

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of)
)

ADJUSTMENT OF THE RATES FOR)
NONCOMMERCIAL EDUCATIONAL)
BROADCASTING COMPULSORY LICENSE)

) Docket No. 96-6 CARP NCBRA

GENERAL COUNSEL
OF COPYRIGHT

OCT 1 1997

DIRECT CASE OF
THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS **RECEIVED**



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Dated: September 30, 1997

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LICENSE)

REQUEST BY THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS FOR
RATES AND TERMS FOR A COMPULSORY LICENSE

The American Society of Composers, Authors and Publishers
("ASCAP") hereby submits, pursuant to 37 C.F.R. § 251.43 (a), (b), (c) and (e), its
request for the terms and rates for a compulsory license for the nondramatic public
performance of copyrighted published musical compositions in the ASCAP repertory
by the Public Broadcasting Service ("PBS"), National Public Radio ("NPR") and the
stations which they represent in this proceeding. The request is made pursuant to 17
U.S.C. § 118(b)(3).

ASCAP, based on the evidence presented in its direct case, requests that the Copyright Arbitration Royalty Panel ("the Panel") establish the following annual license fees for the performance of the music of its members for the five calendar years 1998, 1999, 2000, 2001 and 2002 by: (a) PBS and the television stations it represents in the amount of - -

1998:	\$5,201,000
1999:	" "
2000:	" "
2001:	" "
2002:	" "

and; (b) by NPR and the radio stations it represents in the amount of --

1998:	\$3,580,000
1999:	" "
2000:	" "
2001:	" "
2002:	" "

ASCAP requests the foregoing because, as Congress intended, such license fees represent a fair return to the copyright owners of the music in ASCAP's repertory without unfairly burdening PBS, NPR, and the approximately 350 public television and 700 public radio stations that broadcast ASCAP members' music.

Attached hereto are: (1) a copy of the proposed rate and terms for a compulsory license which ASCAP requests be established by the Panel and adopted as a part of the Code of Federal Regulations; (2) the Witness Statements and Exhibits submitted in ASCAP's direct case and (3) a schedule of the past records which are incorporated by reference as part of ASCAP's direct case.

BACKGROUND

Notwithstanding their efforts to negotiate a voluntary license agreement as contemplated by 17 U.S.C. § 118(b), ASCAP, acting on behalf of its members, and PBS and NPR, acting on their own behalf and the television and radio stations which they represent, were unable to reach agreement. The rights which were the subject of this unsuccessful negotiation are the rights afforded to ASCAP's members under the 1976 Copyright Act with respect to nondramatic public performances of their music by public broadcasting.

Twenty years ago, shortly after enactment of the 1976 Copyright Act, a dispute arose as to both the rate to be charged for, and terms of performance of, the music of ASCAP's members by public broadcasters. That dispute was then settled by the Copyright Royalty Tribunal. 42 Fed. Reg. 25068 (June 8, 1978) (ASCAP Ex. 8). Since that time, licenses between PBS and NPR with ASCAP have been settled by agreement, negotiated every five years.

This present proceeding is only the second occasion in almost twenty years when the parties were unable to reach agreement as to the details of the license by which the public broadcasters would have the right to broadcast the music in ASCAP's repertory. It is thus only the second time that a compulsory license has been sought.

ASCAP SEEKS JUST AND FAIR COMPENSATION
FOR THE USE OF ITS MEMBERS' MUSIC BY
PBS, NPR AND THE STATIONS THEY REPRESENT

1. The Growth and Commercialization
of Public Broadcasting

Upon the failure of ASCAP, PBS and NPR in 1997 to achieve a voluntary settlement as to the amounts to be paid to ASCAP for use of its members' works, ASCAP began preparations for this proceeding. Those preparations resulted in the marshalling of the direct evidence which is being submitted to this Panel.

The evidence before the Panel submitted by ASCAP concerning the growth and current status of public broadcasting is primarily in the form of expert testimony given by James Day, James Ledbetter and Robert Unmacht, as well as a vast amount of data gleaned from publications authorized or undertaken by the public broadcasters themselves. Those documentary admissions of public broadcasting stations and their representatives in all respects support the opinions of ASCAP's experts as well as ASCAP's position as to the growth and commercialization of public television and radio.

Whether caused by the policies of the national government or its own natural evolution, public broadcasting is today a behemoth, receiving over two billion dollars annually from solicited memberships, commercials from businesses, contributions from federal, state and local governments, and sales of goods, services and other compensated activities. Public broadcasting is in all respects competitive

with commercial broadcasting in market share, revenues generated, costs of programming, and other relevant indicators.

Urged by Congress to become self-supporting, the stations and their representatives, PBS and NPR, have undertaken programming and activities specifically designed to maximize the commercial value and financial rewards to them of their broadcasting.

The direct evidence before the Panel submitted by ASCAP also demonstrates the voracious appetite public broadcasting has for ASCAP's music. Such music, whether "popular" or "serious," is critical not only for public broadcasters' programming in the ordinary course, but is often the vehicle by which public broadcasting stations achieved in 1995 over three quarters of a billion dollars in pledges of funds from the viewing and listening public and commercials from business sponsors. Nor is there any real likelihood that during the future years, that appetite for music will be significantly diminished. ASCAP has submitted to this Panel an independent survey of viewers of public television in representative markets as to their interest in music programming. The results are that over 60% of those viewers expressed a desire for music to continue and even increase as a feature of public television.

The record establishes that there is no reason why ASCAP's membership should be required to accept less in license fees on a relative basis for the performance of their compositions than they already receive from the

commercial broadcasters with whom the stations represented by PBS and NPR clearly compete.

2. ASCAP's Proposal

To determine appropriate license fees for the public broadcasters, ASCAP proposes that those stations pay fees comparable to those which have been established after years of negotiation and rate-making litigation with the commercial broadcasting industry.

The analysis and development of what those fees should be are set forth in the direct testimony of Dr. Peter Boyle, ASCAP's Chief Economist. That analysis is based upon the concept that revenue produced for the public broadcasters as a consequence of the sale of memberships and underwriting are comparable to the broadcasting revenues earned by commercial stations.

In essence, public radio and television stations broadcast programs to achieve underwriting by business and interested institutions (*i.e.*, sponsorship or non-governmental contributions) and the purchase of entertainment by viewers and listeners. It is therefore appropriate to use such revenue as a basis upon which royalty fees are to be paid, particularly when the music for which royalties are paid is so important to these stations.

It is also appropriate in seeking to value the right to perform music to use as a reference the values of that use which have been established in the marketplace. ASCAP's proposal does this valuation by providing that public radio

and television broadcasters pay the same proportionate share of their revenues earned through programming as do commercial broadcasters, adjusted or refined to consider the respective proportion of ASCAP music used by those stations.^{1/}

ASCAP's ability to make those adjustments is made possible by its access to the annual survey conducted by it (of which Dr. Boyle is in charge) for purposes of distributing ASCAP's revenues to its members. That survey is a scientific sampling, recognized repeatedly in the courts, of what music is played annually by various media in the United States.

