fails to meet its promise, the consumer is all too ready to conclude that the fault lies with the station or with UHF generally. A Commission study which defines a uniform method for the measurement of UHF antenna characteristics, and which reports on the performance of currently available antennas would be of inestimable value to the public and to other government agencies charged with the responsibility for regulating deceptive or misleading advertising.

(b) Continuing evaluation of tuner performance—In addition to conducting an ongoing measurements program on receivers, the Commission is urged to perform the "clearinghouse" role by assembling data on all developments in device technology which offer the promise of improved UHF tuner performance. In particular, attention should be given to developments in Europe, where the experience with successful use of UHF has been far more favorable than in the United States, due in large part to the availability of receivers of advanced design, especially in the area of tuner sensitivity.

(c) Transmitters—Developments in transmitter design are underway which pre-empt the availability of more efficient UHF transmitters. In response to its obligations imposed by the National Environmental Policy Act (NEPA) the Commission should actively encourage the development of more efficient—and hence energy-saving—transmitters, possibly to the extent of requiring a showing of optimum energy utilization as part of its type-acceptance procedure.

The "receiver of tomorrow" project stands as an example of how active involvement by the Commission in the advancement of technology may yield large public interest dividends. When the Commission assembles information on UHF through its own research efforts, and through active solicitation of information developed by others—as recommended above—it will then be in a position to determine when it would be appropriate to let developmental contracts which will direct the private sector in their choice of appropriate technology to implement UHF improvements. Adoption of such a technological leadership posture will put the Commission in full management control of the spectrum. As things now stand, with the Commission basing allocation policy on the characteristics of existing receivers, the de facto control of the spectrum lies with the receiver manufacturing industry whose understandably profit-oriented policies are almost exactly contrary to the achievement of efficient spectrum utilization.

The work of CUB, other organizations, and the Commission can and should culminate in improved UHF reception and transmission capability. As a consequence the UHF band will attract large numbers of licensees who, until now, have been deterred from activation of UHF stations by past unfavorable experience with UHF, primarily stemming from deficiencies in the receiving system. It would be a gross breach of faith for the Commission to respond to the efforts of the proponents

of UHF improvement by giving the band over to other services once improvements have been realized. Moreover, even if improvements in receiver performance provided additional UHF channels, they should not be made available to other users. The Commission is urged to continue its commitment to the integrity of the UHF band for broadcast purposes and not to use hard won improvements in receiver performance as an excuse for intrusions into the UHF broadcast band by other services. Today, in major cities, and even in some relatively unpopulated areas, there are not sufficient channels to accommodate the immediately foreseeable growth in UHF television broadcasting.

Candidly, UHF proponents are concerned that the recent resurgence of interest at the Commission in improvements in UHF reception capability may be motivated by a desire to give the UHF spectrum to other users who today are not making full and efficient use of the frequencies which they are currently assigned. As the Commission noted in the Sixth Report, the growth of television service in the United States is "indissolubly tied to UHF."

We welcome any suggestions regarding these recommendations, or other suggestions, from you, Commissioners, or staff members in the Chief Engineer's office, the Broadcast Bureau, Plans and Policies or elsewhere. We are ready and anxious to engage in discussion with any interested Commission personnel.

In sum, we see an opportunity for Commission leadership which, far from impinging on private initiative, would stimulate and channel that initiative most effectively. The beneficiaries would be the American public.

Sincerely,

RICHARD C. BLOCK, *Chairman.*

Senator CANNON. All right, Mr. Blake.

STATEMENT OF JONATHAN BLAKE, COUNSEL, ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC.

Mr. BLAKE. I am Jonathan Blake, attorney with the firm of Covington & Burling. We represent the Association of Maximum Service Telecasters. I am appearing to present the statement of its president, Mr. Lester Lindow, who personally regrets his inability to be here today.

We are here for two purposes. One, to support Dick Block's plea as to the importance and need for UHF development. As usual, he has needed no support at all in that. Second, to express the defense for the current allocation to UHF television of the frequencies it has.

As Dick has indicated, these two issues are integrally related, for two reasons. One, you cannot develop UHF if there are no frequencies on which to operate, and two, time and again we have found that UHF improvement efforts have been thwarted by those who feel that these improvements would make it difficult to give spectrum away to other users.

I would like to summarize and hit the high points of Mr. Lindow's written statement. Let me say that MST is made up of 185 nonnetwork-owned stations; some are UHF, some are VHF; some are public stations, some of them are commercial stations. They serve the largest cities, medium-sized cities, smaller areas. Some are affiliated and some are independent stations.

MST believes in UHF. It believes that UHF is the dynamic element in broadcasting, both now and for the future. It is the single greatest hope for providing more opportunities for minority ownership and ownership and management by women. It is the single greatest hope for the development of public television. It is the single greatest hope for more networking possibilities and for greater diversity and competition in television.

Congress, we believe, understood this future for UHF when it passed the All-Channel Act in 1962. And it committed national communications policy at that time to the development of UHF.

We fear that commitment is being undermined by the threat to UHF television spectrum today. The basic problem, of course, is that you cannot use the same frequencies for different purposes in the same area without causing destructive interference to both uses, which cancel them out so that there is no service at all. So, you have to make choices as between various uses.

Ten years ago UHF television had channels 14 through 83 on an exclusive basis. Over the years that allocation of the UHF spectrum has been chipped away. Today it faces perhaps its most serious threat from the preparations for the 1979 world administrative radio conference, or WARC, as it is called, in which allocations are being reconsidered for purposes of an international treaty.

The basic premise of those who would take UHF spectrum away from UHF television is that there are many UHF assignments that are not being used. These other users, which basically are private land-mobile users and Government users, would use the frequencies for delivery services, pickup services, businesses and that sort of thing, convenience users, for the most part.

Their basic argument is that they have a need for these frequencies; that their frequencies are congested; that their frequencies are filled up. They, therefore, argue that since the UHF assignments are vacant, they should be able to have those assignments.

This is a phony argument. Channels of these other users, even on their own claims, are only crowded in the largest cities of the United States; and in these large cities of the United States, the UHF television assignments are used up.

In other words, the only way the demands of these other users could be met is by taking away UHF service from the American public to make those channels available for pickup, delivery, and convenience services. Not only is UHF important now and not only is existing UHF television service threatened by allocation proposals, but UHF is the hope for growth in the future, as I have indicated. This hope, which is a realistic hope set by Congress 15 years ago, is being realized. This hope would be crushed if the frequencies are given away to other users.

On the other side of the coin is the use these other users make of the frequencies they have at the present time. The Federal Government has asked for the equivalent of 17 UHF television channels across the country. That need has been totally unsubstantiated, and this past week the Commission advised the Federal Government that that demand would not be met.

Senator CANNON. What was the purpose of that request?

Mr. BLAKE. It is very hard to tell what they would use it for. It has not been documented. The purpose is to take the equivalent of 17 UHF television channels and give them for use by the Federal Government for various purposes. And clearly there are some very, very important Federal Government uses of the spectrum, for national defense and other purposes. But there is also a whole range of just convenience uses. This demand by the Federal Government has been shrouded in secrecy and nobody—nobody at least in the private sector or the public—knows what the Federal Government

uses its frequencies for today. And, in a supplementary letter to the writtren statement I submitted, I reported to you on this development—the FCC telling the Federal Government it had not documented its need for additional frequencies.

The same situation applies with respect to the private land-mobile services, diaper services, taxicabs, other delivery services. There the land-mobile users have made a showing based on the number of units outstanding, but they have refused to have on-the-air monitoring of what their use of these frequencies is.

The last study showed that in Detroit the average land-mobile channel was being used only 2.5 percent of the time. Yet these are the same people who want to take UHF frequencies away. The land-mobile people have resisted having any on-the-air monitoring tests conducted since those that were conducted about 6 or 7 years ago.

We think that their demands should be turned down. Preparation in this country for the world administrative radio conference of 1979 focuses on these issues. There are some that argue that the United States should urge a change in the allocations table so that UHF would no longer have exclusive allocation for the UHF channels it presently has, and that this allocation should, now, be on a shared basis.

But the FCC already has the power to do that domestically in any event, so there is no need for that change. What we are really talking about is the establishment of priorities for national communications policy. We think that the Commission should reflect the decision made by the Congress that UHF television should be the priority use in these bands. And it can do that by maintaining the present frequency allocation provided for by international treaty.

In summary the message that we want to get across as clearly and loudly as we can is that UHF can meet the national communications goals that Congress set for it; that it has made enormous strides in this direction—they are always underestimated; that it can do a great deal more in the future.

If somebody tried to predict what FM would be like today 15 years ago, they would have made the same kind of dire predictions one hears about UHF, and they would have been wrong. We can clear away the clouds of doubt with respect to UHF by making it clear that the UHF spectrum is going to continue to be allocated for the American public's television service.

UHF would be free to grow if we could turn our back on some of these speculative alternatives which cannot serve all the people. In short, just as Dick Block has asked that the Congress reaffirm its commitment to fuller UHF development in the area of achieving technical comparability with VHF, we would ask in the allocations area that the same thing be done.

Senator CANNON. Thank you very much, gentlemen, for very fine statements.

[The statement follows:]

STATEMENT OF LESTER W. LINDOW, PRESIDENT, ON BEHALF OF THE ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC.

My name is Lester W. Lindow, President of the Association of Maximum Service Telecasters, Inc. (MST).

MST is an association of more than 185 non-network owned television stations serving metropolitan centers, smaller communities and rural areas. Its members are UHF and VHF, public and commercial, network-affiliated and independent stations. For 21 years MST has been dedicated to maintaining and promoting the development of television in accordance with the basic allocations policies established by Congress and engineering standards adopted by the Commission and affirmed by Congress. It played a major role in the adoption of the All-Channel Receiver Act in 1962, and, as Dick Block mentioned, has participated vigorously in CUB's efforts over the past two years.

We, too, appreciate the opportunity to appear today. We are vitally interested in a number of topics which are or could be covered by these hearings. We are deeply concerned by the potential erosion of local television service available to all Americans by the inroads of CATV which can serve only the well-to-do in urban and some of the suburban areas of the country. We are alarmed by various developments—such as inadequately regulated citizens band radio and the possibility of new FM services—which threaten and do cause serious interference to the television service enjoyed by the American public. We feel, too, that even a few short-spaced VHF drop-ins would cause interference to television reception and would injure the public interest in UHF development. The answer to demands for more service is not to destroy the present system but to build up UHF television.

We believe that the allocations and engineering policies which Congress has endorsed serve the public interest well. Degrading the technical quality of the public's service or depriving any segment of the public of the service it currently enjoys would raise a popular outcry—much louder than the clamor for new CB channels—that would be clearly heard here in Congress. Nor is the existing system static and fixed. Through the all-Channel Receiver Act Congress wisely made provision for our dynamic society to be reflected in the development of new television services, greater diversity, more opportunities for minorities, females, and public stations. It is UHF television's future prospects which are especially menaced by short-spaced VHF drop-ins and a rudderless CATV policy.

So there are many topics we could address but today we confine ourselves to the threat that spectrum currently allocated for UHF television will be handed over to other users. There is probably no more important issue in the communications field than this one. Yet it receives comparatively little attention.

I

As Dick Block has stated, only UHF can deliver the additional television services which the American public deserves; UHF's growth to date has demonstrated that it can realize its potential for providing these services; and the biggest threat to continued progress in this direction is the demand for UHF spectrum space by other users—private and governmental. This demand has generated an unremitting pressure that delays and frustrates efforts to accelerate UHF development.

This pressure has been accompanied by advocacy of other forms of program distribution—satellite-to-home, the wired nation, and fiber optics—and other expedients like short-spaced VHF drop-ins. These other distribution systems would not provide local and area service to anywhere near the broad range of people to whom UHF can provide service. They would not serve the public interest. Claims on their behalf are speculative and unrealizable.

Nevertheless, the always present threat that UHF spectrum will be given away to other users and the continual downgrading of UHF's viability and potential for additional growth have placed a dark cloud over UHF's past progress and future development. UHF has grown nonetheless. Perhaps more important than any single step in advancing UHF development is removing this cloud that overhangs it.

II

The central fact cited by both those who denigrate the existing communications policies that Congress helped formulate and those who seek UHF frequencies for their own use is that many UHF assignments are vacant. This is, of course, true. But it also seriously distorts the issue. The demands of other users—business users and the Federal Government—are principally confined to the largest metropolitan areas in the United States. There is no shortage of business radio frequencies in other areas because there are many fewer users in these other areas. The demand is less, so the existing supply of spectrum is sufficient.

But it is in the very same largest cities of the United States where the demands of other users are greatest that UHF assignments are entirely used up or almost so. In the top 10 markets for example there are only two vacant assignments. And in

smaller markets where one or two channels may still remain vacant UHF's past and accelerating growth makes clear that any vacant UHF channels will be needed in the near future. It is also in these largest communities where there is the greatest need for additional television services—for minority and female ownership, for public stations and for specialized and more diverse formats. There is, therefore, very little UHF television spectrum that could be given away in areas where land mobile and other users claim to need additional frequencies without tremendous loss of service to the public.

In short, the claim that UHF spectrum lies fallow is a misleading oversimplification. Just as there is less demand for business radio services in Dubuque than there is in New York, there is also less demand for television stations in Dubuque than there is in New York. But the existence of vacant UHF television assignments in Dubuque does not justify giving away occupied UHF assignments in New York City. Yet that in essence is what these other users are arguing for.

III

The other side of the equation, of course, is the claim of need by other users that covet UHF spectrum space. Their claims have never been substantiated.

The on-the-air monitoring of land mobile operations has shown remarkably sparse usage even in periods of peak usage. Probably because these monitoring studies have always yielded such negative results, these other users have adamantly refused to undertake similar studies in the last few years. The Commission should have refused even to consider their demands without monitoring data. But unfortunately, it has not done so.

Similarly, the federal government is a large and greedy user of spectrum space. Yet it also has frustrated every effort to determine the basis for its claimed need for additional frequencies. We think this is wrong. The federal government's demands for additional spectrum should be subjected to the same rigorous scrutiny as the claims of other users and should be substantiated by similar over-the-air monitoring data. Congress is in a particularly strong position to require substantiation of the federal government. Failing such documentation, the federal government's claims should not be considered.

The failure on the Commission's part to insist on over-the-air monitoring data by other claimants for UHF spectrum has not only subjected UHF to crippling uncertainty, it has also discouraged land mobile and other users from implementing available techniques for vastly increasing the efficiency of their usage of existing frequencies. For example, experts have estimated that the efficiency of land mobile's use of its spectrum could be increased by up to 50 times. Since land mobile spectrum was quadrupled several years ago, the combined effect could be to increase the effective amount of its spectrum by up to 200 times.

IV

The spectrum allocations issue is particularly important now, not only because it thwarts UHF development but also because this country is preparing for the 1979 World Administrative Radio Conference (WARC) at which international spectrum allocations will be determined for the next 20 years. The Commission's recommendations will importantly affect both the development of UHF and the efficiency of nonbroadcast spectrum usage.

In WARC '79 the federal government seeks at least 17 UHF television channels and land mobile users (and more significantly the manufacturers of land mobile equipment) seek an additional 46 television channels. In support of their claims, they make the usual arguments that I have tried to dispose of above. In addition, however, they argue that the United States should seek to amend the present worldwide allocations scheme to provide for joint land mobile and UHF television allocation of the UHF band, so that the Commission can have flexibility to adjust allocations in this band in the future.

This is a superficially appealing proposal. But even without joint allocation internationally, the Commission has the flexibility domestically to reallocate UHF television frequencies to other users on an exclusive or shared basis provided it doesn't run afoul of broadcasting operations and allocations in Canada and Mexico. In short, the FCC already has this flexibility and has used it in the past at the behest of many of the same people who argue that it is necessary now to confer such flexibility internationally.

The purpose of WARC, however, is to establish priority uses for the future, in order to provide a framework for international coordination of spectrum use. Accordingly, the Commission's decision whether to recommend joint allocation for

UHF television and other users or to maintain the present UHF allocation is critically important. A Commission decision to maintain existing allocations would free UHF television to continue its growth without the cloud of imminent spectrum reallocation hanging over it, although we realize that the clamor of other users won't simply disappear. Such a decision would also spur more efficient use of spectrum allocated to these other users. It would say loud and clear that UHF is here, to stay and to grow, and that land mobile and other users must put their houses in order.

On the other hand, a recommendation for joint allocation to UHF and other users would be a statement that the future of UHF is problematical and that other users need not use their spectrum resources with maximum efficiency but may simply demand more UHF spectrum space at the expense of the American public's stake in UHF.

The Senate must consider whatever treaty emerges from WRAC '79. But then it can only accept or reject the positions that the treaty embodies. We believe that the Congress which passed the All-Channel Receiver Act in 1962 and is a prime architect of existing communications policy should act now to assure that that policy is not flouted in the preparations for WARC '79. It should reconfirm the commitment of national communications policy to the development of UHF television and it should make clear that this commitment means no departure from UHF allocations policy at WARC '79.

COVINGTON & BURLING,
Washington, D.C., May 10, 1977.

HON. ERNEST F. HOLLINGS,
Chairman, Senate Subcommittee on Communications, U.S. Senate, Washington, D.C.

DEAR SENATOR HOLLINGS: On Tuesday, May 3, the Association of Maximum Service Telecasters, Inc. ("MST"), submitted a written statement for its appearance before the Senate Subcommittee on Communications scheduled for May 10. Subsequently the Federal Communications Commission has taken an important step which pertains to MST's written statement and which should be made part of the written record in these hearings.

Our written statement observed that both private land mobile users and the Federal Government covet additional frequencies now assigned for UHF television use, without having provided reliable support for their demands. It is gratifying to report that on Wednesday of this past week the Commission announced that it would not entertain Federal Government demands for additional spectrum space, in part because of its failure to provide any evidence of need.