It should be recognized, however, that the public financial data released to date by PBS and NPR, together with the stations they represent, does not disclose the actual amounts of revenue realized by public broadcasting stations in 1996 and 1997. Because we were unable to obtain that information given the limitations on discovery established in this proceeding, ASCAP must extrapolate from previous data for the purpose of presenting its proposals. If more current information is disclosed, we will request an opportunity to refine ASCAP's proposal.

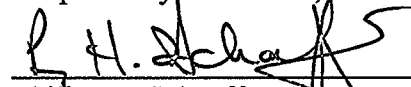
^{1/} For purposes of this proceeding, ASCAP has not considered so-called ancillary income or government funding as revenue for purposes of fixing license fees. Good arguments can be made that these amounts, amounting to over \$1.003 billion in revenues in 1995, should be considered. ASCAP, while not so asserting that position at this time, reserves its right to do so on future occasions.

**CONCLUSION: PUBLIC BROADCASTING
SHOULD PAY FAIR VALUE FOR THE MUSIC IT USES**

There is no tenable basis for public broadcasters to pay less for what they purchase than do their competitors in the commercial broadcasting industry. This is particularly true in an environment where our national government has repeatedly insisted that public broadcasters not be subsidized by others and learn to support themselves by their own efforts. All evidence shows that public broadcasting has succeeded in realizing vast sums of money, which it uses to nurture itself. The payment of reasonable license fees is a responsibility which public broadcasting should not be allowed to shrug off or evade by pleading that the stations cannot afford payment them. To the contrary, the law requires that public broadcasting pay the fair value of the intellectual property it is using for its own benefit and that ASCAP's members not be required to subsidize public broadcasting through licenses fees set below fair value.

Dated: September 30, 1997

Respectfully submitted,


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**ASCAP'S PROPOSED REGULATIONS CONTAINING
RATES & TERMS OF COMPULSORY LICENSE
FOR THE NONDRAMATIC PUBLIC PERFORMANCE
OF COPYRIGHTED PUBLISHED MUSICAL
COMPOSITIONS IN THE ASCAP REPERTORY,
CODE OF REGULATIONS, PART 253**

§ 253.1 General.

This Part 253 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 1998 and ending on December 31, 2002. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

§ 253.2 Definition of public broadcasting entity.

As used in this Part, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(d)(2).

§ 253.3 Performance of ASCAP musical compositions by PBS and NPR and their stations.

(a) Scope. This section applies to the nondramatic public performance of copyrighted published

musical compositions in the repertory of the American Society of Composers, Authors and Publishers (ASCAP) by public broadcasting entities. Such public broadcasting entities shall include all noncommercial educational television broadcast stations, noncommercial low power television broadcast stations, and noncommercial educational radio broadcast stations, which: (1) are members of the Public Broadcasting Service (PBS) or National Public Radio (NPR), or which receive or are eligible to receive general operational support from the Corporation for Public Broadcasting pursuant to the Public Broadcasting Act of 1967, as amended; and (ii) engage in the activities set forth in 17 U.S.C. 118(d)(1) and/or 17 U.S.C. 118(d)(3).

(b) Royalty Rate. (i) PBS and the television stations it represents shall pay ASCAP in each calendar year the sum of \$5,201,000 for the performance by PBS and the television stations it represents of the copyrighted published nondramatic musical compositions in the repertory of ASCAP.

(ii) NPR and the radio stations it represents shall pay ASCAP in each calendar year the sum of \$3,580,000 for the performance by NPR and the radio stations it represents of the copyrighted published nondramatic musical compositions in the repertory of ASCAP.

(c) Payment of royalty rate. The payments required by paragraph (b) shall be made in two equal payments on July 31 and December 31 of each calendar year.

(d) Identification of stations. PBS and NPR shall annually, not later than January 31 of each calendar year, or within 30 days of the effective date of this section, whichever is earlier, furnish to ASCAP a complete list of all public broadcasting entities within the scope of this section, as of January 1 of that calendar year.

(e) Records of use. (i) PBS and NPR shall maintain and quarterly furnish to ASCAP copies of their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs during the preceding quarter (including the title, composer and author, type of use, and manner of performance thereof, in each case to the extent such information is reasonably obtainable by PBS and NPR in connection therewith).

(ii) PBS and NPR stations shall furnish to ASCAP upon the request of ASCAP a music-use report listing all musical compositions broadcast from or through each station, on all PBS, NPR and other programs carried by such station, showing the title, composer and author of each composition. PBS and NPR stations will not be obligated to furnish such reports to ASCAP for a period or periods which

in the aggregate exceed four weeks (per station) in any one calendar year.

§ 253. Notice of restrictions on use of reproductions of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

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ADJUSTMENT OF THE RATES FOR
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LICENSE

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)Docket No. 96-6 CARP NCBRA

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WRITTEN TESTIMONY OF
JON A. BAUMGARTEN
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

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Background and Qualifications

[1] I am an attorney in private practice in Washington, D.C. with the law firm of Proskauer Rose LLP. I have been asked by the American Society of Composers, Authors and Publishers ("ASCAP") to give direct testimony in this proceeding which is undertaken pursuant to Section 118 of the Copyright Act of 1976. My purpose in doing so is to provide the panel with background information concerning the Copyright Act of 1976, its history, and its application to the issues herein. I have also been asked to address Section 118 of the Copyright Act, its relationship to copyright law in general and to the handful of other compulsory license provisions Congress has enacted.

[2] I have practiced copyright law for almost thirty years, with an emphasis on domestic and international copyright litigation and counseling pertaining to the publishing, computer, motion picture, music and recording, communications and arts communities. From 1970 through December, 1975, I was associated with the law firm of Linden & Deutsch. One of our clients was the American Guild of Authors and Composers ("AGAC"), among others, a trade association of songwriters (now known as The Songwriters Guild). In the course of my representation of AGAC, among others, I was closely involved in the negotiations concerning what was then a proposed public broadcasting compulsory license, which ultimately led to Section 118 of the Copyright Act. From January 1976 through May 1979 — that is, from before enactment of the general copyright revision through the first sixteen months

of experience under the revised copyright law — I served as General Counsel of the United States Copyright Office. In that connection I was a principal participant — with the Register of Copyrights, Congressional staff, the Chairman of the House copyright subcommittee, and representatives of affected parties -- in the final formulation of Section 118. During that period generally, I was a leading participant in the formulation of the new 1976 Copyright Act, was responsible for the preparation of Copyright Office regulations and practices under that new law after its enactment, and represented the Copyright Office before courts and Congressional committees, and the United States Government in international copyright conferences. Since that time, I have represented such trade associations and consortia interested in copyright as the Association of American Publishers, the Motion Picture Association of America, the International Intellectual Property Alliance, and the International Publishers Copyright Council. I regularly counsel such groups as well as individual companies in the entertainment and publishing industries in the identification, perfection, protection, and defense of intellectual property assets and claims. I have written and lectured extensively on copyright law. A copy of my curriculum vitae is attached.

I. General Principles: the Copyright Owner's Rights

[3] In order "to promote the progress of science and useful arts," Article 1, Section 8 of the Constitution granted Congress the power to secure "for limited times to authors . . . the exclusive right to their respective Writings"

Congress enacted copyright laws promptly thereafter and has revised them from time to time. The copyright law was revised wholesale in 1909 (the "1909 Act"), which was effective through 1977, and again in 1976, when Congress enacted the Act for the General Revision of the Copyright Law (the "1976 Act"), 17 U.S.C. §§ 101 *et seq.*, which became effective January 1, 1978.

[4] Copyright law affords authors (including composers and lyricists, hereafter collectively, "authors") certain exclusive rights in works that they create, for specified limited periods of time.

[5] The various exclusive rights that copyright ownership affords are specified in Section 106 of the 1976 Act, 17 U.S.C. § 106. They include the rights of reproduction, distribution and public display, the right to make derivative works from the copyrighted work, and, in the case of "literary, musical, dramatic, and choreographic works," the right to perform the work publicly (*i.e.*, "the right of public performance"). These exclusive rights, like any form of property, may be transferred to others.

[6] The broadcast, whether by radio or television, of a musical composition under copyright, is a public performance of that composition.^{1/} As such, any

^{1/} As defined in 17 U.S.C. § 101,

To perform or display a work 'publicly' means —

(2) to transmit or otherwise communicate a performance or display of the work to . . . the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same

(continued...)

broadcast of a copyrighted musical work would be an infringement of the owner's rights, unless authorized by the owner, excused by some particular exemption granted by the law, or licensed pursuant to other provisions of the copyright law.

[7] The "exclusive right to do and to authorize" public performance under copyright law includes, as a necessary corollary, the right to deny such authorization. Indeed, the essence of private property is the right to exclude and control use. It is precisely by authorizing the copyright owner to deny permission to copy, perform or the like except on terms and rates acceptable to the copyright proprietor, that owners are secured the opportunity for compensation that induces their creation in the first place, to the public benefit. *See generally Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985) (ASCAP Ex. 18).

[8] The right of copyright owners to control the use of their own works, with the concomitant right to license those works on terms that are mutually agreed-on (but not to be forced to accept use of their works otherwise), is a fundamental aspect of American copyright law.

¹/(...continued)

place or in separate places and at the same time or at different times. *See*, 17 U.S.C. § 101 (ASCAP Ex. 1).

Under the 1909 Act, the nondramatic musical performing right was limited to performances "for profit," and, as discussed below, whether performances by public broadcasting entities were public performances "for profit" had never been conclusively resolved by the Supreme Court. The 1976 Act eliminated the general "for profit" limitation on the public performing right for music, as explained below.

II. Section 118 of the 1976 Act

A. The Historic Policies of Owner Control and Against Compulsory Licensing

[9] From its outset, American copyright law historically has been adverse to the idea of compulsory licensing of authors' works. This policy against the enactment of compulsory licenses is a feature not only of the United States copyright law but of copyright law throughout the world. It was strongly adhered to by Congress in the 1976 Act.

[10] Indeed, from the 1909 Act until the 1976 Act, there was only one exception to the copyright owner's general right to refuse to license his or her works and to the author's unfettered discretion as to terms on which a license would be given. That exception was the limited compulsory license enacted in 1909 with respect to the reproduction and distribution — although not the performance — of second recordings of nondramatic musical works (the so-called "mechanical compulsory license").

B. The Role of Performing Rights Organizations

[11] Because there are so many nondramatic public performances of copyrighted musical compositions occurring constantly,^{2/} because music users publicly perform such works in bulk, and because individual authors and copyright owners

^{2/} As a matter of music industry practice, performing rights are categorized as "dramatic" or "grand" rights, or "nondramatic" or "small" rights, and licensed differently. The public broadcasting compulsory license covers only nondramatic performances (Section 118(f)) and ASCAP is expressly authorized to license only "nondramatic" or "small" rights.

were unable to learn of and license all such performances on their own, clearing-house mechanisms developed to do so. These performing rights licensing organizations — epitomized by ASCAP — offer music users a single license which allows the performance of all the works in their repertories.

[12] In exchange for the ability to license collectively, however, the individual authors and copyright owners who license through these collective bodies give up the right to refuse a license. As a result of antitrust consent decrees which govern their operations, ASCAP and its chief competitor, Broadcast Music, Inc. ("BMI"), have agreed to license any music user who requests a license and is willing to pay a "reasonable" fee — and if the parties cannot agree on a fee, it will be set by court determination. But, of course, the individual authors and copyright owners who have voluntarily agreed to that requirement have voluntarily given up their right to say "no" — by choosing to affiliate with the performing rights organization.

C. Congress's Early Decision in the Copyright Revision Process to Abolish the Existing Non-Profit Exemption

[13] The right of nondramatic public performance of copyrighted musical works in the 1909 Act was limited to public performances "for profit." 17 U.S.C. § 1(e) (repealed 1976).

[14] Prior to the enactment of the 1976 Act, case law gave strong reason to believe that the performance of nondramatic musical works by noncommercial broadcasters was nevertheless a public performance "for profit," as the 1909 Act

used the term, and was an infringement absent a license or an available defense.^{3/}

In any event, at a very early stage in the revision process, both congressional committees with jurisdiction reported out bills with provisions confirming that public broadcasters would not be exempt from infringement because of any nonprofit status. Reporting favorably an early version of what became the 1976 Act, the House Judiciary Committee observed in 1967:

The right of public performance under Section 106 . . . unlike the equivalent provisions now in effect, is not limited by any "for profit" requirement . . . The committee has adopted this approach as more reasonable than the outright exemption of the 1909 statute. It found persuasive the arguments that the line between commercial and "nonprofit" organizations is increasingly difficult to draw, that many "nonprofit" organizations are highly subsidized and capable of paying royalties, and that the widespread public exploitation of copyrighted works by educational broadcasters and other noncommercial organizations is likely to grow. In addition to these trends, it is worth noting that performances and displays are continuing to supplant markets for printed copies and that in the future a broad "not for profit" exemption could not only hurt authors but could dry up their incentive to write.

H.R. Rep. No. 90-83, 90th Cong., 1st Sess. 26 (1967) (ASCAP Ex. 2). The Senate Judiciary Committee agreed. S. Rep. No. 93-383, 93rd Cong., 2d Sess. 112 (1974) (ASCAP Ex. 3).

^{3/} See, e.g., *Rohauer v. Killiam Shows, Inc.*, 379 F. Supp. 723 (S.D.N.Y. 1974); *Mills Music, Inc. v. Arizona*, 187 U.S.P.Q. 22 (D.D.C. 1975); *Associated Music Publishers, Inc. v. Debs Memorial Radio Fund, Inc.*, 141 F.2d 852 (2d Cir. 1944). While the 1909 Act was in effect, in the late 1960s and early 1970s, ASCAP and representatives of public broadcasting attempted to negotiate license agreements, but were unable to reach signed agreements. See Copyright Law Revision: Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, on H.R. 2223, 94th Cong., 1st Sess. 927-30 (1975) (hereafter "1975 Hearings").