We commend the Commission for taking this position. We recognize that in the further preparations for the 1979 World Administrative Radio Conference (in which these allocations issues will be resolved internationally), efforts will be made to change this determination and that in any event it is not binding as to what the ultimate United States position will be. The Commission's action, nevertheless, is eminently correct and unquestionably serves the public interest.

The Commission should promptly take the same position with respect to the spectrum demands of land mobile users. Their demands are based on criteria which the Commission has determined to be unreliable. Land mobile users have refused to undertake the over-the-air monitoring that would provide reliable evidence of existing land mobile spectrum use, perhaps because in the past it has shown such usage to be sparse indeed.

Accordingly, MST requests that this letter be associated with its written statement to the Subcommittee.

Respectfully submitted,

JONATHAN D. BLAKE,
Attorney for Association of Maximum Service Telecasters, Inc.

Senator CANNON. The next witness, Mr. Henry Harris, president, Cox Cable, representing the National Cable Television Association.

STATEMENT OF HENRY HARRIS, PRESIDENT, COX CABLE, REPRESENTING THE NATIONAL CABLE TELEVISION ASSOCIATION, ACCOMPANIED BY ROBERT SCHMIDT, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION

Mr. HARRIS. Thank you, Mr. Chairman.

On my right is Robert Schmidt, president of the National Cable Television Association.

My name is Henry Harris. I appear before you today on behalf of the National Cable Television Association. I am president of Cox Cable, a division of Cox Communications of Atlanta. Cox Communications is both a broadcaster, cable system operator, and publisher. We operate television stations in five markets as well as 39 cable systems, including the Nation's largest in San Diego.

You might suspect that involvement in both cable and broadcasting would be contradictory, particularly in light of broadcaster claims of cable's potential to cause the demise of commercial TV stations. Let me assure you that our cable and broadcasting operations are quite compatible. We are communicators. Whether we communicate on cable or via over-the-air television, our intent is to offer our public the best in television service.

We view broadcasting and cable television as complementary rather than exclusive offerings. Many other broadcasters apparently feel the same way since over one-third of all cable television systems are owned by broadcasters.

A brief look at the structure of these two industries will support my argument that cable television and broadcasting are complementary services which can and do exist profitably.

Advertising expenditures are justified by the number of homes delivered. Consequently, it has an obligation to program for and to the masses.

Approximately 65 percent of all programming on affiliated stations is network programming which is simply the most economically feasible way to deliver programming at the least cost with the best diversity.

Cable, on the other hand, has virtually unlimited channel capacity. It offers more choices and can deliver more channels to the home. For that it gets a monthly fee directly from the subscriber. Its economic well-being is not dependent upon advertising.

We give a subscriber a choice. We really don't care whether he uses the choice or not. We are not in the ratings game.

Cable historically grew up in the small markets of this country. To use the FCC definition, these are, by and large, markets outside the top 100 metropolitan areas. For the most part, cable is a mature industry in the smaller markets. Because the lack of over-the-air television in most of the markets—probably two stations are less—cable has done very well in these markets and is very profitable.

Certain broadcast interests think small market broadcasters are the ones that might be hurt by cable. I find this somewhat humorous since these are the markets where cable and broadcasters have coexisted comfortably for the last 25 years.

FCC financial data shows that small market TV stations have experienced a revenue growth of 31 percent during the period 1972 to 1975 should be higher, although these figures are not yet available.

My point is that cable grew up in the small markets. By and large, these markets have been built. Broadcasters and cable coexist profitably.

While academically, people would like to protect the small guy, it is the small guys that have gotten along well for many years. These are obviously the best cable markets financially. But because

very few are left to build, cable in the midsixties moved into the larger markets where there is continuing development today.

However, most of these markets have at least two—and more often than not, three or four—air local signals, which makes the selling of a cable service a more difficult product to market.

Cox Cable operates cable television systems in several urban areas of our country. Our system in San Diego is the largest in the United States, and it is a prime example of cable and broadcasting being compatible and coexisting successfully and profitably together.

For a monthly charge of \$7.50, the 147,000 households served by Mission Cable TV in San Diego receive 24 channels including the 4 local San Diego stations, 2 Mexican stations, 1 in English, 1 in Spanish, 9 stations from Los Angeles, 1 of which is another Spanish station. One is a specially programed station with business data.

We do our own local-originated program including community events, San Diego State University football games, forums with city and local officials, and local sports activities. We do approximately 83 hours a week of this type local programming.

There is a local educational channel which is jointly programed by the 32 school districts in San Diego. This provides about 21 hours of educational programming a week.

There is a municipal information channel operated by the city, and access channel operated by a community video center that also produces programs of local interest about 27 hours a week.

We have five automated channels that include weather, the stock market, AP news, a sports wire, a community message channel, and a consumer information channel.

Last but not least, yes, we offer movies on a pay cable channel. We offer all of this, and still the local broadcast outlets are showing ever increasing profits and growth.

In the period 1967 to 1974, the percentage increase in broadcast revenues in San Diego exceeded by almost 2½ times that experienced by all U.S. television stations. Local broadcast income grew at a rate 3½ times faster than the national industry average.

That chart is an example of the San Diego broadcast income revenue growth against the national growth in broadcast revenue. The San Diego market has enjoyed tremendous success.

The threat of injury to broadcasters due to cable television has certainly not materialized in this market. Our subscribers have grown during the same period from roughly 25,000 to our present-day 147,000 homes served.

By the way, we enjoy a very good relationship with the local broadcasters, which was not always the case.

Another example of a market where cable and television coexist compatibly is San Francisco. Cox Broadcasting owns the independent television station, KTVU, in San Francisco. The San Francisco market is well served by cable, with just about a third of all households subscribing. Many of the cable subscribers in the market also subscribe to pay cable service. Even with this heavy cable activity in the market, our independent station continues to show record financial success.

My point here is that successful broadcast and cable operations can exist side by side. Recognizing the real addition to the quality and quantity of television programming which can be made by cable, I am even more frustrated with the regulatory restraints which limit cable television's ability to serve consumers.

With every new programming product developed by cable operators comes the broadcaster's claim of imminent financial ruin. Regulatory philosophy to date has focused on immediate protection of broadcast interests, without consideration of either the substance of their claims or of the impact of such protection on the public's right to choose.

Pay cable television is an example of my point. A great deal of commotion has recently surrounded this premium service. For an extra monthly fee, pay cable subscribers receive a separate channel of high quality programming not available on commercial TV. This includes current movies, sports events, drama, cultural and children's programs and entertainment specials, all presented without commercial interruptions. As I have mentioned, it is precisely this type of diverse specialized programming from which consumers have a right to choose and which is so important to major market cable television development.

Those who want to thwart cable television have changed their tune insofar as pay cable is concerned. Instead of damaging profitability and viability of local broadcast outlets, those who oppose pay cable charge it will siphon away programs from commercial television.

They argue the public would be greatly harmed through the commercial TV's loss of movies and sporting events. We agree.

FCC without any quantitative evidence to support these claims, imposed strict regulations limiting the quantity and types of programming that pay cable operators could provide consumers. The rules were opposed by the U.S. Department of Justice, public interest groups, program suppliers, and cable television operators.

On March, 25, the U.S. Court of Appeals unanimously overturned the pay cable rules, rejecting all assertions of siphoning, injury to the public, and broadcast industry collapse. In short, the court found absolutely no basis for restriction of pay cable development and censured the FCC for acting when no such action was warranted.

The Court commented:

The Commission's lack of a clear picture—of the pay cable industry and its relationship to broadcasting—is directly attributable to its own choice to regulate rather than allow a period of unregulated experimentation in which data could be generated that could form a predicate for informed agency action.

The court went on to reject the FCC's basic philosophy of regulating cable television as a stepchild of the broadcasting industry, observing:

... the Commission has in no way justified its position that cable television must be a supplement to, rather than an equal of, broadcast television. Such an artificial narrowing of the scope of the regulatory problem is itself arbitrary and capricious and is ground for reversal.

The court went to great lengths to point out that no evidence had been submitted showing existing or potential siphoning of

movies or sports events by cable, yet we continue to hear that siphoning is imminent.

I can tell you that the cable industry has no desire to restrict the availability of sporting events. Our intent is just the opposite. We want to offer more games, games which for various reasons are not covered by broadcast television.

This continued demand for protection from some unseen and hard-to-imagine happening is precisely what the court argued against. The judges overturned pay cable rules on the grounds that regulation of and restrictions on pay cable should not be enacted prior to a demonstration that such action is necessary to protect the public interest.

Cable's growth in the major markets is further stymied by FCC restrictions which limit the number of distant signals cable systems can offer and restrict cable retransmission of specific programs on those signals. Like the pay cable rules, the Commission's signal carriage and syndicated exclusivity rules were enacted to protect broadcasters. And, similarly, this protection was granted absent any factual evidence that such protection was necessary.

The signal carriage rules are simple. They generally limit major market systems to two distant signals certainly not enough to provide the additional programs desired by consumers. On top of his limitation, the syndicated exclusivity rules require newer cable systems to delete a significant number of individual programs on these distant channels. The exclusivity rules require systems to eliminate an average of 30 percent of the programming of those already limited distant signals.

These rules deprive the consumer of valuable programming, severely inhibit cable viability in major markets and inhibit the development of new markets. Worst of all, they are based completely on unsupported claims of potential injury to broadcasters, and ruin.

I offer the pay cable, signal carriage, and exclusivity rules as prime examples of the completely unreasonable anticonsumer regulatory structure in which cable operators attempt to survive. The charges cannot be contained nor can they be pinned down. While we believe it is far too premature to enact any legislation dealing with siphoning, we have a genuine desire to put this emotional issue to bed.

Toward the end, the NCTA today—and I would like it entered into the record, if I could—wrote NAB President Wasilewski, proposing that both associations work together to support legislation establishing a public interest standard whereby regulation of cable and broadcast competition is triggered by identifiable public harm.

Such a standard would preclude the type siphoning about which the NAB seems concerned. Likewise, such a standard would require that before the FCC could limit the number of TV signals or programming that we could offer our consumers, there must be shown to be an identifiable public harm absent such regulation.

Cable can do many things. These restrictions are not necessary. We hope our friends in broadcasting did recognize that we can coexist, be profitable, and live happily together while both serving the public.

We ask you help in elimination of regulatory restraints which restrict cable's ability to provide greater diversity. We are anxious to work with the broadcast industry and the Congress so that we may all better serve the public. Thank you.

Senator CANNON. Well, thank you Mr. Harris for a fine statement. When did you write Mr. Wasilewski on that particular point?

Mr. HARRIS. It was today.

Senator CANNON. Do you have a copy for the record?

Mr. HARRIS. We have a copy and would like to put it in the record.

Senator CANNON. This might be something worth considering because it sounds like you may be interested in trying to prohibit the type of occurrence that most people feel, that is, the siphoning-off problem which is, I would say, probably the No. 1 problem.

Mr. HARRIS. Our industry has no intention of siphoning, nobody seems to believe us, but we certainly would like to work in the context of this overall regulation toward working this problem out.

Senator CANNON. Absent some agreement or absent some type of legislation it would seem that the opportunity for mischief is there.

Mr. HARRIS. It perhaps is there.

Senator CANNON. If it is then, that is something, obviously, that we have to be thinking about.

Mr. HARRIS. We hope to be able to talk in terms of any demonstrated public harm, for instance, to use an example, back to my San Diego system, the Padre away games are on a local television station out there. If our pay-cable operation were to buy those Padre games we only have 13,000 pay-cable subscribers, so we would deny them to another 500,000 homes. I think that is clearly public harm and should be prohibited. We are in favor of that. We do not want to siphon.

Senator CANNON. Senator Hollings?

Mr. SCHMIDT. If I may elaborate just a second, Mr. Chairman, what the current rules do in effect, instead of adding to the public's viewability of sports programming, under the FCC's pay-cable rules on sports day, they further restrict the programming because you are subject to a lot of high watermarks on games that are available today on network television.

A good example is the national Hockey League, for a variety of reasons I am sure that the networks didn't get the ratings or something along those lines, the National Hockey League games went off broadcast television a few years ago.

But because the rules specifically state that any event that has been on within 5 years cannot be exhibited on pay-cable, so here is an example where the public, through our subscribers, has an interest in sports programming but because of the rules we cannot put that programming on even after it's been voluntarily taken off by the networks.

Another example is home box office which is in the programming business, had to go through a waiver procedure in order to televise the Wimbledon tennis tournament, because today the semifinals and finals are televised on network television.

We wanted to provide the American viewing public the sports programming on all of that competition up to the semifinals and

finals. But because of the rules we had to go through an elaborate procedure at the FCC in order to obtain them.

Senator CANNON. Senator Hollings.

Senator HOLLINGS (presiding). I am indebted to Senator Cannon and I apologize to him and the witnesses for my not being here earlier. But our Budget Committee resolution, as you know, under law has to come up on May 15. We got to one impasse that holds the entire House and Senate conferees up and that is category 50-defense.

I chair that particular task force within the Budget Committee, held all the hearings, had all the files and everything else. My Senate colleagues and the Senate, incidentally, Senator Cannon, is in step with the Senate Armed Services Committee of which you are the ranking member, with the Senate Appropriations Committee, and with the House Armed Services and Appropriations Committee.

The only one out is that Budget Committee with an extremely low figure. So, we have gotten to an impasse. I just couldn't get away sooner and I apologize now.

Trying to catch up not having heard all the witnesses, do you feel, Mr. Harris, Mr. Schmidt, et cetera, that cable or pay-cable TV is totally private as to be not regulated at all?

Mr. HARRIS. No; I think, No. 1, we have got to be regulated by the cities in terms of the rights-of-ways we use and the grant made.

Senator HOLLINGS. If you use rights-of-ways some public entity ought to carry, the airwaves are granted in particular channels to the regular broadcasters. Since you use that public permit in order to enter into the market, then you owe some public responsibility, you think it is only to the cities and not to the FCC?

Mr. HARRIS. Oh, no. I think there is some regulation that is clearly due from the FCC. I think our problem is they have overdone it.

Senator HOLLINGS. If you were a Senator, what regulation would you impose, I understand the inequities and discombobulation of FCC rules, I have to agree. We read them several times and no one can make sense out of them. It is worse than OSHA.

Now, suppose you were the Senator, trying to come back and write sensible rules or some forfeiture provisions, or some restrictions, what do you propose?

Mr. HARRIS. Well, I am not good enough to write rules, but let me try to get at the heart of the problem if I can and that is really what we are talking about and what I tried to address in my few minutes here. But the whole reason that cable is limited in the product it can offer, be it more channels or whatever, more choice, is because of an assumed potential negative impact on broadcasting. There has been no factual evidence that cable, in any way, has had any kind of demonstrable economic impact on broadcasting.

I cited several markets where cable and broadcasters have never had better years than they did last year. So, it seems to me if I were looking at the question I would try to look at the facts. And I would try to see if there had been any damage, and if not, I would want to know why one person was held back and not another.

Now, if damage occurred, and damage I define as loss of service to the public, certainly that is where regulation should come in.

Senator HOLLINGS. Taking the testimony we heard yesterday with respect to the public interest requirements of a regular broadcaster whereby there are certain requirements that have developed over the years by way of NAB guidelines, FCC rules and regulations, court decisions and otherwise, a certain amount of children's programming, trying to inhibit the volume of violence and sex programs and otherwise, the fairness doctrine, public access so that the public would have some kind of access, should cable TV or pay-cable respond to the same requirements? In other words, broadcasters say they are required to do all of these things and cable is not.

Would you say, oh, no, we don't mind playing by the same rules, is that what you are testifying to?

Mr. SCHMIDT. If I could I would like to respond to that.

Senator HOLLINGS. Yes.

Mr. SCHMIDT. I think that in order to be candid in that situation you were describing, I think you have to go back and look at how cable comes into being.

In the case of broadcasting there is a preemption on the part of the FCC, there is no other Government entity basically involved in broadcasting but the FCC rules and regulations.

Now, there are operational problems, I am sure they have, OSHA, et cetera. I am talking about policy related to the existence of their business. Contrary, the cable system comes into being through a franchise granted in a local community whether it is a municipality, city, county government, et cetera. These also regulate rates, so that you are clearly looking at what you can charge for that service.

Again, we maintain that the marketplace is the proper place for many of these facts to be disseminated because I think that our public, our viewers, our subscribers tell us very quickly whether they are dissatisfied with what they are seeing. They disconnect us.

So, we come into being through a franchise arrangement, then in some 13, 15 other States we have State regulation piled on top of that. Then we come to the national level where we have a Federal procedure we go through, certificates of compliance, and other checks and balances on our performance.

Senator HOLLINGS. There are a lot of checks and balances at the Federal level, do you accede to proper ones? Which at the Federal level do you think proper?

Mr. SCHMIDT. Maintain—that is the justification principally for the FCC having jurisdiction over cable. We are out there inside a wire—

Senator HOLLINGS. You use the public highways. You couldn't get the cable there if there wasn't a public link. If you and I organized a cable company and tried to run it from here to Richmond, we wouldn't get two blocks down the street were it not for the right of eminent domain, is that right?

Mr. SCHMIDT. Correct, Senator, but I am saying the local government is there to protect the interest in the case of the use of those right-of-ways.

Senator HOLLINGS. Do you think the local government from spot-to-spot, area-to-area, can really control? The local station affiliates maintain their programs come from the networks and they have no

real control over content. The cable operator is in a similar situation—importing other people's product.

Mr. SCHMIDT. We haven't seen any demonstrable evidence that they can't effect policy to protect their citizens. I think that what has happened is because of the potential competition that is involved in cable to the current format of television, this is where I trigger so many comments of what I think tends to be emotional by broadcasters.