[15] Notwithstanding periodic pleas from public broadcasters for total exemption from the need to obtain performing rights licenses, Congress refused to alter its decision that there would be no general exemption. From about 1974, the issue before Congress was not whether public broadcasters should pay for the right to perform copyrighted musical works, but only whether they would do so in the manner that commercial broadcasters and other users do, [*see, e.g., Buffalo Broadcasting Co. v. ASCAP*, 744 F.2d 917, 921-22 (2d Cir. 1984) (ASCAP Ex. 24) and *CBS v. ASCAP*, 620 F.2d 930 (2d Cir. 1980), *cert. denied*, 450 U.S. 970 (1981)], or under some form of compulsory license.

D. The Terms of Section 118 and Its Legislative History Reflect Congress's Abolition of the Existing Non-Profit Exemption, Requirement of Market Rates, and Prohibition of Rates That Would Effectively Require Copyright Owners to Subsidize Public Broadcasting

[16] As that issue played out in the legislative arena, the copyright owners, on the one hand, considered any compulsory license an anathema. They urged that public broadcasters should obtain performing rights in the same way that commercial broadcasters and other users do — by negotiating license agreements or, if negotiations failed, court determination of a reasonable fee. *See, e.g., 1975 Hearings, passim.*

[17] The public broadcasters, on the other hand, many of whom had for years claimed that the 1909 Act did not require them to pay copyright owners for the right to perform their works, sought to retain as much of their revenue as

possible. Pointing out that their funds were in substantial measure contributed by the government, corporate underwriters, and foundations, they worried about the impact of any fees on their operating funds. Their fear was heightened by their recognition that public broadcasters use nondramatic musical works far more than do commercial broadcasters: their arts programming was more likely to use the repertoires of the performing rights organizations, and their programs were more likely to be repeated many times during a week. Hence, they argued, in effect, for subsidization of their operations through the copyright law. *See* 1975 Hearings, *passim*.

[18] Congress resolved the issue through the Section 118 compulsory license. In doing so, Congress clearly, fundamentally, and explicitly rejected the public broadcasters' plea for subsidization. However, given the public broadcasters' fears — however unproven — that the performing rights organizations would insist on excessive rates (*See, e.g.,* 1975 Hearings at 864, 866-68, 879, 889-90). Congress gave the public broadcasters the procedural protection of a compulsory license with a rate-setting administrative body.

[19] In essence, the Section 118 compulsory license is structured as follows:

a. First, public broadcasters and copyright owners were encouraged to negotiate and agree upon the terms and rates of royalty payments. The authors and copyright owners were allowed to designate common agents to negotiate, agree to, pay, or receive payments, notwithstanding any provision of the antitrust laws. Hence, the performing rights organiza-

tions were freed from the strictures of the consent decrees which imposed certain licensing requirements on them and which are now covered by the public broadcasting compulsory license. *See* Section 118(b).

b. Second, to take care of parties who did not agree, the Copyright Royalty Tribunal established under the Act was to conduct a proceeding in 1978 and, if necessary, at five year intervals thereafter in which it would determine "reasonable terms and rates of royalty" for covered works and activities. *See* Sections 118(b), 801(b)(repealed), 801(c)(repealed).

c. Finally, license agreements voluntarily negotiated at any time "between one or more copyright owners and one or more public broadcasting entities" would, if filed with the Register of Copyright within thirty days of execution, be given effect "in lieu of any determination by the Tribunal." *See* Section 118(b)(2).

[20] The legislative history makes plain that the substantive standard which the Tribunal was to use in setting rates was one of "fair value."^{4/} The Senate committee stated in its 1975 report:

. . . The compulsory license is intended to ease public broadcasting's transition from its previous "not for profit" exemption under the copyright law. As such, this provision does not constitute a subsidy of public broadcasting by the copyright proprietors since the amendment requires the payment of copyright royalties reflecting the fair value of the materials used.

S. Rep. No. 94-473, 94th Cong., 1st Sess. 101 (1975) (ASCAP Ex. 4).

[21] The bill reported out by the House subcommittee in September 1976 amended the Senate bill in various other respects (all of which prevailed over conflicting Senate provisions in the conference report), but its royalty rate provision shared the same general "no subsidy by copyright owners" principle and intention as the Senate provision:

The Committee does not intend that owners of copyrighted material be required to subsidize public broadcasting.

H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 118 (1976) (ASCAP Ex. 5).

Emphasizing that point, the House report invited the Tribunal to consider voluntarily

^{4/} The relevant legislative history of Section 118 is comprehensively collected in the Legislative Materials and Cases at ASCAP Exs. 2-8. The express Congressional sentiment against copyright owners' subsidization of public broadcasting is pervasive. In its 1974 report, the Senate Judiciary Committee said: "The committee is not unaware of the financial strain of many public broadcasting stations. Such stations may deserve greater financial assistance, but they should not be subsidized by this country's creative talent." S. Rep. No. 93-983, 93rd Cong., 2d Sess. 128 (1974) (ASCAP Ex. 3). In its 1975 report, finally accepting the notion of a compulsory license, as shown in ¶ 20 it reiterated this conclusion. And in its 1976 report, the House Committee explicitly agreed. See ¶ 21.

negotiated rates and the general incentive principle of copyright to induce creation by affording opportunity for fair reward:

Section 118(b)(3) provides that "the [Tribunal] may consider the rates for comparable circumstances under voluntary license agreements." The [Tribunal] is also expected to consider both the general public interest in encouraging the growth and development of public broadcasting, and the "promotion of science and the useful arts" through the encouragement of musical and artistic creation. *Id.*

E. The Role of Performing Rights Organizations Under Section 118

[22] Congress has recognized generally and in Section 118, and the Copyright Royalty Tribunal recognized as well in its initial proceeding, that ASCAP and the other performing rights organizations are the licensing entities authorized to speak for and negotiate on behalf of authors and copyright owners. ASCAP and other performing rights organizations have for many years been invited to testify at hearings where legislation affecting rights of authors and copyright owners has been considered, including the hearings leading to the enactment of Section 118 and the hearings leading to the substitution of CARPs for the Tribunal. Indeed, ASCAP was the principal participant for authors and copyright owners in the Tribunal's first proceeding under Section 118(b)(1), conducted in 1978. *See* 43 Fed. Reg. 25068 (June 8, 1978) (hereafter the "Final Rule") (ASCAP Ex. 8).

[23] As previously noted, Section 118(b) clearly contemplates the participation of performing rights organizations in the process of agreeing on terms and rates for the licensing of nondramatic performance rights, and immunizes such participation from challenge under the antitrust statutes:

Notwithstanding any provision of the antitrust laws, any owners of copyright in works specified by this subsection and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

[24] Further, as Section 118(b) provided for the effectiveness of voluntarily negotiated rates between "any owners of copyright" and public broadcasting entities, agreements negotiated between public broadcasting entities and performing rights organization superseded the need for any Tribunal-determined rates for the copyrights licensed by those performing rights organizations. Similarly, the Tribunal determined that the "rates and terms" operating under Section 118 contemplated blanket royalties for each individual performing rights organizations. *See* Final Rule, 43 Fed. Reg. 25068 (ASCAP Ex. 8).

F. Section 118's Relationship to Other Compulsory Licenses and Congress's Expectation of Individual Rates

[25] The compulsory license and rates provided by Section 118 differed in important respects from the other compulsory licenses enacted by Congress in 1976. The statutory provisions providing compulsory licenses for secondary transmissions by cable television (Section 111(e)), for mechanical reproduction of nondramatic musical works in sound recordings (Section 115), and for jukeboxes (Section 116, now repealed), specified rates which were initially set by Congress. The Tribunal's authority with respect to royalties paid under those compulsory licenses was to adjust those rates in the future and, for the compulsory licenses which required it

(the cable and jukebox compulsory licenses), to determine how the collected sums should be distributed.

[26] By contrast, Congress did not undertake the initial task of setting rates under the public broadcasting compulsory license. Congress recognized that it was ill-equipped to engage in the detailed consideration of the different circumstances of the various copyright owners, who were represented by a handful of performing rights organizations whose repertoires differed greatly by way of size and likely use. Accordingly, to the extent that rate-setting might be necessitated by the failure of voluntarily negotiations and licensing, Congress left the initial task of setting non-subsidizing reasonable rates, individualized to the performing rights organizations as necessary, to the Tribunal, acting as a kind of "rate court."

[27] The structure of Section 118 confirms Congress's expectation that rates would be set, individually, for each performing rights organization. An expectation of individualized rates is implicit in the requirements, inserted in the provision governing the Tribunal and its rate-setting responsibilities, that different groups of owners and public broadcasters "negotiate in good faith . . . in an effort to reach reasonable and expeditious results," that they "negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees among various copyright owners," and that the Tribunal "*proceed on the basis of the proposals submitted to it* as well as any other relevant information." Sections 118(b) and

(b)(1) (emphasis added).^{5/} Indeed, such individualized rate setting was an absolute necessity if — as occurred in 1978 — some performing rights organizations reached agreement with public broadcasters while others did not.

[28] The expectation that the Tribunal would determine individualized blanket royalty rates for the various performing rights organizations is also evident in the key changes to the royalty provisions that the House made and that the Senate accepted in conference.

[29] The Senate bill in the final round of revisions had followed the "single rate applicable to all owners" model similar to the jukebox compulsory license.

Rates would have been set

on a per-use, per-program, prorated or annual basis as the Copyright Royalty Tribunal finds appropriate with respect to the type of the copyrighted work and the nature of broadcast use,

^{5/} The Tribunal in the First Section 118 Proceeding, discussed below, broadly construed Section 118 to empower it to review a range of licensing formulas, including those geared to copyright payments made by commercial broadcasters; as that Tribunal stated:

In the determination of reasonable royalty payments for the performance of ASCAP musical compositions, the CRT [*i.e.*, the Tribunal] examined a number of formulas. These included an annual flat payment, a fee determined on the basis of market population or size of audience, formulas related to the usage of music, and formulas geared to copyright payments made by commercial broadcasters. In examining possible formulas, the CRT has considered copyright licensing practices by United States commercial broadcasting and foreign public broadcasting systems.

Final Rule, 43 Fed. Reg. 25068, 25069 (ASCAP Ex. 8). See 17 U.S.C. § 118 (b)(1) (" . . . any other relevant information. ").

and the Tribunal would have had a royalty pool-dividing function with respect to all royalties collected comparable to that eventually provided, for example, with respect to jukebox royalties. S. Rep. No. 94-473, 94th Cong. 1st Sess. 16 (1975) (ASCAP Ex. 4); *see, id.* at 101 ("The procedures for implementing the compulsory license parallel those provided in other sections of the legislation, but in the interests of establishing well-researched and reasonable rules, the amendment leaves the establishment of initial rules to the Copyright Royalty Tribunal.")

[30] Congress rejected that model, however, substituting in its place the provisions of the House Bill, which "substantially changed" the Senate's compulsory licensing terms and procedures. H.R. Rep. No. 94-1733, 94th Cong. 2d Sess. 78 (1976) (ASCAP Ex. 6). The "substantial changes" were identified, *inter alia*, as providing for consideration of the individual proposals. *Id.* As a result of individualized royalties among the performing rights organizations, "Payment of royalties under Section 118 were to be handled among the parties without government intervention." *Id.* And, of course, "the parties" can hardly refer to thousands of composers individually, but rather signified a manageable, small number of parties, *i.e.*, the three principal performing rights societies, ASCAP, BMI, and SESAC.

G. The First Section 118 Proceeding and the Resulting 1978 Rate Schedule

[31] In a number of respects, the first Section 118 proceeding before the Tribunal is instructive.

[32] **Individualized license fees.** The Tribunal invited and heard presentations concerning rates for each performing rights organization. The public broadcasters' proposal that evidence *not* relate to individual copyright owners was rejected. The Tribunal concluded, instead, that individual presentations (by ASCAP concerning its rates, for example) should be made.^{6/} The Tribunal's schedule of final rates reported that BMI and SESAC had each reached agreement with public broadcasting on their own rates, and provided for a distinct ASCAP fee. Final Rule, 43 Fed. Reg. 25068 (ASCAP Ex. 8).

[33] **Blanket licenses and rates.** The Tribunal rejected public broadcasters' suggestion for rates set on a per-composition basis, and instead concluded early on — confirming that decision in the Final Rule, 43 Fed. Reg. 25069 — that a blanket license for the entire ASCAP repertory was the correct approach.^{7/}

[34] **Basis of the ASCAP fee.** In setting an annual license for ASCAP for the 1978-1982 period, the Tribunal began by relying on the House and Senate reports, which were found to be "particularly useful." Final Rule, 43 Fed. Reg. 25068. The Tribunal quoted the "fair value" and "no intention to subsidize" language of the legislative reports cited above. *Id.* It expressly disclaimed reliance

^{6/} See B. Korman & F. Koenigsberg, *The First Proceeding Before the Copyright Royalty Tribunal: ASCAP and the Public Broadcasters*, 1 *Communications and the Law* 15, 29 (1979) (hereafter "First Proceeding Article") (ASCAP Ex. 19).

^{7/} *Id.* at 37; 43 Fed. Reg. 25068-69 (ASCAP Ex. 8).

on any particular formula, noting that on the record before it every formula proposed "suffered from inherent limitations." *Id.* at 069.

[35] The Tribunal gave extensive consideration to a revenue-based fee (*e.g.*, as a percentage of public broadcasting revenues, to rise in subsequent years with any increases in revenues). First Proceeding Article, at 36-39. The revenue-based approach was endorsed by two of the five commissioners, who proposed a formula that would have produced \$1.283 million for 1978. But faced with uncertainty about whether it had been given sufficient evidentiary basis for assessing revenue reliably and without the double counting of some revenues, however, the majority in the end settled on a fixed amount not expressly tied to a revenue measure, although one that, at \$1.25 million for 1978, closely approximated what the revenue formula would have produced. The Final Report expressly stated that "the amount of the payment is approximately what would have been produced by the application of several formulas explored by this agency during its deliberations." Final Rule, 43 Fed. Reg. at 25069 (ASCAP Ex. 8).

[36] **Combined reporting and payment.** ASCAP agreed to combine reporting and payment for all PBS (*i.e.*, PBS-affiliated television station) and NPR (*i.e.*, NPR-affiliated radio station) uses. Final Rule, 43 Fed. Reg. 25068 (ASCAP Ex. 8); First Proceeding Article, at 38 (ASCAP Ex. 19).