I think that we are after a different market, we are in the mass-media business. We don't have to deal with advertising-supported television. We feel that what the public wants is freedom of choice in this case.

I don't think that they are getting that because of a variety of reasons, some of which we touched on.

Senator HOLLINGS. Well, I mean if you brought a boxing bout from Madison Square Garden down to Washington, D.C., heavens above, you wouldn't want to go through all the city councils that that cable would run through, would you?

Mr. SCHMIDT. No, but again, I think what we tended to jump to is that there is today in existence a closed-circuit system available that is not cable. You have through various promotional efforts the very thing that you are describing in existence that has nothing to do with cable television.

Senator HOLLINGS. You are talking about running off satellites and otherwise?

Mr. SCHMIDT. I mean, when a Capital Center in Washington, D.C. is used as a huge theater and they bring via satellite the Ali fight from the Philippines, there is an example. No, that is not coming via cable. The Federal Government or city and State is not involved in the presentation of that exhibition. It is the marketplace.

Senator HOLLINGS. Of course, that satellite is again a public media, and it is being employed. Let's assume then rather than the city council, it comes by satellite, then you get to the ultimate, the contention of the other side; namely, that if you come in that way to those who can pay, then eventually it will erode the services and the programing to the fellow who can't pay or can't receive the cable, who is generally being served now.

Everybody agrees, you agree, Mr. Harris agrees, I agree, we have a pretty good system working. I am worried whether you are being discriminated against; I am worried whether or not free market forces cannot operate. I am trying to test in my mind. I am not smart enough to make a decision on it yet. But as I test it and see these obligations, expressions you used yesterday, coming on their back, they built up the studios and all, pay cable doesn't have big studios, staff, news gathering things, these have all happened, frankly, without this Congress doing too much.

I rather like it the way it is happening, but I don't want to see you folks continue to be penalized. I don't want to come around and by regulation knock it out and find 5 or 10 years from now, that in the big cities the people have the big shows and they are getting all that so-called freedom of choice and free market impact, that is in New York and Washington, D.C.

But, in Orangeburg, S.C., there is no freedom of choice because the growth of cable has put local broadcasters out of business. I

compare what I can get in 1977 and in 1987 and where I used to get certain news and programing and sports, competition has cut that back because you have come into the market and then Orangeburg has a second, third-rate proposition.

That is the kind of thing that the fellow who runs for reelection has to get back down to Orangeburg and explain. He says:

I put in a bill, I listened to that fellow Schmidt and that fellow named Harris and we put in a bill to give cable a free market, and now we in South Carolina have got so much we have got nothing.

When you turn on your TV, you have got junk and you don't get Wide World of Sports and you don't get all these other programs.

Now, what do you say about that?

Mr. SCHMIDT. Senator, I think that the processes of Government that we exist under, I think, will protect the public. I don't think that the public's interest is being served by a denial of the choice. If, in fact, commercial television as we know it today is going to change, and the content of that programing is going to diminish, diminish in the sense that the public in some way is ill-served by that change, I think that the U.S. Congress is very capable of stepping in as the representatives of the people and asserting whatever authority is necessary to correct that problem.

But, I don't think that we can get there by talking about it as an imaginable horror; I don't think we can get there by talking about this in a projected disassembling of what television is today.

I will give you an example in the case of supports. Less than 25 percent of the games today in professional sports leagues of the National Football League, the National Hockey League, the NBA, and major league baseball are on network television. We think that the public would like to have more sports, but because of rules, we are unable to bring in the other 75 percent of those games, if the public was in a position to choose.

So I think that as evidenced probably by the sports blackout rules, which the Congress acted on in a very timely way, I think that the Congress is in an excellent position to protect the public interest, when in fact, the public interest is harmed. I don't think that there is any identifiable harm as evidenced today. And I think that in the case of Orangeburg, S.C., or any other community which is so dependent upon television as a means of communications, they don't have the luxuries of the urban centers that they can go and exercise choice in a different way, I think that those are real tests that cable ought to be prepared to deal with and have evidence of their good intentions, this is a local product in many instances, we have an obligation under the rules to provide local programing in markets where we have 3,500 subscribers or more.

So we are doing things in that local market. Unfortunately, I think most of the information local people have is not coming view televisions because what they are seeing is the national news as disseminated by the networks. So I don't think that there is a great deal of local information passing into the hands of the public today. I think that there are other means of getting it there.

Senator HOLLINGS. Well, I appreciate it and that is why I am trying to press you. I would like to get you to write the bill. I would like for Mr. Wasilewski to write the bill and see what the bills would look like.

Mr. HARRIS. They would be a little bit different.

Senator HOLLINGS. But you say you are corresponding and you often get together.

Mr. HARRIS. We wrote Vince Wasilewski today and have requested that the letter and information related there be submitted in the record, and we are very interested in a show of good faith to try to find ways to deal with the facts and find a test that we can all live with and be compatible.

Senator HOLLINGS. I think you are in good shape really. You have a new committee that is trying to do the right thing.

Thank you, Senator Cannon, a lot. Again, I am sorry I am late. I appreciate it.

Senator CANNON. Thank you, sir. That concludes the hearings for today. Thank you very much, gentlemen.

[The statements and letters referred to follow:]

STATEMENT OF HENRY HARRIS, COX CABLE

My name is Henry Harris. I am president of Cox Cable, a division of Cox Communications of Atlanta. Cox Communications is both a broadcaster, cable system operator and publisher. We operate television stations in five markets as well as thirty-eight cable systems, including the nation's largest in San Diego. You might suspect that involvement in both cable and broadcasting would be contradictory, particularly in light of broadcaster claims of cable's potential to cause the demise of commercial TV stations. Let me assure you that our cable and broadcasting operations are quite compatible. We are communicators. Whether we communicate on cable or via over-the-air television, our intent is to offer our public the best in television service. We view broadcasting and cable television as complementary rather than exclusive offerings. Many other broadcasters apparently feel the same way since over one third of all cable television systems are owned by broadcasters.

A brief look at the structure of these two industries will support my argument that cable television and broadcasting are complementary services which can co-exist . . . profitably.

As you know, broadcast television uses specific frequencies to transmit its programming over-the-air. These frequencies are sharply defined and limited, with a specific number of TV channels allocated to each market. Since the number of television stations is limited, each station is economically compelled to offer programming which will appeal to the largest mass of people. As a result, there is little room for diversity or specialization in broadcast television programming.

This "television for the masses" philosophy of broadcasting is reinforced by the fact that the great majority of all television stations are network affiliates and thus fill a majority of their broadcast day with national network programming. Approximately 65% of all programming on affiliated stations is distributed by the parent network. Programming developed for national distribution must certainly be structured to appeal to the broadest possible audience in order to meet the needs of the advertisers who measure success by the number of viewers reached.

Please understand that I am not trying to downplay the importance of over-the-air broadcasting and the quality of its programming. Broadcasters provide a significant portion of the population with high caliber programs, movies and sporting events. But I do ask you to recognize the additional services cable television systems can provide: services complementary to basic broadcast fare.

Cable television has moved through several stages of development, all the while demonstrating an ability to provide additional programming without damage to the public's access to commercial television. Cable started out simply retransmitting broadcast signals in rural areas where the over-the-air reception was virtually impossible. Over the years cable systems moved into less remote areas. In these markets they not only carried local television stations but also added an additional service of importing television signals from distant cities. By so doing, cable provided these smaller communities with increased television diversity and the high level of television service previously available only in the largest cities.

The acceptance and importance of cable television in these smaller markets is born out by the numbers: of the 120 smaller TV markets, approximately 70 have television cable going into at least 30% of the homes. Cable systems have operated

in these smaller markets for many years, offering a wealth of TV signals, as well as local programming and access channels for use by the community.

Despite this widespread cable penetration, smaller market television stations remain financially healthy. FCC broadcast financial data shows that small market TV stations have experienced a revenue growth of 31% during the period 1972-1975, 1975 data being the latest available. This growth compares favorably to the 29% growth experienced by the total broadcast industry. Recently at the annual convention of the National Association of Broadcasters, it was forecast that the small television markets would have a greater profit growth in 1977-78 than broadcasters in the larger markets.

Today cable operators are attempting to offer service to consumers in metropolitan areas. Initially we believed that these markets could be built with the same types of services offered in smaller markets. We quickly discovered that the demand for a retransmission service in a major market with an abundance of local TV stations was almost nonexistent. The importation of distant signals from other cities showed promise and has proven to be a saleable commodity in some markets. However, FCC rules which limit the television signals cable may import and what programs it may show on those signals have severely limited their value to the consumer. This is a subject we will address in great detail in your upcoming cable hearings.

Cable entrepreneurs soon realized that in order to build viable cable systems in major markets already well-served by local broadcast outlets they would have to offer new services. In short, cable operators needed a product. Operators reacted to this need in many ways. I would like to tell you what my company has done.

Cox Cable operates cable television systems in several urban areas. Our system in San Diego, the largest in the country, is a prime example of the point I've been trying to make—cable and broadcasting are compatible services and can co-exist successfully. Broadcast stations provide a basic and important foundation of services, with cable systems providing specialized programming of broad diversity.

For a monthly charge of \$7.50 the 147,000 households served by Mission Cable TV receive:¹

1. The four local San Diego TV stations.
2. Two Mexican stations, one English language, one Spanish.
3. Nine stations from Los Angeles including a Spanish language station and a specially programmed business data channel.
4. Locally originated programming including: Local community events, San Diego State University football, open forum with city and local officials, Local sports activities, such as horse shows, etc.
5. Local educational channel programmed jointly by the 32 school districts in the San Diego service area.
6. Public access channel, programmed through the Community Video Center, with locally produced activities.
7. Municipal information channel, programmed by the city government and providing up-to-date information on city projects, programs and services.
8. Five automated channels, including a weather channel, stock market channel, AP news and sports wire, community message channel and a consumer information channel. The consumer information channel provides comparative price data for the major supermarkets and drug stores in the San Diego area, giving shoppers easy access to the information needed to take advantage of the best buys.

We offer all of this and still the local broadcast outlets are showing ever increasing profits and growth. In the period 1967-74 the percentage increase in broadcast revenues in San Diego exceeded by almost 2½ times that experienced by all U.S. television stations. Local broadcast income grew at a rate over 3½ times the national industry growth rate. The San Diego broadcast television market has enjoyed tremendous audience increases—the sixth fastest growing market in the nation. Broadcast revenues have followed this growth, increasing 55% between 1972-75, a period during which cable households increased 75%. The San Diego market television audience was ranked 48 in the nation in 1972, and by 1976 it had grown to 42nd place. The threat of injury to broadcasters due to cable television has certainly not materialized in this market.²

Another example of a market where cable and television co-exist compatibly is San Francisco. Cox Broadcasting owns the independent television station, KTVU, in San Francisco. The San Francisco market is well served by cable, with just about a

¹See Exhibits D, E, F & G for local newspaper accounts of Mission Cable Services.

²See Exhibit A, B, & C for data on the growth of broadcast and cable in the market.

third of all households subscribing. Many of the cable subscribers in the market also subscribe to pay cable service. Even with this heavy cable activity in the market, our independent station continues to show record financial success. KTVU ranks 5th in the nation in its audience level during the important 8-11 pm time period. It is Cox Broadcasting's leading television station.

My point here is that successful broadcast and cable operations can exist side by side. Recognizing the real addition to the quality and quantity of television programming which can be made by cable, I am even more frustrated with the regulatory restraints which limit cable television's ability to serve consumers. With every new programming product developed by cable operators comes the broadcaster's claim of imminent financial ruin. Regulatory philosophy to date has focused on immediate protection of broadcast interests, without consideration of either the substance of their claims or of the impact of such protection on the public's right to choose.

Pay cable television is an example of my point. A great deal of commotion has recently surrounded this premium service. For an extra monthly fee, pay cable subscribers receive a separate channel of high quality programming not available on commercial TV. This programming includes current movies, sports events, drama, cultural and children's programs and entertainment specials without commercial interruptions. As I have mentioned, it is precisely this type of diverse specialized programming from which consumers have a right to choose and which is so important to major market cable television development.

As I have demonstrated, there is no merit in the argument that cable television will harm the public interest by limiting the availability of broadcast television. Those who want to thwart cable television have changed their tune insofar as pay cable is concerned. Instead of damaging profitability and the viability of local broadcast outlets those who oppose pay cable charge it will "siphon" away programs from commercial television. They argued that the public would be greatly harmed through commercial TV's loss of movies and sporting events, with the collapse of the broadcast industry looming on the horizon.

The FCC, without any quantitative evidence to support these claims, imposed strict regulations limiting the quantity and types of programming that pay cable operators could provide consumers. The rules were opposed by the U.S. Department of Justice, public interest groups, program suppliers and cable television operators. On March 25th the U.S. Court of Appeals unanimously overturned the pay cable rules, rejecting all assertions of siphoning, injury to the public and broadcast industry collapse. In short, the Court found absolutely no basis for restriction of pay cable development and censured the FCC for acting when no such action was warranted.

The Court commented: "The Commission's lack of a clear picture (of the pay cable industry and its relationship to broadcasting) is directly attributable to its own choice to regulate rather than allow a period of unregulated experimentation in which data could be generated that could form a predicate for *informed* agency action." (Emphasis added.)

Emphasizing its findings, the Court said: "We cannot fathom how the Commission reached the conclusion that the balance here should be struck in favor of regulation . . . the only discussion purporting to be an explanation is obviously flawed and is completely irrelevant to most of the anti-trust issues raised." (footnote omitted)

The Court went on to reject the FCC's basic philosophy of regulating cable television as a stepchild of the broadcasting industry, observing:

" . . . the Commission has in no way justified its position that cable television must be a supplement to, rather than an equal of, broadcast television. Such an artificial narrowing of the scope of the regulatory problem is itself arbitrary and capricious and is ground for reversal." (cit omitted)

Reaction by the anti-cable forces to the court decision was not unexpected: they just increased the noise level on the assertions the court had already rejected. The court went to great lengths to point out that no evidence had been submitted showing existing or potential siphoning of movies or sports events by cable, yet we continue to hear that siphoning is imminent. The claims continue to be made that in the not so distant future pay cable will even siphon away such all-American events as the World Series and the Super Bowl.

These claims are so ridiculous that we are at a loss to refute them. I can tell you that the cable industry has no desire to restrict the availability of sporting events. Our intent is just the opposite! We want to offer more games, games which for various reasons are not covered by broadcast television. I can tell you that a vast range of witnesses have appeared before various Congressional Committees testifying to the sheer folly of the broadcaster claims that World Series-type events would be siphoned. Bowie Kuhn has promised the Congress that the World Series would

remain in the domain of commercial television; representatives of the hockey and basketball leagues have likewise assured the commercial availability of their respective play-offs and championships.

When you get right down to it, cable television cannot sneak up and "siphon" a major sporting event off of commercial television. Contracts for the Super Bowl, for instance, are signed three years in advance. If cable were suddenly going to steal events like this the public and the Congress would have three years advance notice. I remember well how it only took both Houses of Congress a couple of weeks to pass a sports blackout law. I have no doubt such a steamroller would also flatten any attempt by the cable industry to "siphon" major sports events.

This continued demand by broadcasters for protection from some unseen and hard to imagine danger is precisely what the court cautioned against. The judges overturned the pay cable rules on the grounds that regulation of and restrictions on pay cable should not be enacted prior to a demonstration that such action is necessary to protect the public interest. As the court found, such evidence has not yet been offered.

Cable's growth in the major markets is further stymied by FCC restrictions which limit the number of distant signals cable systems can offer and restrict cable retransmission of specific programs on those signals. Like the pay cable rules, the Commission's signal carriage and syndicated exclusivity rules were enacted to protect broadcasters. And, similarly, this protection was granted absent any factual evidence that such protection was necessary.

The signal carriage rules are simple, they generally limit major market systems to two distant signals, certainly not enough to provide the additional programs desired by consumers. On top of this limitation, the syndicated exclusivity rules require newer cable systems in major markets to delete a significant number of individual programs on these distant channels. The exclusivity rules require systems to eliminate an average of about 30% of the programming of those already limited distant signals. As we will explain in great detail during this Subcommittee's cable hearings next month, the programming blacked out due to exclusivity is quite often programming which is not available locally or is available only in a radically different time period than it would appear on the distant station.

These rules deprive the consumer of valuable programming, severely inhibit cable viability in major markets and inhibit the development of new markets. Worst of all, they are based completely on unsupported claims of potential injury and ruin.

I offer the pay cable, signal carriage and exclusivity rules as prime examples of the completely unreasonable anti-consumer regulatory structure in which cable operators attempt to survive. I reiterate, cable is a service complementary to broadcasting. We offer services and programs which local broadcast outlets are simply unable to provide. The growth and good health of cable and pay cable television does not signal the end of the profitability of over-the-air broadcasting.

Look again at San Diego. Our system offers San Diego State University football games. These games have never been televised on broadcast TV because their appeal is too limited and would not generate the revenues the broadcaster would receive from other more mass appeal programming. Yet these games are of great interest to many San Diego residents. If this is siphoning, so be it. Our San Diego cable system also televises the Independence Day parade, city council meetings and local beauty pageants. Broadcast TV simply can't or won't do these. And we bring in three Spanish language channels, a valuable commodity to the 18% Spanish sur-named population in the market.

Cable can do many things. However, we are greatly frustrated by a regulatory scheme which stifles our growth at every turn. These restrictions on our ability to offer the services desired by the American consumer are not necessary. Let us stand back for a moment and take a long look at cable television and its relationship with broadcast television. Let us examine the services provided by both industries and particularly those services within cable's potential but currently prohibited by FCC regulation. And let us examine the financial state of the broadcast industry and explore the validity of its claims of adverse cable impact. I believe we will see that cable and broadcasting can operate side by side and in good health. And I believe that the public will greatly benefit from the additional services the cable industry can provide.