[38] **No precedential effect for the rate or rate-approach adopted.** The CRT expressly disclaimed any intent to create precedent in either the particular rate

adopted or the particular "approach" there used (*i.e.*, the setting of a rate "on the whole record" without express reliance on any particular formula or method):

The CRT has adopted this schedule on the basis of the record made in this proceeding. When this matter again comes before the CRT, the CRT will have the benefit of several years experience with this schedule. The CRT does not intend that the adoption of this schedule should preclude active consideration of alternative approaches in a future proceeding.

Final Rule, 43 Fed. Reg. 25069 (ASCAP Ex. 8).

H. The Tribunal's 1982 Determination

[38] ASCAP and PBS/NPR reached voluntary agreement for the second compulsory license term, 1982-1987. But ASCAP was unable to reach agreement with certain noncommercial educational radio stations which were not represented by NPR (the "community radio stations"). Hence the Tribunal was required to determine reasonable license rates and terms for those stations, and did so. Decision of the Copyright Tribunal Re: 1982 Adjustment of Royalty Schedule for Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting; Terms and Rates of Royalty Payments, 47 Fed Reg. 250 (1982) (ASCAP Ex. 17).

[39] In the course of that determination, the Tribunal reaffirmed that the compulsory license rates for public broadcasting must reflect the "reasonable market value of the copyrighted works subject to a compulsory license," that no subsidization of public broadcasting was allowed, and that the rates must reflect the "fair value of the materials used." The Tribunal said:

The Tribunal has consistently held that the Copyright Act does not contemplate the Tribunal establishing rates below the reasonable market value of the copyrighted works subject to a compulsory license. As we discussed in our 1978 public broadcasting opinion, we have found the congressional committee reports to be particularly useful. The House Judiciary Committee report stated that Congress "did not intend that owners of copyrighted material be required to subsidize public broadcasting." The Senate Judiciary Committee report stated that section 118 "requires the payment of copyright royalties reflecting the fair value of the materials used."

I. The Tribunal's Recommendation for Abolition of the Public Broadcasting Compulsory License

[40] In its 1978 Final Rule, and in accordance with requests from Congress, the Tribunal provided that it would transmit a report to Congress "making such recommendations concerning 17 U.S.C. § 118 that it finds to be in the public interest." 37 C.F.R. § 304.14 (June 30, 1978). The Tribunal delivered a report with those recommendations to Congress on January 23, 1980.^{8/}

[41] The Tribunal examined the legislative history of Section 118 and, more importantly, its own experience in the 1978 rate adjustment proceeding. The Tribunal concluded that there was no justification for the public broadcasting compulsory license, and that it should be repealed.

[42] In reaching that conclusion, and making that recommendation to Congress, the Tribunal reaffirmed the key points I have previously noted, and added some new ones:

^{8/} The full text of the Report of the Copyright Royalty Tribunal on "Use of Certain Copyrighted Works in Connection With Noncommercial Broadcasting" as required by the 1978 version of 37 C.F.R. § 304.14 may be found at ASCAP Ex. 8A.

- The Tribunal again affirmed that Congress did not intend that owners of copyrighted material be required to subsidize public broadcasting through the compulsory license.
- The Tribunal reaffirmed that a blanket license is the most suitable method for licensing public broadcasting to perform musical works.
- The Tribunal said that public broadcasting's argument that their music "clearance needs cannot be met within the limitations of their administrative and financial resources without a statutory license cannot be sustained on the evidence since the passage of Section 118."
- In response to the public broadcasters' arguments for the compulsory license, the Tribunal said that it "has not discovered any 'special programming,' 'repealed use,' or 'varied type of producing organizations' clearance problems for the licensing of nondramatic musical works."

J. The Substitution of Copyright Arbitration Royalty Panels for the Copyright Royalty Tribunal

[43] Congress has revised Section 118 only once since 1976, as part of a general substitution of *ad hoc* arbitration panels, selected by the Librarian of Congress, for the previous permanent Copyright Royalty Tribunal. Like the Tribunal before them, the CARPs are to consider, if no agreement is reached by the parties, "rates for comparable circumstances under voluntary license agreements

negotiated," and determine reasonable rates and terms. *See* Copyright Royalty Tribunal Reform Act of 1993, Pub. L. 103-198, 107 Stat. 2304, 2309.

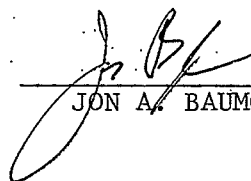
[44] Notwithstanding that procedural change, conforming amendments, and the tidying-up elimination of certain provisions that had been applicable only in connection with the initial proceeding under Section 118, nothing in either the text or history of the Copyright Royalty Tribunal Reform Act of 1993 changed in any fashion the previous key legislative decisions:

- to encourage voluntary negotiation of licenses by public broadcasters and owners, by providing for the overriding effectiveness of such voluntary license terms and rates notwithstanding any official determination pursuant to Section 118;
- to provide for the consideration of voluntary license agreements negotiated pursuant to Section 118, and others, in any setting of rates and terms; and
- to provide for the setting of rates and terms, to the extent necessary at all, at "fair value" — that is, at a rate reflective of the normal incentivizing function of copyright royalties, and one that specifically would not entail any subsidization of public broadcasting by copyright owners.

[45] Indeed, the CARPs are directed, in Section 802(c) of the amended 1976 Act, to act "on the basis of a fully documented written record [and] *prior decisions*

of the Copyright Royalty Tribunal" Acting "on the basis of . . . prior decisions" of the Tribunal necessarily means respecting the Tribunal's express judgment that specified portions of its Final Rule (such as the initial rate and the initial rate "methodology") should be *denied* any precedential effect. By the same token, it necessarily means that to the extent that the Tribunal's Final Rule did not itself disclaim precedential effect, its decisions (for example, that Section 118 requires rates that do not create subsidies for public broadcasters out of the intended fair returns to owners or that the blanket license, with a rate set individually for each performing rights organization is the appropriate form), the Final Rule provides important guidance for this Panel.

I declare under penalty of perjury that the foregoing is true
and correct. Executed on September 17, 1997.

A handwritten signature in dark ink, appearing to read 'Jon A. Baumgarten', is written over a horizontal line.

JON A. BAUMGARTEN

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Jon A. Baumgarten

Jon Baumgarten is a Proskauer Rose LLP partner, resident in the firm's Washington, D.C. office. (He is also regularly available in the firm's offices in New York City, California, Boca Raton and Europe.) He is a graduate of the New York University School of Law, where he was an Executive Editor of the New York University Law Review.

From his admission to the Bar in 1968 until January 1978, and since June 1979, Jon has engaged in private practice, with emphasis on domestic and international copyright, trademark, licensing, contract, litigation and related matters pertaining to the publishing, computer, motion picture, music and recording, communications and arts communities. His client responsibilities in these areas include trade associations and domestic and international consortia (including the Association of American Publishers, Motion Picture Association of America, International Intellectual Property Alliance and International Publishers Copyright Council), leading American and foreign companies, start-up and emerging ventures, and individuals. In addition to clients in the publishing, computer and entertainment industries, he regularly counsels general business companies in the identification, perfection, protection and defense of intellectual property assets and claims.