We hope our friends in broadcasting will recognize that we can live happily together while we both serve the public. We ask your help in the elimination of the regulatory restraints which restrict cable's ability to provide greater television diversity. We are anxious to work with the broadcast industry and the Congress so that we all may better serve the public.

TELEVISION STATION, NET TOTAL REVENUE, 1967-74

	National		San Diego	
	Revenue	Percent annual increase	Percent annual increase	Revenue
1967	\$1,322,122,000	.....	.....	\$7,130,000
1968	1,504,484,000	13.8	21.9	8,688,000
1969	1,652,150,000	9.8	4.3	9,065,000
1970	1,863,616,000	12.8	7.3	9,729,000
1971	1,656,215,000	11.1	3.9	10,113,000
1972	1,908,129,000	15.2	28.8	13,027,000
1973	2,059,934,000	8.0	25.2	16,314,000
1974	2,230,297,000	8.3	15.0	18,764,000
Total .....	.....	68.7	163.2	.....

Note: Increase in net total revenues by San Diego stations have exceeded all stations (nationally) by 138 percent.

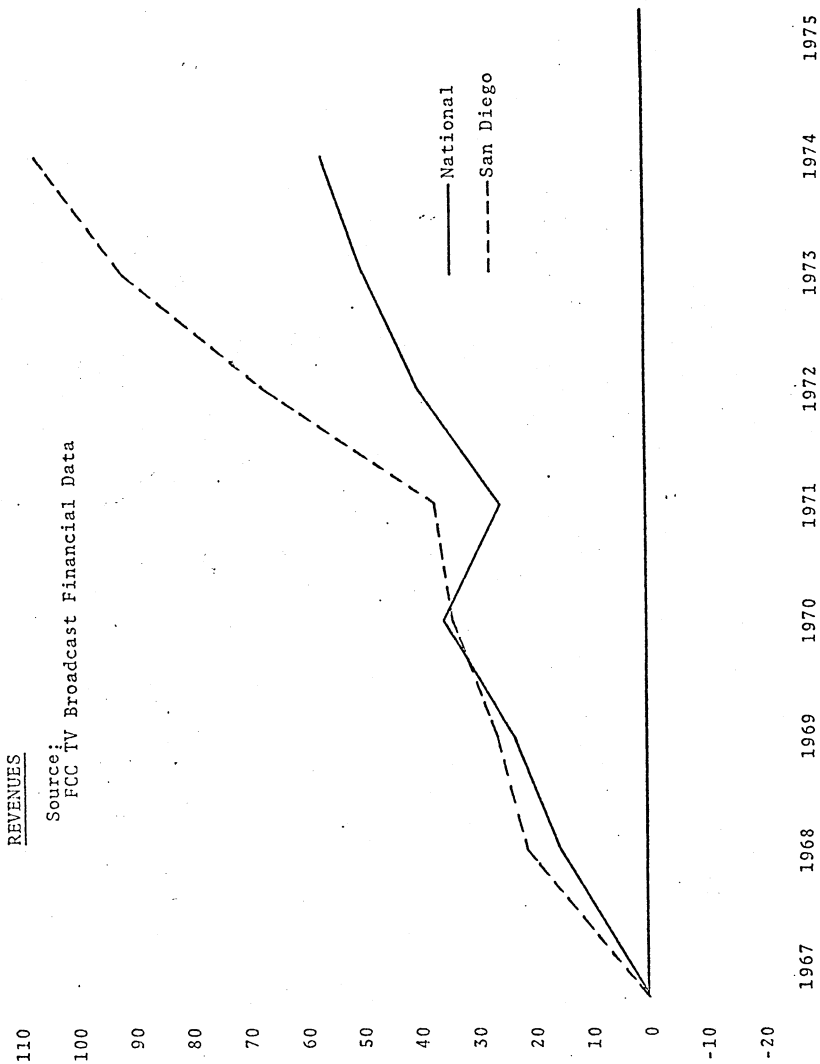
Source: FCC TV Broadcast Financial Data.

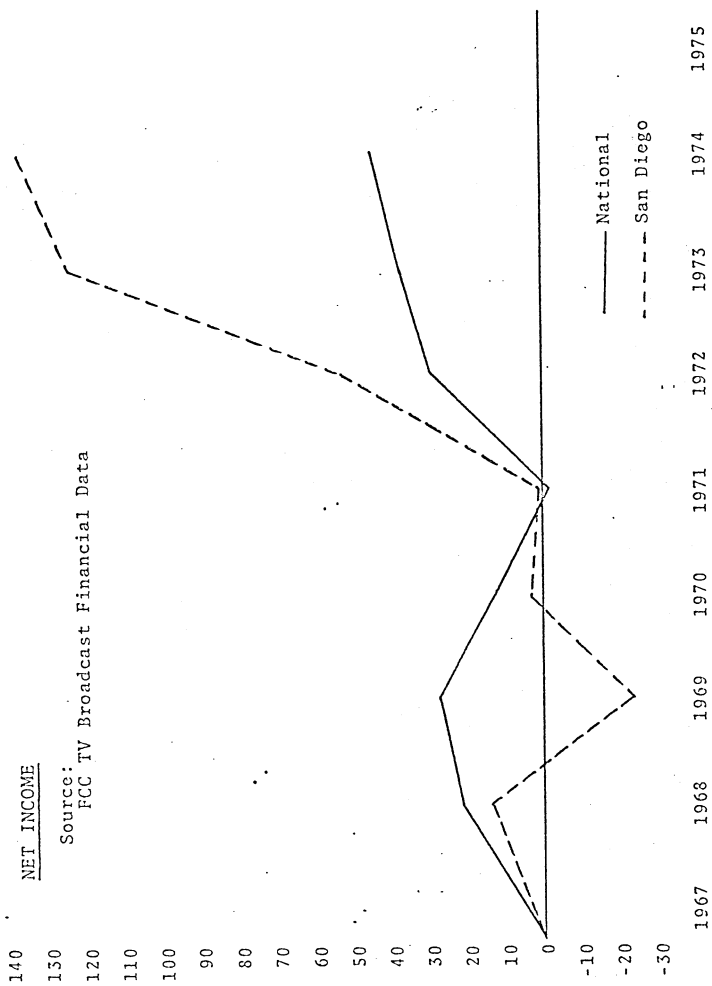
TELEVISION STATION, NET INCOME, 1967-74

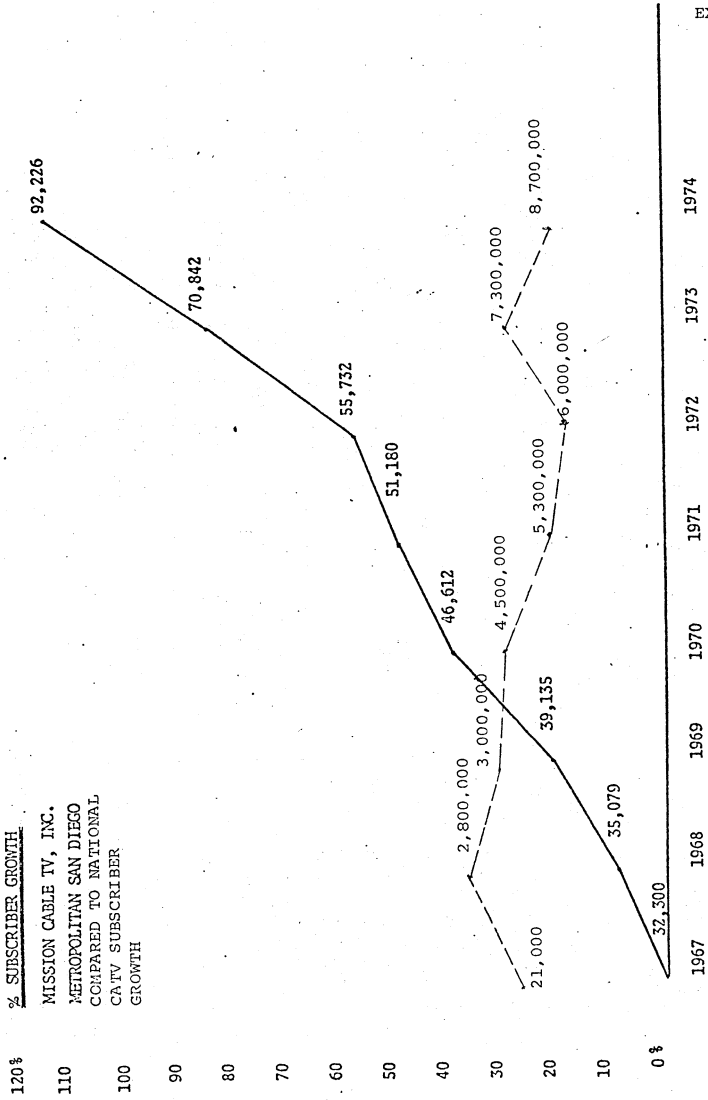
	National		San Diego	
	Net income	Percent annual increase	Percent annual increase	Net income
1967	\$358,800,000	.....	.....	\$1,529,000
1968	438,400,000	22.2	13.2	1,731,000
1969	460,900,000	5.1	36.6	1,097,000
1970	403,700,000	12.4	27.3	1,396,000
1971	333,500,000	17.4	2.5	1,361,000
1972	441,300,000	32.3	52.8	2,080,000
1973	468,200,000	6.1	70.5	3,547,000
1974	512,000,000	9.4	12.5	3,992,000
Total .....	.....	42.7	161.1	.....

Note: Increase in net income by San Diego stations have exceeded all stations (nationally) by 28 percent.

Source: FCC TV broadcast financial data.







[NOTE.—Exhibits D through G were not reproducible.]

NATIONAL CABLE TELEVISION ASSOCIATION,
May 10, 1977.

The Hon. ERNEST F. HOLLINGS,
Chairman, Subcommittee on Communications, U.S. Senate, 233 Russell Senate Office
Building, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of your hearings on broadcasting there have been many claims by broadcast witnesses about the impact on the public of pay cable television. These arguments are essentially the same arguments the U.S. Court of Appeals rejected in its *HBO v. FCC* decision which overturned the FCC's pay cable rules.

Nevertheless, so that your committee may have a fully documented hearing record, we submit the following:

1. Correspondence from NCTA to NAB proposing a legislative standard of identifiable public harm as the basis for all regulation of cable-broadcast television competition. Such a standard would remove the "siphoning" threat broadcasters allege while at the same time insuring that all cable regulation is not designed merely to protect the profits of broadcasters.

2. A white paper, "The Facts About Pay Cable Television's Impact on Current TV Programming," which addresses the issues raised in broadcaster testimony.

3. NCTA's new information booklet, "Pay Cable Television . . . The Right to Compete," which discusses the facts behind pay cable and how it will offer consumers more, not less, in television programming.¹

4. A copy of the U.S. Appeals Court's decision in *HBO v. FCC*, striking down the FCC's pay cable rules.¹

We hope this information is helpful to you and the subcommittee.

Sincerely,

ROBERT L. SCHMIDT,
President.

Enclosures.

NATIONAL CABLE TELEVISION ASSOCIATION,
May 10, 1977.

Mr. VINCENT WASILEWSKI,
National Association of Broadcasters,
1771 N Street NW, Washington, D.C.

DEAR VINCE: Recently, your organization has accelerated its claims that pay cable television will deprive the public of programming now seen on commercial television, notably sports events. These spectres of "siphoning" are unfounded and unwarranted. The National Cable Television Association (NCTA) has repeatedly testified before Congress and the Federal Communications Commission that pay cable television's goal is to expand, not restrict, viewer choice in television programming, including sports events.

Now, however, the National Association of Broadcasters is calling on the Congress to pass legislation to permit restrictions on pay cable television on the grounds that the public's interest in receiving commercially televised sports and other programming must be protected. While we strongly disagree that pay cable television poses potential harm to the public interest, we, nonetheless, propose a legislative standard that would eliminate the situation about which you are concerned. This standard would form the foundation for all regulation of cable-broadcast television competition. It is simple and straightforward: Let public interest be the determining factor.

Under such a standard, a demonstration of harm to the public as a result of the involuntary removal of existing programming from commercial television could prohibit any of the kinds of "siphoning" that you allege may take place.

This identifiable public harm standard would also prohibit any regulatory restrictions on the television signals or programming cable consumers may or may not see unless it is demonstrated that this added diversity results in harm to the public.

In short, we are proposing a uniform public interest standard governing all aspects of cable-broadcast television competition. This standard would not only solve your concerns about pay cable siphoning, but also would insure that consumers have the full benefit of the greatest diversity in television programming.

NCTA is ready to support legislation establishing identifiable harm to the public interest as the foundation for regulation of all cable-broadcast competition. We hope

¹ These publications are in the subcommittee files.

that NAB will do likewise. Together, we both can support fair and equitable legislation that places the public interest above all proprietary interests.

Sincerely,

ROBERT L. SCHMIDT.

THE FACTS ABOUT PAY CABLE TELEVISION'S IMPACT ON CURRENT NATIONAL PROGRAMMING

The National Association of Broadcasters has asked the Congress to take legislative action to prevent pay cable television from "siphoning" local sports from commercial television. In Senate testimony, Vincent Wasilewski, NAB President, said that he was concerned that the public "may lose some prime programming to pay cable television". The cable television industry shares his concerns, but finds his fears unfounded.

There are two key terms that must be defined in order to understand what is at issue in this debate and whether or not pay cable television poses a threat to the public's access to programming on commercial television.

The first term is pay cable television. Pay cable television is an additional service offered by cable operators to cable subscribers who, for an extra monthly fee, receive first run motion pictures, variety entertainment, and sports events not seen on commercial television. All programming on pay cable is presented unedited and without commercial interruptions. Today, slightly more than a million Americans in 45 states have chosen to subscribe to pay cable television services.

In short, pay cable television is a form of viewer supported television that can open the doors to greater diversity in TV home entertainment and broaden the range of programming choices available to American families. Contrary to what the broadcasters contend, pay cable will supplement commercial TV, not supplant it.

The second term is siphoning. Siphoning is a word used by the broadcasters as a scare tactic to suggest that pay cable television will divert the best programming from commercial television and deprive the public of entertainment it now receives on so-called "free television". Siphoning is a myth that the broadcasters have conjured up in order to restrict the growth and development of pay cable television and, thereby, foreclose competition in providing televised home entertainment to the public.

In a recent decision, the United States Court of Appeals overturned FCC restrictions on pay cable television of feature films over three years old and certain categories of sports events. The FCC had stated as its primary justification for the pay cable rules, the need to prevent pay cable siphoning of movies and sports programming away from commercial television.

In striking down the FCC rules, the Court addressed particularly the so-called siphoning rationale. The Court, in a unanimous 105 page opinion, stated that the FCC had presented no evidence whatsoever that siphoning poses a threat to the public interest. The Court declared, "The Commission has not put itself into a position to know whether the alleged siphoning phenomenon is real or merely a fanciful threat to those not served by cable. Instead, the Commission had indulged in speculation and innuendo."

The cable television industry submits that this is exactly what the broadcasters have engaged in—speculation and innuendo. The Congress should not take any legislative action based on the self-serving assertions of an involved industry. Congress should legislate on the facts, and in the public's interest.

What are the facts concerning this siphoning controversy?

Fact No. 1: The so-called siphoning charge was found to be totally without merit by the U.S. Court of Appeals in its March 25 decision.

Fact No. 2: The siphoning argument has been thoroughly examined by a number of impartial government agencies that concluded, as the Court did, that siphoning poses no threat whatsoever to the public interest. For instance, the Justice Department said in testimony before the FCC during pay cable rulemaking, "To begin with, present consideration of any potential harm from pay cable must necessarily be carried out in a void for the factual record before the Commission is barren of any credible evidence that siphoning has happened, or more importantly, is going to happen."

The House Communications Subcommittee staff report, "Cable Television, Promise vs. Regulatory Performance," also addressed itself to the siphoning accusation. The report concluded, "We believe that pay cable can potentially contribute greatly to the public interest by offering a viable alternative to the advertiser supported system of over-the-air broadcasting."

The NAB states that it's deepest concern is that some sports events may be taken off of commercial television and shown exclusively on pay cable television. Increased availability and diversity of sports programming is of major concern to the cable television industry; however, as noted in testimony before the Congress, the pay

cable industry has no intention whatsoever in purchasing the World Series, Super Bowl, or any sport's championship events of this caliber for exclusive exhibition on pay cable. We recognize that these attractions belong in the public domain and we will not attempt to alter that fact. Indeed, even if an attempt were made by the pay cable industry to purchase these events, they must be contracted for years in advance and, the Congress or the FCC would have ample authority and time to block such a transaction.

On the question of local sports siphoning, it is important that we again separate fact from speculation. Mr. Wasilewski has argued that the pay cable operator will someday be able to outbid the broadcaster for professional sports.

Again, what are the facts?

Fact No. 1: The vast majority of cities with professional baseball, football, basketball, or hockey franchises are not cabled to any significant degree. Most sport franchises are located in urban cities that today, are not viable cable markets.

Fact No. 2: It is sheer speculation to suggest that pay cable operators will be able to outbid local broadcasters for the television rights to professional sports, or indeed, any programming. The Court of Appeals specifically addressed this question in its decision, stating, " * * * the Commission did not consider whether conventional television broadcasters could pay more for feature film and sports material than at present without pushing their profits below a competitive return on investments and consequently, it could not properly conclude that siphoning would occur because it would not know whether or how much broadcasters, faced with competition, would increase their expenditures by reducing alleged monopoly profits."

The Court went on to refute the broadcasters' contention that consumers who lived in areas that were not cabled or who could not afford pay cable television would suffer a loss of programming. The Court said, "We have similar difficulties with the second cardinal assumption that siphoning would lead to loss of films and sports programming for audiences not served by cable systems or too poor to subscribe to pay cable."