From January 1978 through May 1979, Jon served as General Counsel of the United States Copyright Office. During this period, he was a leading participant in the formulation of the new Copyright Act, was responsible for the preparation of Copyright Office regulations and practices under the new law, and represented the Copyright Office before courts and Congressional committees and the United States Government in international copyright conferences.

Jon is the author of numerous articles and a book entitled U.S. - U.S.S.R. Copyright Relations Under the Universal Copyright Convention, has lectured on copyright at numerous professional and industry conferences and seminars in the United States and abroad and has chaired several conferences on proprietary rights issues. He has been a lecturer on international copyright law in a cooperative program of Duke University and the University of Copenhagen and at the International Law Institute in Washington, and has served as a private sector and government delegate to the People's Republic of China, the U.S.S.R., Japan and the World Intellectual Property Organization.

Since re-entering private practice, Jon has continued to be called upon by the government. He has served as an Advisor to the Congress' Office of Technology

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of)

ADJUSTMENT OF THE RATES FOR)
NONCOMMERCIAL EDUCATIONAL)
BROADCASTING COMPULSORY LICENSE)

) Docket No. 96-6 CARP
) NCBRA
)

WRITTEN TESTIMONY
OF MARY RODGERS
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

Background and Qualifications

1. My name is Mary Rodgers. I am a composer, lyricist and screenwriter, and a writer member of the American Society of Composers, Authors and Publishers ("ASCAP"). Since 1995, I have served as a writer member of ASCAP's member-elected Board of Directors.

2. Music has always played an important role in my life. My father was the composer Richard Rodgers, who with his collaborators Oscar Hammerstein and Lorenz Hart, wrote some of our country's greatest musical treasures including "The King and I", "South Pacific" and "The Sound of Music." Today, my son Adam Guettel continues in the family tradition, receiving accolades for his Off-Broadway show "Floyd Collins" last year.

3. My father's works and those of his collaborators have been performed over the years in every medium, by every type of music user -- on the dramatic stage, in concert halls, in cabarets and nightclubs and on radio and television, including public television. Indeed, a few years ago, New York public television station WNET approached the Rodgers and Hammerstein ("R&H") Organization for permission to produce a pledge special on the life of Oscar Hammerstein. The R&H Organization agreed and the show "Some Enchanted Evening" was later aired in 1995 as part of WNET's "Great Performances" series. Over the years, other producers of programming for public broadcasting have

approached the R&H Organization about creating other pledge programs for public television. For example, a documentary entitled "The Sound of American Music" hosted by Mary Martin premiered on public television in 1985; the documentary "Music by Richard Rodgers" hosted by Shirley Jones debuted on public television in 1989.

4. I attended the Mannes Music School and Wellesley College, and became a member of ASCAP in 1954. I have written music for theatre and television, including the musical theatre works "Once Upon a Mattress," "Hot Spot," "The Mad Show" and "Working." I was also a contributor to the Marlo Thomas television special "Free To Be . . . You and Me" and have written musical scores for the Bill Baird Marionettes. (A list of some scores I have written and publications and screenplays I have authored is being submitted as ASCAP Ex. 33.)

5. In addition to serving on the ASCAP Board, I serve as Board Chairman of the Juilliard School, as a board member of the Lincoln Center for the Performing Arts and Theatreworks/USA, as a member of the council of the Dramatists Guild, as Vice President of Young Playwrights Inc. and as a Board member of the ASCAP Foundation.

6. The purpose of my testimony is to provide this Panel with background regarding ASCAP and its formation: who we are and what we do; how we serve our members and the users of our members' music, including public

broadcasting. I will also testify about ASCAP's leadership role in the copyright and creative communities.

The History of ASCAP

7. ASCAP is an unincorporated membership association with more than 67,000 writer and publisher members who reside in every state of the United States. ASCAP is the oldest and largest musical performing rights society in the United States with a repertory of millions of copyrighted musical compositions. ASCAP is also affiliated with 58 foreign performing rights societies around the world and licenses the repertories of those societies in the United States.

8. ASCAP's writer members -- composers who write music and authors or lyricists who write words -- are essentially small businessmen and women who make their living writing music. However, writers must have both the time and incentive to write. As a consequence, writers and music publishers have formed creative partnerships. Music publishers handle many of the commercial aspects of the business, leaving writers free to create. Among their many tasks, music publishers license various rights granted by the Copyright Law, promote the writers' works with record companies and performing artists, and provide career guidance. Other publishers administer the catalogues of writers who form their own publishing companies.

9. But, even writers and publishers working together cannot do all that is necessary to ensure that the performances of their music are properly

licensed and that they are fairly compensated for the use of their property. For that assistance, the music community historically has turned to collective licensing organizations. The first performing rights society for music was founded in France in 1851. After the right of public performance developed in American Copyright Law, ASCAP was formed in 1914. Similar societies were formed in other major European countries and exist today in countries around the world.

10. The idea for an American society came from the Italian opera composer Puccini. While visiting the United States in 1910 to attend the American premiere of one of his works, Puccini spoke of the fine work of the Italian performing rights society to his American music publisher, George Maxwell. Maxwell discussed the idea with Raymond Hubbell, a popular songwriter of the day, and with Maxwell's lawyer, Nathan Burkan. Excited about the idea, Burkan approached another of his clients, Victor Herbert, the composer of many famous operettas including "Babes In Toyland". Herbert embraced the idea and on a rainy evening in October of 1913, Herbert met with a handful of writers and publishers at the old Luchow's Restaurant in New York City and ASCAP was born. The Society grew rapidly -- for the first time writers and publishers had a practical means for licensing the public performances of their music.

11. Some 83 years later, ASCAP remains the preeminent performing rights society in the United States and an international leader in copyright.

The ASCAP Clearinghouse

12. First and foremost ASCAP serves as a clearinghouse for ASCAP's writer and publisher members and the users of copyrighted music in the ASCAP repertory. Millions of nondramatic public performances of copyrighted music occur each day in the United States (as opposed to "dramatic" performances that one might see on professional stages throughout the country). Users include television and radio stations (both commercial and non-commercial), cable networks and cable system operators, hotels, nightclubs, restaurants, colleges and universities, concert halls and many others.

13. Given the vast number of users and performances, it is impossible for ASCAP's members to locate and license these performances. The corresponding responsibility of users of copyrighted music would be equally daunting without ASCAP. But for ASCAP, users would have to identify the owners of the music they wish to perform and negotiate licenses with each one of them in advance of the uses. The administrative costs alone for individually licensing every work would be astronomical. Consider the typical radio station which plays hundreds of songs each day. Without the ASCAP clearinghouse, obtaining permission to perform those works would be a formidable task.

14. ASCAP offers the solution by licensing in bulk. Users, large and small, obtain the right to perform publicly all of the millions of copyrighted musical compositions in the ASCAP repertory, and the repertories of ASCAP's

foreign affiliates, through a single license. With this right of unlimited access, users are free to use as much or as little music in the ASCAP repertory as they wish.