"To reach such a conclusion", the decision said "the Commission must assume that cable firms once having purchased exhibition rights to a program will not respond to market demands to sell the rights for viewing in those areas that cable firms do not reach. We find no discussion in the record supporting such an assumption. Indeed, a contrary assumption would be more consistent with economic theory since it would prima facie be to the advantage of cable operators to sell broadcaster rights to conventional television stations in regions of the country where no cable service existed."

This issue was also examined by the House Communications Subcommittee staff report. The report clearly pointed out that the marketing sequence would dictate that sports and movies remain available to both pay cable and commercial television. "The common staples of pay and conventional television are films and sports", the report stated. "The film producers assert that they have no intentions of withholding their product from conventional television; rather they see an orderly progression of sales to motion picture theaters, to pay television, and finally to conventional television, the latter because it supplies vitally needed further revenues. Sports entrepreneurs similarly state that they will not withdraw programming from conventional television—that they seek an additional box office dividend. There is everything to gain and nothing to lose by testing these assurances."

The sports entrepreneurs have gone on record before the Congress that they will not remove their games from conventional television for exclusive exhibition on pay cable. In testimony before the House Communications Subcommittee in June of 1976, Baseball Commissioner Kuhn said, "Baseball believes that pay cable will offer an opportunity to supplement the games already offered to the public on conventional television not to substitute for our current television." He added, "Baseball believes that the continuity of over-the-air sports will in no way be jeopardized by making our regular season games available to pay cable."

NAB charges that the rising costs of sports franchises will force them into exclusive pay cable arrangements. In reality, the opposite is true without "siphoning" any games, pay cable can provide the additional revenues that the sports industry needs to meet its rising costs. The new box office provided by pay cable will increase sports programming, not curtail it. Were it not for pay cable, for example, many hockey games would not be seen by the public since the networks for economic reasons refuse to carry any NHL regular season games.

There are two major questions in this controversy. Will the public suffer a loss of programming as a result of the growth and development of pay cable television? And, is there a need for prior restraint legislation on pay cable when there is currently only speculation and innuendo to support such an unprecedented action? The answer to both questions is no. In the words of Senator Ernest Hollings,

Chairman of the Communications Subcommittee, "when it come down to the situation in pay cable TV, I don't see for the life of me why we in this country do not allow this particular advancement to run free for awhile and see what happens."

[Whereupon, at 12:43 p.m., the hearings were adjourned, to reconvene Wednesday, May 11, 1977.]

TELEVISION BROADCAST POLICIES

WEDNESDAY, MAY 11, 1977

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee was reconvened, pursuant to adjournment, at 9 a.m. in room 235 of the Rayburn Senate Office Building, Hon. Bob Packwood presiding.

Senator PACKWOOD. The hearing will come to order, please.

The first witness this morning is Bill Bradbury, who is the news director at KCBY in Coos Bay, Oreg.

Bill, you are on.

STATEMENT OF BILL BRADBURY, NEWS DIRECTOR, KCBY-TV

Mr. BRADBURY. Thank you, Senator Packwood. It is a pleasure to be here.

I am not here as a representative of myself or my station, but rather a representative of a group of people in Oregon who attended a series of TV townhall meetings in our coverage area. We are on the south coast of Oregon and we held nine townhall meetings in the month of March to discuss with people in our coverage area their thoughts about television, both national television and local television.

What I would like to do is show you a 15-minute videotape that is a summary of the comments that people at these townhall meetings made in March to get a feel for what the television consumer has to say about television.

Senator PACKWOOD. All right.

Mr. BRADBURY. The first thing you will see is a 30-second promo we used on the air to advertise the townhall meetings, then the townhall meeting comments will begin.

[Film.]

VOICE. Television is a major part of our lives. The average American family spends 6 hours every day watching TV, but we rarely get a chance to talk back or with those who make TV what it is. I will be holding a series of TV townhall meetings to hear how you feel about television and how you would like to see it changed. The TV town hall meetings will be held throughout KCBY's coverage area on the coast. Watch your TV town hall meeting in your area.

VOICE. I think TV is here to stay. We are not going to get rid of that and because of that I think family life has been changed greatly over the past few years and in many cases probably we don't really have a communication and doing of things together as a family as in years gone by before the TV came on.

For this reason, I would like to see the TV programming so that families can be together during those hours when the children are out of school and they are

together as a family, because obviously that is where they are going to be, is watching, TV.

VOICE. It has broadened our younger generation a great deal. They are more knowledgeable in every field and about the world and everything in the world than my generation was, or anyone before TV.

But I do think the younger people now, they are not reading. They are not learning how to read; they are not learning how to communicate. They sit around and watch that TV 4 hours a night, and they are losing the art of communication.

VOICE. Another thing that bothers me is the commercials. They make us feel like, well, they think we are idiots, that we believe them; and I also think they tend to teach our children to lie, because some of them are just lies. And I wish there was a way that we could just get them to make sure that their advertising is true.

VOICE. They thought that sex and violence is their new play toy so everything has to have so much sex and so much violence in it, and pretty soon they are going to get tired of it. I don't know what they are going to find next, but they are going to get tired of it. By that time we are the ones taking the punishment. It is not a thing to play around with.

VOICE. I can remember when I was a boy and "Gone With the Wind" came out and they said the word "damn." Everybody in the theater gasped. And over the years TV and movies have gradually pushed more and more sex and violence. Young people growing up now think it is an every day go. It is not in my book. It really turns me off.

VOICE. Also I don't believe that sex is a spectator sport. I don't think my kids need to see that. I also object to violence very, very much.

VOICE. For a while there, there were getting to be too many police and doctor stories. It was getting so you could turn your TV on at 8 o'clock, watch a guy get shot and at 9 o'clock, watch him get the bullet taken out.

VOICE. There is violence in the world and I don't think that we should shut it out, because there is violence, but there isn't enough positive things to counteract all of this negativism.

VOICE. I grew up in Gene Autry, Tom Mix days and it used to be the good guys won out, but it seems to me like the new shows, they make the villain the hero nowadays and I don't think that is good for kids to watch.

VOICE. If you are going to teach a lesson, teach a good one.

VOICE. My biggest complaint is like most people, I get awful tired of the monotony of police stories and crime dramas.

VOICE. Police stories—makes me feel like somewhere in this country there is a police state, but it sure isn't here and that isn't real to me.

VOICE. I am opposed to violence. I am tired of police shows. I don't want to seem them any more. I have seen enough of them already. As far as allowing my child to watch TV, I would much rather see my child watch two people making love on TV as somebody blowing some guy's brains out, which is legal to show the guys blowing the brains out and not legal to show two people making love on TV.

VOICE. Well, those police programs are sort of violent for kids' taste.

VOICE. The police shows that are all the same, or medical shows that are all the same, or children's shows are so boring.

VOICE. I like them.

VOICE. I know. You have no taste. It's a waste of time, most of it.

VOICE. And you know what I do on a weekend morning.

VOICE. Do you watch Saturday morning cartoons?

VOICE. Yes.

VOICE. What do you do?

VOICE. First I get up.

VOICE. That's a good start.

VOICE. Naturally. I start my day. Then I watch cartoons. Then I have breakfast and then I watch cartoons until they are over with. Then I go play, and then when the Saturday programs come on, like the night programs, for instance, I always watch them with my mother.

VOICE. But I do get upset about everybody saying we have to have family hour; we have to have this; we have to have that so the kids might not see it. Heaven forbid they see something. It is up to me to decide what she watches and I would rather not have to watch 90 million hours of Walt Disney just on the chance that she might see something that might upset her.

VOICE. I did not permit my children at any time to watch stuff that was objectionable as far as I was concerned or that was too suggestive or anything else. I feel that many parents who have things against television and the violence and the bad influence on their children are simply being neglectful of their responsibilities as far as the children are concerned.

VOICE. I don't like them to come home. If nothing else, it is just to preserve them from the habit of being addicted to that television, so we—have now they go out and play or they play games or they—we read or something like that, then in the evening if we want to relax and watch television, that's fine.

VOICE. As far as what I see as being the basic problem in our community, it's lack of communication amongst home and family, and certainly a TV set does play a role in that. It does break down, neighbors—you don't sit on your porch and eat watermelon or whatever they did before they had a television set. Now they sit inside and eat that new candy that blows up in your mouth.

VOICE. You don't act in watching it. You react. You become a follower. And of course, it is possible to create material that can cause you to think. It is also possible to create material that can mold the mind.

VOICE. I think that watching them and never letting anything change your mind, never letting anything come across your mind, nothing wasn't getting in front of me from that screen, is—I hope I don't offend anybody—is making a bunch of television idiots.

VOICE. I can remember when TV first started and it was voices just like talking pictures, you know. It was great, right there in your home you could see people, but that novelty to me is—people have got away from so much the novelty. I think it is the greatest education tool that we have got in your home.

VOICE. A lot of people allow their children to watch as much television as they want instead of steering them in the direction of an educational experience. Frankly, most of television is not an educational experience.

VOICE. It is a helpless feeling, because there is just nothing that is decent for children and there is hardly anything decent for adults, in my opinion, but particularly preschoolers in this community need educational television programs. They need them.

VOICE. Teachers are now having to compete with so many other types of media. They are beginning to be almost like an actor to get somebody's attention in a classroom. So there is an effect, I think, that probably has had one of the greatest impacts. If you are a teacher, if you don't teach me in the classroom and keep my interest up, my enthusiasm up, I can always turn you off and turn the TV on. That kind of attitude has come out from the students.

VOICE. TV could be one of the finest educational instruments in the world and it is not being used at all in the full sense. The thing that disturbs me mostly about TV, the people who are running it in New York are unmindful of the fact that the airwaves belong to the people and the people are apathetic and they don't pay too much attention. But the TV owners who make the programs forget they have a responsibility to the listeners and they certainly have a responsibility to put out better material and programs than they are putting out today.

VOICE. They are showing TV shorts about 5 seconds each.

VOICE. You should always remember TV is a private enterprise. They are there to make money. If they couldn't make money, they wouldn't be there. They are not there particularly to entertain you and I.

VOICE. We buy those things that attract the viewer. Our entire broadcast today is based on the number of viewers we can get versus someone else. The program is designed to garner a major share of the audience in order to merchandise somebody's product and the end result is if that program doesn't sell products, it isn't going to survive.

VOICE. And I hear the big percentage of people say, hey, they cancelled this show. I really liked it. How come they cancelled it? Somebody says, well, the Nielson ratings say it's down the tube. Where's these Nielson ratings coming from? Certainly not from the same group we are circulating with. Maybe there should be four or five Nielson families in this area.

VOICE. I think it is something that is fed to us by the same bunch of people who make the TV shows, who make the advertisements, would have to keep us in what they consider a place of fear and second best.

VOICE. Well, I would prefer that instead of these things coming from New York or Timbuktu or wherever they come from, that the station here do some—do more local production.

VOICE. How does it come about that so much of the input into the TV, I mean, 72 percent comes from New York and 20-some-odd percent also comes from Hollywood and New York, I mean why isn't it that you don't have more time to just devote to what is happening around here?

VOICE. I come from the big city, OK, where all the programs are originated, up until 5 years ago. There was no cable TV, but there was no local TV. We never saw a high school football game or high school basketball game or anything else and,

therefore, I think that if you guys really don't get on the ball, you are missing the boat on a good thing for an awful lot of people in this area.

VOICE. So my advice or encouragement, what I would like to see in the local programing is that we be aware that the television is a very unique and wonderful instrument if it is used properly and out of Eugene where we have 25 percent out of the locally and where we have 3½ percent, that we would really be sensitive to building the character of the people of our communities rather than tearing it down.

VOICE. I honestly think, all of us, and let's face it, all of us are guilty of allowing television to pay to—to have too much of an impact on our everyday life. We sit here and we gripe and we moan and groan about television, what it does to us, what it does to our children, and yet that box comes on every morning and stays on all day long and we watch it.

VOICE. Now, I am not saying all of us, but the majority of us do. I think we should, all of us, be more critical. We should care more and we should say once in a while, or maybe more than once in a while, that is not for me. Off.

Mr. BRADBURY. TV is over.

It is obvious people have a lot to say about television. It is certainly something that concerns them.

As a local TV station, we held these obviously to find out more about our viewing area and we were specifically concerned about what we could do to make television better.

Obviously we can't do much, as probably the fifth smallest television station in America, to change NBC, CBS, or ABC, but there were some results that were intangible from the townhalls, but you could perceive them.

The viewers in our coverage area seem to have an altered perception of our TV station now. They view the station more as their own, as a community resource that they can tap. They don't just view it as something coming into their homes separate from themselves.

And those of us involved in producing local television have been changed very much by it.

To know that there is an actively involved and concerned audience improves the quality of the programs we produce, knowing the audience wants more local programing, increases our efforts, and to know the programs are part of the community increases the integrity of those programs.

But there is another issue here. That is, how can the TV townhalls be used by television stations in other markets.

They may, in fact, be an exportable concept that could be used under the Federal Communications Commission's requirements for community ascertainment.

Perhaps this is a more public form of community probing that could be useful in the license renewal process.

Since television licenses are a publicly sanctioned monopoly, we must walk a fine line between constitutional freedoms and the public obligation of that license.

TV townhall meetings may be one way to increase public responsiveness as required by a TV license without increasing Government intervention or regulation in programing decisions.

Senator **PACKWOOD.** I am curious about your selection of the people you put on. With one or two exceptions, they were all negative comments about television, critical, critical of programing, and yet, obviously, they all continually watch television.

Was this a good random cross section? Was almost everybody that you interviewed critical?

Mr. BRADBURY. I think generally speaking they certainly started out critical, particularly about network entertainment. At this point they were fairly critical. I think partly because people have heard so much about sex and violence, they almost felt that was what they were expected to say about sex and violence.

When it came to areas like the news, and this included local news and national news, they were very generally supportive and wanted that continued as an important service that they needed.

I think the negativity comes from the fact that people have never had the opportunity to consider what they do want on television.

Senator PACKWOOD. What I am curious about now, they are negative and yet they are very typical of the audience that watches the shows that they are criticizing.

Do they consciously, when they watch them, think, "I don't like this show, but I will watch it anyway"?

Mr. BRADBURY. Well, I can't speak for all of them. From the ones that mentioned this, they say, yes, they found themselves watching television, though they knew they didn't want to watch the show.

You know, it is this habit that has developed to watch television and it has been pointed out, for example, ratings tell the network what people don't like, but they don't necessarily tell a network what people want. And that is, I think, a symptom of that.

In other words, it is easy to criticize, but it took people near the end of every meeting to get to the point where they could even consider what they want on television because they have never been asked that before.

Senator PACKWOOD. What they want—you mentioned more local programing. Did they say what they wanted in the way of programing?

Mr. BRADBURY. Of course, I was a newsman, so we were talking from that perspective. But they wanted anything that had to do with their area, instead of Los Angeles, New York, or "Streets of San Francisco."

I think this would be true anywhere in the country, anything that had to do with their town, the life they are used to, the loggers, fishermen, and so on.

Senator PACKWOOD. Can you afford to do that?

Mr. BRADBURY. Only to a limited extent.

You know, we try to do the local news, we try to do half-hour specials.

Now, one of the things that has grown out of this, we are starting to work with the community college and community groups much more because there is clearly a desire for more local programing, we now feel more at ease to go to these groups and work with them to produce programing that may not be real slick, but it will be local and it will be interesting to local audiences.

Senator PACKWOOD. What do you generally perceive after having gone through this; if you were not the fifth smallest station in the United States but were in New York producing for NBC, what would you change based on what you are learning from this town-hall experience?

Mr. BRADBURY. I would change the way the networks produce programs. I don't mean content. Right now, essentially all the

programming that Americans watch, or 70 percent of it, comes through a system that is very centralized. It comes through New York and Los Angeles. I mean that is basically where it comes from.

There is a small number of production companies and there is a group of people in New York that make the decisions as to which programs to buy.

I would like to see a more regionalized production system. I would like to see the best local programming seen on a regional basis and the best regional programming seen on a national basis along with national production, not in substitution for it.

I think we need to get more programming that comes from, in a sense, the grassroots.

We need to get programming produced for a particular audience and then the best of that could be seen; the best of Coos Bay should be seen by the rest of Oregon, the best of Oregon should be seen by the Northwest, and the best of the Northwest should be seen by the country.

Senator PACKWOOD. This is an argument cable TV makes, that they can produce local shows for local areas.

Mr. BRADBURY. There is a cable system that has Coos Bay pretty well saturated. They use the community college as their access. Community college runs an access channel. I don't think you can say it has a large viewership.

Senator PACKWOOD. Are they doing a lot of local programming?

Mr. BRADBURY. No. I think they are probably doing 4 or 5 hours a week.

Senator PACKWOOD. I don't have any other questions.

Thank you very much. I appreciate it.

Good luck with this.

[The attachment referred to follows:]

TV TOWN HALL MEETINGS,
11N KCBY-TV, *Spring 1977.*

Television is a major part of our lives, with the average American family watching an average of over six hours of television every day. But people rarely get an opportunity to talk back or with those who make TV what it is.

KCBY-TV provided just such an opportunity at a series of "TV Town Hall meetings" or Oregon's South Coast in March of 1977.

KCBY-TV News Director Bill Bradbury conducted nine meetings in local communities throughout KCBY's coverage area. Each Town Hall session focused on television, with participants being asked to share their ideas on America's most pervasive medium. From the meetings, KCBY is attempting to develop local television programming that is more responsive to the community it serves.

A videotape condensing an entire 19 hour broadcast day into just under ten minutes was shown at the start of each meeting to spark discussion. KCBY-TV staff members demonstrated the portable mini-cam equipment, and how it can be used for local programming. Then the floor was opened to a Town Hall style discussion of television. The sessions were videotaped for broadcast on the local news, and eventual inclusion in a KCBY-TV public affairs special report. In addition, each participant was asked to fill out a questionnaire on their programming preferences.

Comments and criticisms generated at the TV Town Hall meetings will be forwarded to the Federal Communications Commission as part of KCBY-TV's public file.

The fifteen minute videotape prepared for the U.S. Senate Subcommittee on Communications is an edited summary of comments made at all nine TV Town Hall meetings. Concerns expressed about television include too much sex and violence, misleading advertizing, impact on family and community life, lack of educational value for children, and a desire for more local programming.

IMPACT

The results of the TV Town Hall meetings are intangible yet perceivable.

Viewers in KCBY's coverage area seem to have an altered perception of the station. They now view the station more as theirs, more as a community resource they can tap.

Those of us involved in producing local television have also been changed. To know there is an actively involved and concerned audience improves the quality. To know the audience wants more local programming increases the effort. To know the programs are part of the community increases the integrity.

MODEL

TV Town Hall meetings may be an exportable concept to other television markets. The Federal Communications Commission requires community ascertainment for license renewal. Perhaps this more public form of community probing could be useful in the renewal process.

Since television licenses are a publicly sanctioned monopoly of the airwaves, television stations and the government must walk a fine line between constitutional freedoms and public obligation. TV Town Hall meetings may be one way to increase public responsiveness as required by a TV license without increasing government intervention or regulation in programming decisions.

APPENDIX—TV TOWN HALL MEETING DATES AND LOCATIONS

Date	Location	Population
Mar. 7	Coos Bay	14,000
Mar. 8	Myrtle Point	2,500
Mar. 10	Bandon	2,000
Mar. 14	Charleston	(¹)
Mar. 16	Reedsport	4,000
Mar. 17	Coquille	4,500
Mar. 21	Gold Beach	1,500
Mar. 22	Powers	800
Mar. 23	North Bend	9,000

¹Unincorporated.

Note.—KCBY-TV, Coos Bay, is an affiliate of Eugene Television, Inc. KVAL-TV Channel 13, Eugene, Oreg., KPIC-TV Channel 4, Roseburg, Oreg., KBCI-TV Channel 2, Boise, Idaho.

Senator PACKWOOD. Dr. Rothenberg.

STATEMENT OF DR. MICHAEL B. ROTHENBERG, PROFESSOR OF PSYCHIATRY AND PEDIATRICS, DIRECTOR, CHILD PSYCHIATRY-PEDIATRICS LIAISON SERVICES, UNIVERSITY OF WASHINGTON SCHOOL OF MEDICINE AND CHILDREN'S ORTHOPEDIC HOSPITAL AND MEDICAL CENTER, SEATTLE, WASH.

Dr. ROTHENBERG. Senator Packwood, my name is Dr. Michael B. Rothenberg. I am professor of psychiatry and pediatrics at the University of Washington School of Medicine and the Children's Orthopedic Hospital and Medical Center in Seattle, Wash.

I appreciate this opportunity to present to you my concerns about some of the deleterious effects of current commercial television programming practices on television viewers, particularly children and adolescents. I speak to you as a father of three children and as a pediatrician and child psychiatrist who has worked with literally hundreds of children and adolescents from every kind of background and in every type of physical and emotional health and illness situation for nearly 25 years.

I also appreciate the opportunity to place into your records, as appendices to this statement, the formal resolutions of concern

about the effects of television on children and youth which have been generated during the past year from over 245,000 health care professionals, representing the American Medical Association, the American Psychiatric Association, the American Academy of Child Psychiatry, the American Academy of Pediatrics and the American Orthopsychiatric Association.

During my career I have spent 5 years in formal research activity, in the natural and behavioral sciences. I come to you today not as a researcher, but as a parent, pediatrician, and child psychiatrist who has spent the past 2½ years studying and critically evaluating the research of many of my colleagues on the effects of television on children and youth. This effort has left me deeply concerned, and I should like to share with you the reasons for my concern.

Walt Whitman wrote:

There was a child went forth every day, and the first object he look'd upon, that object he became, and that object became part of him for the day or a certain part of the day or for many years or stretching cycles of years.

There is universal agreement among those who work with children in any professional capacity that physical activity is one of the major hallmarks of childhood; and that, for normal emotional and social growth and development to occur, children must identify—for better or worse—with meaningful adults with whom they come in contact. Specifically, they must imitate the behavior of such adults if they are to learn the basic patterns of social and emotional interaction needed for everyday living—indeed, for everyday survival. Young children, particularly, achieve mastery of every conceivable kind of normal life task by actively involving themselves in play and fantasies, in which they can repeat patterns over and over again until they feel secure with them.

Concerning the violence issue, over the past 9 years two national commissions and several congressional hearings have addressed themselves to the issue of violence in American generally and violence on television specifically. Whatever anyone and everyone's best intentions may have been, we find ourselves today confronted with the fact that the latest television violence profile from Dr. George Gerbner and his colleagues at the Annenberg School of Communications at the University of Pennsylvania, covering the fall 1976 offerings, has revealed yet another increase in the average number of violent episodes per hour of commercial television broadcasting. Violence increased sharply in all categories, including family viewing and children's program time, on all three networks. Indeed, the overall average rate of 9.5 violent episodes per hour is the highest recorded by Dr. Gerbner's group since they began their study in 1967. While Dr. Gerbner's work has sometimes been criticized by the commercial television industry and sometimes used by the industry to defend itself from its critics, the fact remains that Dr. Gerbner is generally recognized by his colleagues in the behavioral sciences as one of the outstanding communications researchers in the world. The work of Dr. Gerbner and his associates, in my view, fulfills all the major criteria for reliable design, methodology, and outcome evaluation in behavioral science research.

In an article of mine which was published in the Journal of the American Medical Association on December 8, 1975, I pointed out that 146 articles in behavioral science journals, representing 50 studies involving 10,000 normal children and adolescents from every conceivable background, all show that violence viewing produces increased aggressive behavior in the young and that immediate remedial action in terms of television programming is warranted.

My article covered four major issues: effects on learning, emotional effects, the question of catharsis, and effects on aggressive behavior. I summarized the research findings regarding each of these issues, and also summarized the controversial 1972 Surgeon General's report "Television and Social Behavior." Briefly, I pointed out that, as a result of my review of the research material, I had to agree with the conclusions that children are indeed likely to learn and remember new forms of aggressive behavior by watching the kind of violence presented in the mass media; that repetition of violence in the mass media results in a decreased emotional sensitivity to media violence and an increased probability for decreased emotional sensitivity to actual aggressive behavior in real life situations; that watching the kind of aggression shown in the media does not result in "aggression catharsis," a "draining off of aggressive energy," but in the opposite; and that aggression can be inhibited by reminders that the aggression was morally wrong in terms of the viewer's own ethical principles and by an awareness of the bloody, painful aftermath of aggression.

I must emphasize that the material which I summarized in my short paper in the Journal of the American Medical Association was only a representative sample of an enormous body of material that has been generated around this issue by behavioral scientists during the past 25 years.

I concluded that the time was long past due for a major, organized cry of protest from the medical profession in relation to what, in political terms, I considered a national scandal.

The formal resolutions from five major national medical organizations to which I have already referred indicate the response that has developed to my call for an organized expression of concern from the profession.

On April 8, 1976, a special article by Dr. Anne R. Somers appeared in the New England Journal of Medicine entitled "Violence, Television, and the Health of American Youth." Dr. Somers pointed out that in 1973 18,000 young Americans age 15 to 24 died in motor vehicle accidents, over 5,000 were murdered, and over 4,000 committed suicide. She called the reader's attention to the fact that the death rate for this age group was 19 percent higher in 1973-74 than it had been in 1960-61, owing entirely to deaths by violence. She went on to comment that the largest rise in deaths from homicide during the preceding two decades was at the ages of 1 to 4. She concluded that for a considerable proportion of American children and youth the "culture of violence" is now both a major health threat and a way of life. Finally, she called the reader's attention to the fact that one contributing factor to this situation is television's massive daily diet of symbolic crime and violence in "entertainment" programs.

Dr. Somers wrote:

It is this almost total immersion in the home setting, combined with the audiovisual impact that sets television apart from other entertainment media and necessitates special consideration as a risk factor influencing the health of American youth.

Television not only offers—it imposes—vicarious experience and psychologic conditioning on our children.

In the words of the movie critic Joseph Morgenstern, "It is not enough to say that Shakespeare and Marlowe were violent and civilization still survived. Technology has brought a new amplification effect into play. Never before has so much violence been shown so graphically to so many."

Joe DiLeonardi, commander of the Chicago Police Department's Homicide Division, has reported three murders, three extortions, and four rapes investigated by his division during the past year, which he has concluded are a direct result of television violence programming. He has pointed out that these cases represent only a small percentage of the number in which he could document a correlation between the observation of an act on television and the commission of the act in real life, if he had the resources to go through his files.

Representative John Murphy of New York has documented 43 cases of children receiving permanent and major crippling injuries from attempts to imitate, on their bicycles, stunts performed by Evel Knievel or the toy model of Evel Knievel on television. Again, there are many more such incidents about which Representative Murphy has heard, but which have not yet been fully documented.

There have been sufficient incidents, so this has been given a medical name, and it was published a year ago and is called the Evel Knievel syndrome.

Senator PACKWOOD. I will come back to you. It is a matter of Senatorial courtesy.

I would like to put on the two Senators that have arrived, then we will come back to you.

STATEMENT OF HON. WILLIAM PROXMIRE, U.S. SENATOR FROM WISCONSIN

Senator PROXMIRE. Mr. Chairman, I appreciate this opportunity to appear, and I appreciate especially your interrupting the previous witness, and I apologize for your having to do that.

I commend you for holding these oversight hearings on the broadcast industry. As you know, I introduced in 1974—and again this year—a bill to give full meaning to our first amendment's guarantee of freedom of the press by abolishing the so-called fairness doctrine, equal time rule, and other restrictions on broadcasters. Today's oversight hearing is not an appropriate forum for a discussion of that bill, which is known as S. 22, the First Amendment Clarification Act of 1977. I hope to appear before you at some later date to make a presentation of that kind.

But I would like to take this opportunity to touch briefly on some of the major considerations that have convinced me that broadcasters should be on an equal footing with publishers regarding first amendment rights.

The first amendment, as you know, forbids the Congress from passing any law that might diminish our right to have a free press. But, unfortunately, Congress has passed a law that does just that. And the executive and judicial branches have supported that law. I

refer, of course, to the Communications Act, which has abridged the rights of a part of the free press. But broadcasting—radio and television—is the preferred source of news for 76 percent of the American people.

Yet, because of the fairness doctrine, equal time rule, and other governmental controls, broadcasters are second class citizens when it comes to first amendment rights.

In practical terms, this means that our first amendment is only about 24 percent effective when it comes to freedom of the press. Obviously, we can and must do better.

Denying broadcasters their first amendment rights is wrong for many reasons. I wish I had time to discuss them all. But in the minutes that remain, I want to concentrate on three of the most important of these reasons.

First of all, this denial is unnecessary. Second, it is self-defeating. And third, it is dangerous. I shall consider each of these, in turn, in the remarks that follow.

Unnecessary denial: If newspapers, why not broadcasters? More and better professionalism has been demonstrated in recent years in broadcast journalism. Professionalism means that there is less bias in news coverage, that contrasting opinions are aired when it comes to editorializing, and that opinion and news are clearly separated. But isn't that what the fairness doctrine seeks? Unfortunately, it has not worked that way. Rather, the fairness doctrine has stifled professionalism.

About 30 years ago I completed my doctorate at Harvard, except for writing a dissertation, which was on evaluating the political content of the American newspapers. I found there was almost no work done in that area, but in order to develop the basis for my thesis—which I never completed, incidentally—I made a content analysis of papers going back many years.

I was deeply impressed by the tremendous improvement in recent years in the newspapers, without any Government interference, without any Government dictation, operating on their own; I found a tremendous improvement.

I think that broadcasters deserve that same opportunity to be free. And if they get it, I think broadcasters will demonstrate, as newspapers have done, that it is not necessary to "deny freedom" in order to "gain fairness."

Let me show how newspapers have improved down through the years. These front page headlines from editions of the San Francisco Examiner in 1898 remind us all of yellow journalism at its worst. "The Spirit of War Pervades the Breasts of All Americans." "M'Kinley Pursues His Laggard Policy and Still Fears to Deal With Spain."

Obviously, a grossly opinionated view expressed as news. You won't find that in any newspaper in the country today.

I grew up in Chicago, I grew up with the Chicago Tribune. It was typically biased. You couldn't read it without reading bias in their news articles. It was notorious. That has changed. It is no longer the case. They confine now their editorials to the editorial page, and they have another page that expresses the opinion of liberals that disagree with their editorials. They insist on news balance in their news columns.

I think we all know the Wall Street Journal is as strong a conservative paper as you can find. I picked up the Wall Street Journal the day I started preparing this, and I found a three-column headline entitled, "Business Doesn't Need a Tax Break," an article by Lester Thurow. He is a superb economist, a very good economist, and he directly contradicts everything the Wall Street Journal stands for. They devote a large part of their paper, their editorial page, to showing that business doesn't need a tax break.

Now, clearly, newspapers have come a long way. Today, many newspapers carry op-ed pages. Today, most newspaper editors try to make their news columns unbiased and informative. And when an error is made, it is usually corrected. In fact, more and more newspapers are clearly labeling corrections—and they are doing it voluntarily.

In what other ways have newspapers become more fair and unbiased? Here's how: For one thing, by expanding their coverage. There was a time—not too long ago—when we could not read stories about environmental and health hazards, such as those caused by insecticides, food additive, and other previously arcane chemicals. There was a time, too, when we did not see stories about social concerns, such as crime-ridden neighborhoods, venereal disease, old age, population growth, race relations, and school curricula.

Women's rights, it is true, have been reported on since long before the "Bloomer Girls." But now we get searching reports on what women's rights really mean.

The list is endless. But fair coverage means that problems, advances, and experimentation in areas of life affecting all of us are covered in all their aspects.

Nearly all newspapers police their advertising, watching for misleading ads and refusing to run them, even though it means lost revenue.

What about big advertisers trying to influence an editor, threatening to pull their ad unless some news is left uncovered? That abuse is almost unheard of these days. I suspect the reason is that enough fearless editors and publishers have stood up to such advertisers to discourage attempts of this kind.

Errors and excesses can still be found on the pages of today's newspapers. I concede that. But the fact remains that the press, overall, acts responsibly. The press of this country has accomplished what it has because it has not been controlled by the Government. There are no licenses. There are few restraints, other than those dealing with libel and obscenity, and the press wants to live with those. Responsible, professional newspaper journalism has risen out of necessity: to satisfy demanding readers. And, of course, it has also come about through the need to compete with the nearly instantaneous delivery of news by radio and television.

What would happen if we had something like an FCC for newspapers? The first amendment committee of the National Association of Broadcasters has recently speculated on this possibility by producing a newspaper—dated 1984—with the ominous headline, "Congress Creates Newspaper Commission."

This was done on the assumption of a future shortage of newsprint, like we have a shortage of frequencies for media. And of

course, the nightmare—I am sure we would resist, but it's a conceivable possibility—would create an FCC which would regulate newspapers, and I think we would all recognize what a frightful interference with freedom in our country that would represent.

Yet, television and radio broadcasters have the FCC and its fairness doctrine to contend with. By law, they must be fair. Newspapers are fair without Government control. And I maintain that radio and television would also be fair without Government control.

Simply put, again, it is not necessary to “deny freedom” in order to “gain fairness.” Denying broadcasters their first amendment rights is also wrong because it is self-defeating.

Under the fairness doctrine, for example, broadcasters are required to, No. 1, devote a reasonable amount of time to the discussion of controversial issues and, two, afford reasonable opportunities for opposing viewpoints. This sounds fine. But, in actual operation, the fairness doctrine has not stimulated the free expression of diverse ideas. Rather, it has had the opposite effect. It has promoted the “sameness” of ideas. Stations avoid the airing of controversial issues because they fear a challenge to their license renewal or expensive litigation resulting from a fairness complaint.

NBC's problems in airing two television documentaries help to illustrate the point. In 1972, NBC broadcast a documentary entitled, “Pensions: The Broken Promise,” which dealt with corporate pension plans and how they often do not keep faith with the workers they are intended to benefit.

The airing of the program led to the filing of a fairness doctrine complaint with the FCC. NBC claimed in defending itself that the subject of private pension plans was not controversial because as far as it knew the subject has not been dealt with previously on network television.

Accuracy in Media, Inc., complained that contrasting viewpoints were not aired on the program. The FCC rejected AIM's allegation of distortion but did decide that NBC had violated the fairness doctrine. It then ordered the network to broadcast balancing material. NBC said that it had done a fair job and had no intention of giving the subject more air time.

Before moving on to what happened in the courts, I should point out a “Catch 22” aspect of this situation. I do so because it is but one example of the nightmare of complexities that accompanies the attempt to administer the fairness doctrine. Had NBC devoted more time to the subject, giving additional viewpoints, there would have been no issue before the FCC. So in order to prove its point, to test the matter in the courts, NBC could air no more shows on the subject without making its case moot.

Now back to the courts. A three-judge panel of the District of Columbia Court of Appeals ruled in favor of NBC, saying that this country needs investigative reporting. Subsequent court actions left this ruling intact.

What is the lesson of the “Pensions” case? It is this. The fairness doctrine can interfere with journalistic discretion, particularly in investigative reporting.

Just think of the implications if the court had decided the other way. Such a ruling would have meant that Government could, in

the words of fairness doctrine analyst, Fred Friendly, "substitute its judgment for that of the network as to what issue was involved in a broadcast documentary and order that more air time be given to elements that the journalist never thought central to the story."

The end result would be to restrict broadcast efforts at investigative reporting because of the difficulty in airing any program that took a point of view or was controversial.

But wait a minute, you might say. There's no problem here. NBC won its case. It was home free and clear. There is no lingering "after-effect." True? Not necessarily. Let's look at how NBC reportedly agonized over its 1975 television documentary on handguns entitled, "A Shooting Gallery Called America?"

According to New York Times writer John J. O'Connor, complaints from the public even before the program was shown caused a rewriting of the script to avoid fairness doctrine complaints to the FCC after the fact.

And, O'Connor further reports, this documentary on a controversial issue of public importance—gun control—drew little response from a national television audience of about 10 million (381 complaints out of the 441 letters received in the 2 weeks after the show) because it failed to take a stand.

If O'Connor is right, then this is a good example of the chilling effect on journalism caused by governmental control of broadcasting.

I believe NBC executives should not have felt the hot breath of the FCC and its fairness doctrine on the backs of their necks. For if O'Connor is correct, the existence of the fairness doctrine indirectly restrained the producers of "Shooting Gallery."

And if O'Connor is right, if NBC news executives ordered a new script for the "Shooting Gallery" because of the fairness doctrine, I wonder if it was because of the time and expense NBC went through before the FCC and the courts in the wake of its 1972 documentary on "Pensions: The Broken Promise?" I do not know the answer to that question. But it is more than rhetorical.

I firmly believe that broadcast journalists would not be chilled into blandness and sameness if it were not for governmental controls as exercised through the FCC's fairness doctrine.

I believe that without the fairness doctrine there would be more, not less, programing of controversial issues.

Restrictions like the fairness doctrine are, in my view, self-defeating. Their proponents want diversity of ideas and the presentation of controversial and contrasting points of view. What they promote, instead, is sameness, blandness, timidity, and conformity. The American people are the losers.

Denying broadcasters their first amendment rights is wrong for a final reason. It is dangerous.

Letting Government be the final arbiter of fairness, for example, confers immense power. This is especially true when that same Government decides on the granting of broadcast licenses.

Three examples from the recent past remind us how the power of Government—although often exercised in the name of fairness—can amount to the tyranny of Government.

These examples all involve past Presidents of the United States. The President, of course, is the head of Government, the same Government that controls broadcasters through the FCC.

Now, in recalling the stories that follow, it is important to remember, too, that the President himself appoints the members of the FCC and designates who shall be chairman.

My first example comes from the Nixon administration. Relevant episodes from that period are still fresh in our minds. I need only cite some of them briefly here.

FCC Chairman Dean Burch called CBS President Frank Stanton in November of 1969 to request a transcript of that network's news analysis after a Nixon address the night before.

Vice President Agnew made his famous Des Moines speech 9 days later blasting the network's news coverage and reminding them that they held licenses at the pleasure of the FCC.

CBS President Stanton reported that there were a number of White House phone calls over the succeeding 3 years conveying displeasure with news broadcasts.

There was a memo of September 1970 from Charles Colson to H. R. Haldeman proposing that the White House get a ruling from the FCC on the role of the President, when he uses TV. This, Colson argued, would have an inhibiting impact on the networks.

There was, too, the December 1972 Indianapolis speech by Clay T. Whitehead, director of the White House's Office of Telecommunications Policy, condemning the ideological plugola, as he put it, and elitist gossip of network news.

And there was, finally, President Nixon on tape telling Haldeman that, "The main thing is the Post is going to have damnable, damnable problems out of this one. They have a television station—and they're going to have to get it renewed."

But this is not a partisan matter. Fred Friendly has reported that the Kennedy and Johnson administrations, with financial backing from the Democratic National Committee, used the fairness doctrine to subdue right-wing radio commentators who were critical of administration goals.

These clandestine campaigns, which reportedly began in 1963, were also meant to inhibit stations from carrying commentary supporting Senator Barry Goldwater, who was then a prospective presidential candidate.

Friendly reported that both the Kennedy and Johnson administrations maintained professionally staffed organizations that monitored stations carrying right-wing commentary and then demanded time for reply under the fairness doctrine.

Such demands for air time, which the stations would have to provide at no cost, were regarded by many broadcasters as harassments that they chose to avoid. As a result, they either dropped the commentaries or diluted them. This, according to Friendly, was exactly what the White House had in mind.

What do these three examples of the abuse of Government power tell us?

It is wrong to deny broadcasters their first amendment rights because a free press—and that should include free broadcasters—is needed to protect us all from the tyranny of Government power.

What I have been saying today can be reduced to this simple thought—why not take a chance on freedom?

If it's power we're concerned about, and we should be, the power of the electronic media is as pygmy compared to the power of the Government.

Recently, U.S. News and World Report surveyed the leading citizens of this country in business, labor, the universities, the newspapers, and the Government as to who were the people who ran America.

Where did the electronic media rate?

The only person from the media who was rated in the 10 most influential Americans was Walter Cronkite, and he was distant ninth. In fact, Cronkite was the only electronic media person in the 30 most influential Americans.

Who are the most influential? The answer is emphatic. It's Government. Eight of the top 10 persons who run America were Government officials.

By denying the electronic media their full first amendment rights, we give the big guy—Government—more power, and from the less influential—the media—we take it away.

To those who would claim that it is safer to take a chance on Government that a chance on freedom and a free press, there are two clear rebuttals.

First, governments traditionally have gathered more and more power unto themselves without regard to the liberties of their citizens. Europe and South America and Asia are replete with such examples. And we in this country can cite some near-misses, the most recent being, of course, what we have come to know by the shorthand term of Watergate.

And second, it is easy for a government, with its power to give jobs and favors, to present a solid front in controlling information about itself. But it is impossible, with members of a free press competing among themselves, to conspire to suppress information about government or anything else. As Jefferson once said, "whoever heard of a newspaper suppressing a government?"

Freedom of the press can be abused by individual reports, papers, magazines, broadcasters, or broadcasting stations. But, with competition—the drive to be best, to be first with the news, to make money—there is little or no danger of all elements of the press forming a clique or cabal to take over the Government, or—and most important—to deceive the citizens, their customers.

As long as the Government is kept from the neck of the press by the first amendment, the public should be informed. And that is why the first amendment was written the way it was—as a direct prohibition against governmental interference with five basic freedoms: of religion, of speech, of press, of assembly, of redress.

Let us not brush away the wisdom of the men who wrote the Constitution and its Bill of Rights.

But it is easy to do that. Look at what the Government has done already through abridging the freedom of the press by imposing controls over the content of radio and television broadcasts.

If there is any risk in the belief that, in Jefferson's words, "* * * the people * * * may safely be trusted to hear everything true and false, and to form a correct judgment"—and there is—

then it is the risk inherent in any free society. But a free society is not the safest way of life. It is only the best.

Two more very quick points, Mr. Chairman.

One, I want to make sure there is no confusion between what I am proposing here and controlling violence and sex on television. They are entirely different.

What I am talking about is expressing political opinion. And of course, the obscenity laws that apply to newspapers should also apply and can—they can apply very vigorously to television.

I am just as shocked and concerned with some of the things on TV.

And of course, the courts have made rulings there that have permitted a degree of freedom in the area of sex expression and violence, whereas the Congress has limited the power of expression, political expression, through the fairness doctrine. And I think that is plain wrong.

The final point is, frankly, I was the one who proposed the fairness doctrine back in 1958. I have reversed that position. I think I have done so for a number of reasons.

One conspicuous and clear reason is because since then, we have had a revolution in technology. We no longer have the limited degree of access to the air waves we had at that time. We have AM and FM in radio. FM has made it—is far more available than before.

We have a far greater number of TV and radio stations than before. We also have cable television coming on. We have in virtually every major city far more TV and radio than we have newspapers. In Milwaukee, there is one newspaper ownership. There are six television stations. There are about 25 radio stations. And yet the newspaper is free, although they have virtually a monopoly, and the TV and radio are controlled.

I think it is a matter of our not catching up with the changes in technology and the changes in economic facts of life. Thank you very much.

Senator PACKWOOD. I am curious, in your analogy to violence, as to where you draw the line. I don't quite follow it. Give broadcasters first amendment liberties; they are then free to print anything that is violent or as obscene as the newspapers, if they want, within the limits of the Constitution.

And apparently anything that they program today—and Dr. Rothenberg, who was before you, will come back on when Senator Thurmond is done. Anything they program today is inside the constitutional bounds of obscenity.

Would you allow television stations, so long as they were within the Constitution, to program anything they want—no matter how violent or obscene—so long as it was constitutional?

Senator PROXMIRE. It depends on what you mean by constitutional. I think we have a very serious problem with the courts. I am not sure what we can do as a Congress, no matter how determined we are, to restrict the opportunity for the television and radio to have sexual references and to have enormous degrees of violence. I am not sure how far we can proceed.

The only distinction I make here, my sole point is, that should be aside and apart from requiring what we do with the fairness doc-

trine. If they report one side through their TV or radio, then they have to report the other. I think that is a distinct different problem. I don't think it is the same problem.

Senator PACKWOOD. I think the fairness doctrine is a different problem. But if they have the first amendment liberties that the printing press has, is it your position they would then be free to program anything they wanted, short of something that was so obscene or so violent that even a court would uphold a statute prohibiting it?

Senator PROXMIRE. No; I don't think the repeal of the fairness doctrine would have any effect whatsoever on their right to have scenes that depict violence or sex. I think that is an entirely different, separate, distinct problem.

Senator PACKWOOD. Are you saying that that kind of programming—you would leave that kind of control in the FCC or some other Government body to limit what they can program in that area?

Senator PROXMIRE. I haven't addressed myself to that, frankly, Mr. Chairman. I just am not sure about that. I would like to study the testimony of these hearings and see what is proposed.

I am very concerned about our interfering, in any degree, either with the TV or radio or newspapers. I think you have to be extremely careful and cautious about it. At the same time, I think you have some very able people here testifying and some constitutional authorities, who can perhaps tell us how we might be able to achieve that end. But I don't have a position at the present time on that.

Senator PACKWOOD. Do I accurately summarize your statement then; certainly, first amendment liberties would extend to opinion, to editorials, to comment?

Senator PROXMIRE. Right.

Senator PACKWOOD. And you simply reserve your judgment on programming, as to violence, as to whether that should be included in any kind of freedom they have?

Senator PROXMIRE. That's correct.

Senator ZORINSKY. Senator, would you extend your philosophy concerning the fairness doctrine in the area of inequities concerning the ability to sell advertising, as newspapers and billboards do, on the airways?

In other words, there are some items that can be accepted as advertising—I think cigarettes, say, for instance—

Senator PROXMIRE. Cigarettes and hard liquor.

Senator ZORINSKY. Right. Would you extend the fairness, or the elimination of the fairness doctrine to give the television media the same ability to attract the same type of advertising?

Senator PROXMIRE. I think, again, you can separate these two. I think you might agree you could. But it is perfectly proper to question my philosophy and how consistent I am being here. I am inclined to feel that I would not distinguish.

In other words, that I would permit radio and television to carry advertising without restraint with respect to tobacco. And I would hope and pray they wouldn't. I don't smoke. I think tobacco is a killer. I am very much against it. But I am even more concerned with any interference with the right of our press—and it is our

press—our main means of communication, to be inhibited by Government and by Government opinions.

Senator ZORINSKY. Thank you.

Senator PACKWOOD. I have no other questions.

Thank you very much, Bill.

Senator PROXMIRE. Thank you.

STATEMENT OF DR. MICHAEL ROTHENBERG—Resumed

Senator PACKWOOD. Dr. Rothenberg, go ahead and finish your statement. I have some questions. I won't interrupt you now until you finish.

We will finish the questions before we take Senator Thurmond.

Dr. ROTHENBERG. Mr. Chairman, Mr. Zorinsky, I stopped my statement just as I was coming to talk a little bit about child development issues.

I have already pointed out that physical activity is one of the major hallmarks of childhood. Clearly, when a child is seated in front of a television set, the very act of watching television itself places him in a passive position. When one adds to this generally negative factor in normal child development, the large number of violent and otherwise negatively depicted adults who are exposed to the child as role models, one has a second major negative factor in normal child development in the area of identification and imitation, which is also so critical.

In the formal statement of concern from the American Academy of Child Psychiatry, the Academy comments, "our * * * concern is that television is being used more and more as a babysitting device substituting for the necessary interaction of child with parents. We believe that such deprivation of parents' interaction and attention to children takes its toll in the development of a child's capacity for human warmth, understanding and empathy, which occurs in the process of the normal development of child/parent relationships."

With unhappily few exceptions, the most notable being "Mr. Rogers' Neighborhood", which appears on public television, there is essentially no relationship of child development issues to the content of current television programs. The deleterious effect of racial, sexual, child, and adult stereotypes portrayed on television on the development of child and adolescent viewers is documented by a growing body of data, some of which was presented as recently as last month during the annual meeting of the American Orthopsychiatric Association in New York City.

Finally, the effect of television violence on the development of children who already are suffering from emotional disturbance or who themselves have been the victims of child abuse has been demonstrated to be particularly devastating.

A few words, if I may, about the effect of television commercials.

While the Code of Hammurabi, in 2250 B.C., made selling something to a child or buying something from a child without power of attorney a crime punishable by death, in 1977 A.D., the average American child will have been exposed to somewhere between 300,000 and 350,000 television commercials by the time he reaches age 18, of these commercials 55 percent are for edibles, and 65 percent of all the food advertised is sugared. The American Dental

Association and the American Academy of Pediatrics have made the deleterious effects of too much sugar in children's diets clear. Not only are teeth damaged, but the balanced intake of vital protein is seriously compromised by excessive intake of sugar and other forms of carbohydrates.

The effect of television commercials in promoting materialistic and consumerism values in child and adolescent watchers has now been documented by behavioral scientists using careful research methodology. Some of this was demonstrated in testimony before the FTC last fall.

It has been demonstrated that the inability of children to distinguish between program content and commercial messages may lead them to believe that toys, for example, which promote still more passivity or antisocial behavior are being urged upon them by television characters whom they wish to emulate and imitate.

Because it summarizes the television commercial issue so succinctly, I have included as appendix VI to my statement, the winter 1977 issue of Action For Children's Television News.

Some suggestions for change: It's important to remind ourselves that prosocial behaviors, as the behavioral scientists call them, can also be produced and encouraged by television. I refer here particularly to the presentation of a variety of nondestructive and essentially altruistic ways of resolving interpersonal conflicts. The best known example of this is "Mr. Rogers' Neighborhood". Each of the major networks and several local outlets around the country currently provide a few such programs for preschool, school age, or teenage children. During an all-day children's television fair sponsored by the Committee on Children's Television and several medical organizations in San Francisco in May 1975, a great variety of highly entertaining programs which also were developmentally sound and modeled prosocial behaviors were demonstrated by a number of producers, directors, and writers who have made pilot shows in which the major networks have shown little or no interest. What impressed me when I viewed this material was how exciting, entertaining, creative, and instructive it was, while offering no gratuitous violence or other destructive ways of resolving human conflict.

Having studied the evidence at hand, as a behavioral scientist I can only recommend that all advertising be eliminated from television programming directed primarily at children and adolescents.

I would also specifically ask you to find a way for the networks and local groups of stations to take turns offering developmentally appropriate fare for the three major age groups—preschool, school age, and adolescent—at different times of the day and days of the week, just as they rotated their offering of the Watergate hearings so that their financial status would not be impaired.

In closing: When parents bring their child to me because their child hurts, I am, in essence, being asked to do everything in my power to provide a remedy for that hurt. I am, if you will, bringing all of America's television-viewing children and youth as the "child" to you, because the child is "hurting" and needs your participation in finding a remedy.

I recognize my responsibility as a parent to control and supervise my own children's television watching. While we are all aware that

parents must assume some share of responsibility for supervising the quantity and quality of their children's television viewing, we cannot forget that, depending on whose estimates one draws from, there are somewhere between 5 million and 25 million so-called "latchkey children" in the United States—and we should remember that one of every two black families is a single parent family and one of every five white families is a single parent family—these are children who let themselves into their apartment or house after school, because their parents—often their single parent—are working as a matter of economic survival of the family unit. Thus, in the absence of suitable after-school play programs for such children, there is no alternative but for them to be home alone, their television watching, as well as their other activities, unsupervised.

I also recognize my responsibility as a pediatrician and child psychiatrist to bring to the attention of as many parents and as many of my colleagues as possible, this public health hazard. That is why I have come nearly 3,000 miles to submit this statement to you and try to answer your questions.

Further, I recognize that the commercial television industry has made some constructive changes, both in programing and in the handling of commercial messages. But I am deeply troubled that it has taken far too long to do far too little. So I need to ask you to do whatever is in your power to help our hurting child.

I am not a lawyer or a legislator. I have a documented, lifetime record of deep concern and respect for the protection of every citizen's and respect for the protection of every citizen's constitutional rights, especially first amendment rights. But again, as a parent, pediatrician, and child psychiatrist, I know that children need special protection at times. For example, while we can't have someone at every street corner at which even a single child may cross at some time, we can and do consider it possible and, in fact, imperative, to provide supervision on street corners where large numbers of children are known to be crossing at regular intervals. Millions of American children are crossing at the television "street corner" at regular intervals. It has been demonstrated unequivocally that this is a dangerous corner and that, indeed, some of our children have already been "injured" while "crossing."

I leave you with the words of my colleague, Dr. Anne Somers:

In the latter part of the 19th century, in the midst of an epidemic of infant mortality, infanticide, and child abuse far worse than the present one, it gradually dawned on physicians and public officials alike that a high infant death rate was not an act of God but evidence of human weakness, ignorance, and cupidity, and could be corrected. There was also the growing recognition that, in the words of the poet Wordsworth, "The child is father of the man."

The dramatic decline in the infant and early childhood death rates and the general improvement in the condition of children after the turn of the century are tributes to a combination of medical science, technologic progress, enlightened public policy, and human courage. The same combination is now needed for an attack on this new risk factor, pollution of the mind, which has contributed to an epidemic of youthful violence, an epidemic that seriously threatens the health of American youth.

Thank you.

Senator PACKWOOD. Doctor, I am curious. When you boil it right down to the nub, are you saying the Government should monitor or

tell television companies what they can produce and put on for children's fare?

Dr. ROTHENBERG. No; I am not.

Senator PACKWOOD. How do we achieve what you want to achieve and still leave the discretion of programing to the various costs?

Dr. ROTHENBERG. Senator Packwood, I really don't know the answer to that. I wasn't being facetious when I said in my prepared remarks that I am not a lawyer or a legislator, and I don't know how to do this. I am a doctor, and I see sick children and I see children being made sick, in the broadest sense of that word, by what I quite seriously and technically consider a public health hazard.

I am aware there are some very, very difficult and complex constitutional issues that could become involved in this, and I have to turn to you and ask you to help me to determine how we can remedy this public health hazard without trampling on somebody's first amendment rights.

It is easy to say somebody can't get up in a crowded movie theater and yell "fire" when there is no fire. We all agree that is a public health hazard. I don't know to what degree that kind of situation would apply to this kind of situation. I really don't.

Frankly, as I said in my prepared remarks, I have been dismayed that for many years the commercial broadcast industry refused to accept the scientific evidence that there was even a correlation between violence viewing and increased aggressive behavior.

I am probably naive because I am not a businessman. It seems as if—I may be absolutely wrong—it seems as if the commercial industry is assuming that if they change the quality of their programing, that if, for example, they made developmentally correct and sound television shows for children, that they would lose money. I don't understand that at all.

I—as I have said to you—had an experience with seeing a great deal of alternative programing during that San Francisco episode I talked about, which was enormously exciting—which, by the way, was viewed by children. This wasn't just a bunch of adults sitting around and deciding what is good for kids.

Senator PACKWOOD. Let me suggest this, because I am a lawyer and legislator.

Under the present law, we probably have the constitutional power to prohibit broadcast of certain kinds of programs or jerk licensing. I think we probably have that power. The question is, should we. Because no matter how you cut it and slice it, it comes down to the Federal Government and the FCC as an arm of the executive branch, or somebody in Government saying to the television networks, "You cannot, one, advertise on children's programs, period." I think we can do that.

"Two, you shall only program the following kinds of programs." And when I get to that stage, I am very queasy about my knowledge, because now we are not into constitutionality. We are into changing professional opinions of what is good and what isn't good, and those change from year to year, change from decade to decade.

But isn't that our alternative? Either the Government is going to do it, we are going to say "These are what you can do, these are

what you can't," or we are going to leave it to their judgment and discretion, and many cases, their discretion is not what you and I would like, but we leave it to them.

Do we have any other alternatives?

Dr. ROTHENBERG. I am afraid I have to ask you a question, sir. That is, is it that black and white? Is there nothing in between?

After the Evel Knievel Co.—as it was called, or whatever—did a whole series of stunts on one of the major networks, an incredible display of human carnage that went on, there was a real cry of protest from many viewers. Indeed, I am aware that Representative Murphy wrote a blistering letter to that network, giving specific detail about what resulted from children trying to imitate what Evel Knievel and his cohorts did—actually, he wasn't even on the show because he was injured and in the hospital, which they kept reminding everybody every few minutes in a very heroic fashion—as pediatricians over the country documented, they had literally hundreds of children in the hospitals trying to imitate that, and nothing was done. Evel Knievel toys continue to be demonstrated on television.

And I guess I have some sense of outrage because I need you people, because you are the experts, to be as concerned about the public health hazard to our children as you are about the first amendment issues.

I don't know here else to turn.

Senator PACKWOOD. I want to come back to my question. I want to make sure I understand what our alternatives are in your mind. I think we probably have the power to tell a network, you cannot televise Evel Knievel's jump across the Snake River; period. You just can't do that. That might be tested in court, but my hunch is we would win. We could say you can't televise hockey games because they are too violent. They are violent. We have that power.

Should we exercise that power? You are saying, yes, we should prevent the televising of hockey games—

Dr. ROTHENBERG. I didn't say that. You did.

Senator PACKWOOD. No; I mentioned we exercise that power where we, the committee, if we think something is too violent, we should say no, you can't broadcast.

Dr. ROTHENBERG. The criterion I would try to hold to would be whether or not the proposed program constitutes a health hazard for the entire audience for which it is being produced. I am aware that can also be a tricky matter at times, but we do have a Public Health Service in this country which constantly has to make judgments about what constitutes a public health hazard and restrict the—

Senator PACKWOOD. Within the last analysis, it comes down to this—this is my last question—if CBS has a program, and say we don't think this is a public health hazard, and this committee views it or the FCC decides it is, we are the ones that make the decision. We have to be the ones to make the decision, or if we leave it in each case to the network, then they may transgress way beyond the bounds of what you and I would think is decent, but they say we don't think it is. We just deny that evidence. We don't think it is a public health hazard.

Senator HOLLINGS. I apologize. I have been tied up in the Budget Committee conference and will have to go right back to it.

I came in, Doctor, in the middle of your testimony. I think as we try to approach this task in communications that it is obvious to me that it is difficult to legislate in many, many areas, freedom of speech being importantly involved.

With respect to children, yes, we can act. There is no doubt we do it for the clothing they wear, with flammable fabrics; the toys they play with, with respect to product safety liability; the hours they work under child labor laws, to cite a few examples. So the Congress has recognized and I recognize the responsibility. Speaking as a doctor, you recommended that all advertising be eliminated from television programs directly affecting children, and then later on the next page you spoke about the street corners. These street corners are dangerous.

Are you going to eliminate all the street corners and all the advertising? Is that your solution?

Dr. ROTHENBERG. I would like to respond to those separately, if I may, sir.

Yes. I spent 2½ years immersed in studies on the effect of television on children and youth, trying to evaluate. Incidentally, they have not all been studies which have come to the same conclusion. I want to make that clear. However, they have overwhelmingly come to the conclusion in relation to your first question that young children, particularly children under the age of 7 or 8, are unable, the vast majority of the time, to distinguish between program content and commercial message. Even today, when some more stringent rules have been used by the television industry itself to try to further separate program content from commercial message.

Experimental data leaves us absolutely without question that the children simply can't distinguish between program content and commercial messages and on that basis, I feel as a behavioral scientist I have to recommend that commercials be removed from programming aimed primarily at children. I am not saying from every program that might be viewed by children.

As far as the second consequence is concerned, where I use the analogy—

Senator HOLLINGS. Let's take that advertising before we get to the second question. You don't want to end up just seeing nothing but stomach disorders and false teeth aids. That seems to be all they have on at the other hours. It looks like they must sell a lot of false teeth in this country.

Dr. ROTHENBERG. At least kids can't badger their folks to go out and buy them a set.

Senator HOLLINGS. Senator Packwood was asking whether that is even desirable. I admit the effect. My young boy was Robin and Batman. He kept jumping off the garage and out the second story window and he finally learned he couldn't fly. Evel Knievel, he started trying to jump across and race across things, too.

Dr. ROTHENBERG. I have seen too many children paralyzed for life from the neck down. I have seen it with my own eyes. It is all very cute to talk about being Robin and Batman until you see a kid that will never walk again. There are literally hundreds of them in

this country that will never walk again for that specific reason. That has been documented.

I submit to you, sir, that something needs to be done about it. And again, I am not a lawyer; I am not a legislator. I can't tell you what to do. I wouldn't want you to tell me how to run my business.

I only come to you as a citizen with some special responsibilities and knowledge, really, pleading for your help. That is why I am here. I'm not running for anything, believe me. At the moment I haven't even found out where I am going to be reimbursed from, to pay for the trip. And that's the truth.

Senator HOLLINGS. Then you get down to how careful you can be for your own children. You go right to the firecracker cases; many States have outlawed it. I have had firecrackers blow up in my hands. I guess you can tell me that there are many people that don't have any hands.

Can we, as a national policy, say there will be no firecrackers? I am trying to get to the general practice and reaction in real life. This society has changed materially from what it was 30 years ago, or 130 years ago. I doubt if I could exist myself, in the wilds like Daniel Boone did, but to protect a child and expect it to grow and mature into a careful adult; there are certain dangers they are going to have to be faced with and there are going to be tragedies coming up and down the line.

So let's move to the second question, then, with respect to those street corners. Now, you have a situation where there are a great many street corners. We provide supervision on street corners where large numbers of children are known to be crossing. That is every street corner in television. That is every television set. Because they are just all there. I don't know how many hours. The most recent testimony is 6½ hours. They said one survey in January showed that the average set was on in America 7½ hours, and children watch at least 4 hours a day, far more than they spend time in classrooms and studies. So they've got to begin at the beginning where you don't have enough police for every street corner, because there are too many street corners.

What do you do about it? Eliminate the street corners? I mean one way to get them out of the house on Saturday morning is to put on chamber music all over America. That will get rid of them. But is that going to be the national policy? Is that what you recommend?

Dr. ROTHENBERG. I have nothing against chamber music. I expect some of our finest chamber music musicians are that because they heard a lot of it in their homes. I am not sure it would drive them outdoors, sir. It might at first, but they might get used to it.

No, I don't recommend that. What I have tried to say in the body of my formal presentation is, it has been proven that you can have entertaining, creative and fun shows for kids which are not filled with gratuitous violence. There is six times more violence per hour of children's television than there is for adult television.

I am simply trying to draw everybody's attention to that fact. Until recently there was twice as much advertising on children's television per hour than on adult television. The industry has boasted it has cut it down for children. It just cut it down to what it was already limited to for adult programming. I am asking for

some kind of reasonable response to what, in my way of thinking, is a clear and present danger in terms of a public health hazard.

Senator HOLLINGS. If you are trying to bring it to our attention, we agree with you because we have tried to get the FCC more into this particular field. In fact, even the Federal Trade Commission, we are putting in additional moneys there and we have discussed it.

We agree there is a problem. I am trying from your experience standpoint, like you say, having taken a long trip, to tell us as a Senator what you would legislate. It seems like No. 1, you would band, no more advertising. And about those street corners, we just—we have got some differences.

I believe perhaps a child ought to be able to fire a firecracker even though some will blow their hands off and you happen to like chamber music and I don't. That gets into the fundamental Senator Packwood was asking. Are those really things to be legislated, your desires and likes, or my desires and dislikes?

Dr. ROTHENBERG. Senator Hollings, my feeling is there is no way to avoid all of our children being exposed to many, many dangers just in their everyday growing up.

What I guess I am trying to point out, too, is that there is added to the normal, unavoidable, and I agree with you, they shouldn't be avoided, dangers of everyday growing up, there is being added to that an excess by the television industry that I think could be eliminated.

Senator HOLLINGS. Thank you.

Senator ZORINSKY. Dr. Rothenberg, you made a point of the fact that there is a degree of responsibility residing in the parent of a child. You also brought to mind the facts of the latch-key type children who are unsupervised.

You know, we always approach something tantamount to censorship through the television media as it should be this or not be this, and obviously it is in the eyes of the beholder. I can't even get 10 people to agree after a movie whether the rating should have been PG or R or whatever. This is determined by the norm of society.

When I was a youngster had I had two working parents, and I was unsupervised, I had the radio and I could have used my own imagination and it wasn't all spelled out for me. Would you think that a viable alternative in today's world or at least a step in the right direction would be, we are talking about what goes on TV, giving the parent more control?

I am going back to the premise that you bring out concerning unsupervised children, responsibility of parents to their children, because obviously Government has not conceived the children. The parents have.

As to that, we have the authority to implement safety features in automobiles, the seatbelts and a multitude of things. Is a fail-safe lock-key system for a television set where a parent can control the television time of the children possible? Right now every television set is easily turned on with an on-off switch or plugged in and on it goes; any child can do this.

But then if a mechanical device such as this was added to an electronic television set where the parent could in his or her ab-

sence, control the viewing time of the child, this would make the parent the ultimate determinor of viewing time for the child that is unsupervised in the home. I would like to get your opinion on something like that.

Dr. ROTHENBERG. I think it is an intriguing idea, Senator. I think, though, that we have to keep in mind the realities of it. For many parents, especially single parents, with latch-key children, television has become an economical babysitter, or even worse, companion for this child whom they are forced to leave alone.

So, my concern would be that while that is a nifty idea in a lot of ways, I wonder how many parents would be able to get themselves to use it.

Senator ZORINSKY. But again, going back to your statement saying there is a responsibility residing in the parent, and the parent would have the option of making that choice of the volunteer disclosure of the child to the television set, or waiting until the parent gets home and being able to see if that is suitable in their mind and again, I say what one parent will allow a child to see, another parent will not allow a child to see.

Of course, there is a different range of mental instability in our society that does not conform with the norm of society.

Dr. ROTHENBERG. My concern, Senator Zorinsky, would be if this were the only thing that was done about this issue, because quite frankly, I don't think it would begin to be enough. I think it would neglect the harsh reality of what is going on with millions and millions of American homes today in terms of the role television is playing. Particularly—it always seems to come down to this, at least from the point of view of a doctor who has spent his whole career working in so-called ghetto medicine—it is always the poor folks and minority folks who get more of that harsh reality.

Senator ZORINSKY. You are recommending a reduction of the violence availability in television time and you are saying there should be a responsibility of the parent as to the viewing time of the child.

Dr. ROTHENBERG. Absolutely. We cannot neglect parental responsibility.

Senator PACKWOOD. Doctor, thank you very much for your compelling testimony.

[The attachments referred to follow:]

APPENDIX I—REPORT OF THE BOARD OF TRUSTEES, AMA

Since the publication of a special communication in JAMA on December 8, 1975 by Michael B. Rothenberg, M. D., on "Effect of Television Violence on Children and Youth," there has been considerable discussion concerning medicine's appropriate role in this problem area.

Television violence is a complex problem. It requires the concerted attention and effort of a variety of individuals and groups, including the medical and other professions, parents and parent surrogates, all segments of the broadcasting industry and the Federal Government.

These forces, working together and understanding each other's roles, can make progress in identifying and curtailing the use of more harmful types of TV violence, in discouraging the viewing of violence especially by those most susceptible, and in promoting the development of wholesome and positive programming for children.

In his article Dr. Rothenberg declared that the content of TV programming for children is far more violent than it is for adults, and he called upon organized medicine to sound a cry of protest and to make specific recommendations "for new kinds of television programming for children and youth."

Subsequently a group of consultants, after reviewing the Rothenberg article and other pertinent material, concluded that there are legitimate reasons for medicine to express concern and take affirmative action, even though they found a wide divergence of opinion among investigators on the significance of the effects of violence portrayals.

Based on this report, the Board of Trustees at its meeting May 11-15, 1976, authorized:

(1) Appointment of an ad hoc committee to evaluate new research in this field and to recommend ways in which the medical profession and others can appropriately respond to findings which appear to be valid.

(2) Publication of a booklet, to be made available to physicians for distribution to patients, that would emphasize parental responsibility for children's viewing and indicate what parents should look for in terms of suitable children's programming.

(3) Exploration with the National Association of Broadcasters of the possibility of convening periodic joint AMA-NAB conferences on the impact of TV on children. Such conferences would assess the current status of children's programming, identify problem areas and arrive at mutually acceptable recommendations for improvement.

The Board also recommends that the AMA:

(1) Support full funding of research by the National Institute of Mental Health on the influence of television. Funding should include the training of manpower in all appropriate disciplines to perform high quality investigations. Priority should be given to objective and applicable measurements of television violence and its effects, and to the elucidation of how and to what extent various types and degrees of television violence affect children adversely.

(2) Encourage physicians to emphasize to parents their responsibility in taking an interest in their children's viewing habits and in helping them be selective. Such admonition may be given by physicians in their direct contact with patients; in public appearances, including those on radio and TV shows; and in dealings with community organizations, including school boards. Appropriate channels for conveying this type of information to prospective parents are courses in parenting which are being incorporated in some high school curricula.

(3) Urge television networks and independent stations, in deciding on program content and scheduling, to utilize indices of violence as they are developed. The Federal Communications Commission also should be requested to use such indices, or their methodology, to identify trends in portrayal of violence, as well as to measure the violence content of individual programs. Such indices are now being developed by George Gerbner, dean of the Innnenberg School of Communication at the University of Pennsylvania, and by the Social Science Research Council. Both are receiving support from the National Institute of Mental Health. Until indices are perfected, television networks and stations should be urged to use a designation such as "parental guidance suggested" on all programs which contain episodes of violence that may have an adverse effect on some children.

In communicating these suggestions to the television industry, the AMA should acknowledge the sincere efforts which have been made by several segments of the industry to reduce violence and improve programming for children.

Fiscal note: \$1,500—ad hoc committee; \$10,000—joint conference; \$12,000—publication of booklet. (These funds are expected to be recouped through the sale of the booklet.)

APPENDIX II—APA JOINS AMA IN PROTEST OF TV VIOLENCE

The Executive Committee of APA's Board of Trustees voted, at its September meeting, to add APA's support to a resolution passed recently by AMA's house of delegates decrying the picturing of violence on television.

The resolution is as follows: "Whereas, there is ample evidence to document an increase in the death rate of young Americans due to violence; and

"Whereas, an important contributing factor to the 'culture of violence' is television's massive daily diet of symbolic crime and violence in 'entertainment' programs; and

"Whereas, this is an enormously complex problem for which there is no simplistic solution; therefore be it resolved that the house of delegates of the American Medical Association:

"1. Declare its recognition of the fact that TV violence is a risk factor threatening the health and welfare of young Americans, indeed our future society.

"2. Commit itself to remedial action in concert with industry, government, and other interested parties.