15. In sum, ASCAP simplifies the difficult task of granting and obtaining permission to perform copyrighted music. Users have quick and easy access to vast numbers of musical compositions at fair rates, while writers are encouraged to create, and publishers to promote the business of music across the nation and around the world. That encouragement of creativity, and of the performance of music, benefits the public as well.

The ASCAP Repertory

16. ASCAP has always been home to the greatest names in music from George Gershwin, Cole Porter, Irving Berlin, Duke Ellington, Aaron Copeland, Leonard Bernstein and my father and his collaborators, to Billy Joel, Madonna, Stevie Wonder, Bruce Springsteen, Garth Brooks, Stephen Sondheim, Pearl Jam and Wynton Marsalis, to name but a few. Although you might not recognize some of their names, ASCAP members also have written the scores to many thousands of memorable motion pictures and television programs. ASCAP counts thousands of new writers as part of its family, too, some of whom will be stars in the musical firmament of the 21st century.

17. ASCAP also takes pride in the thousands of honors received by its members. In addition to Oscars, Grammys, Tonys, Pulitzers and Emmys, the Songwriters Hall of Fame and Rock and Roll Hall of Fame are crowded with the

names of our illustrious members. The names of our jazz and symphonic greats would fill pages.

18. Every musical genre may be found in the ASCAP repertory including pop, country, jazz, rock, symphonic and concert, standards, new age, theatre and cabaret, Latin, gospel, rap and hip-hop, R&B -- all of which form the backbone of our nation's rich musical heritage.

19. ASCAP licenses performances in the United States of the musical compositions of hundred of thousands of foreign writers and publishers, too, contained in the repertories of affiliated foreign societies (and the foreign affiliated societies license the ASCAP repertory in their countries). Among our past and present foreign musical luminaries who license through ASCAP are Maurice Jarre, Andrew Lloyd Webber, Sergei Prokofieff, Pierre Boulez, Tim Rice and Arthur Honegger.

20. In short, ASCAP stands at the forefront of music and copyright.

ASCAP's Membership and Organizational Structure

21. ASCAP is unique among the three United States performing organizations; only ASCAP is a true membership society owned and governed by and for writers and publishers of music. Membership in ASCAP is open to any writer or publisher who meets certain minimal standards. At present, ASCAP has

approximately 43,000 writer members, 23,000 publisher members and close to 2,000 associate members.

22. Each ASCAP member grants to ASCAP the nonexclusive right to license the nondramatic public performances of all the member's copyrighted music, reserving the right to license users directly if the member chooses.^{1/} ASCAP then licenses the nondramatic public performances of its members copyrighted music and distributes royalties to them for such performances. ASCAP also protects and defends against the unauthorized public performance of its members' works.

23. ASCAP's Board is composed entirely of writers and publishers elected from and by the membership every two years -- 12 writers and 12 publishers. (A list of ASCAP's current Board of Directors is being submitted as ASCAP Ex. 34).

24. ASCAP's rules require that ASCAP's Chairman be a writer member of the Board. Marilyn Bergman, a distinguished lyricist of such musical compositions as "The Way We Were" and "The Windmills of Your Mind", and winner of numerous Oscars and Grammys, currently serves as ASCAP's President and Chairman of the Board. She follows in the footsteps of famed Academy and

^{1/} Although some of ASCAP's members are also performers and recording artists, ASCAP is not a union or an organization of performers or recording artists. Nor does ASCAP license dramatic or mechanical rights.

Grammy Award-winning lyricist Hal David, known for such hits as "Raindrops Keep Fallin' On My Head" and "Alfie", and most recently, the late Morton Gould, a preeminent composer of symphonic music in the United States, Pulitzer-Prize winner and recipient of the Kennedy Center Honors.

The Benefits of ASCAP Membership

25. As working songwriters and music publishers, ASCAP Board members are tuned in to the needs of ASCAP's writers and publishers. ASCAP management answers directly to the Board. But, ASCAP offers its members much more.

26. ASCAP holds annual membership meetings during which members have an opportunity to speak out, ask questions and receive first-hand reports on ASCAP's operations. ASCAP provides full financial disclosure to its members and the public. And, ASCAP members also participate in the further affairs of the Society by serving on a variety of important internal advisory committees.

27. Every penny collected by ASCAP, less operating costs of about 16 percent, is distributed to our members. ASCAP pays its members more quickly than anyone else with at least seven royalty distributions occurring each year -- four covering domestic performances and three covering foreign performances.

28. I think it is fair to say that the most important attribute of the ASCAP distribution system has been and still is its fairness, openness and

objectivity. The same ASCAP distribution rules apply to all similar performances. Whether established or aspiring, ASCAP's members are paid based on their performances, not on who they are.

29. The basic principle that guides ASCAP's payment and distribution system is to "follow the dollar". This means that, generally, monies collected by ASCAP from a particular medium (for example, television or radio) are distributed to the members on the basis of performances occurring in that medium.

30. To distribute royalties to its members, ASCAP regularly conducts a survey of musical performances in the United States. Outside experts design and audit the mechanics of ASCAP's survey and special court-appointed advisors (currently the Honorable Harold R. Tyler, a former federal judge and Deputy Attorney General of the United States and Seth Hufstedler, a distinguished California attorney) oversee the system. Any changes to the system undergo an intense review process, first by the ASCAP Board of Directors, then by the United States Department of Justice and, in some cases, by a United States federal court. Royalty rates may not be changed arbitrarily and members are notified of all such changes.

31. Of course, when dealing with tens of thousands of members and millions of performances, disagreements arise. ASCAP members have the right to present their distribution grievances to a member-elected Board of Review.

Special Services and Awards

32. The benefits of ASCAP membership do not stop here.

ASCAP offers a variety of special services to its members. On many levels, ASCAP's support systems nurture the creative talents of its writers, provide incentives and other assistance to members, offer unique opportunities for members to interact and learn from peers, and offer special recognition to deserving writers. Examples of these programs include:

- **SPECIAL AWARDS PROGRAM** -- ASCAP offers special cash awards to writers whose works are substantially performed in media or venues outside the ASCAP survey. These special awards are also available to writers whose works have unique prestige value. More than \$1 million each year is awarded to ASCAP's members through these awards, which are decided by an outside panel.
- **SONGWRITER WORKSHOPS AND SHOWCASES** -- Each year, ASCAP conducts workshops in major United States cities in many musical genres. Through these workshops, aspiring songwriters have an opportunity to meet with successful songwriters, music publishers and other leaders in the music community, and receive critiques of their works and practical advice on the music business. In a similar vein, ASCAP annually presents many songwriter showcases. At these venues, ASCAP "showcases" some of the best new talent in the country.

- **MEMBERSHIP SERVICES** -- ASCAP maintains membership offices in New York, Los Angeles, Nashville, Chicago, London and Puerto Rico, staffed with individuals who love music and are knowledgeable about the industry. ASCAP's Member Services Department answers members' inquiries on a variety of matters including royalty history and membership status, and serves as a troubleshooter for distribution issues. ASCAP also publishes a variety of informational brochures and other publication for members. And, ASCAP also offers "listening rooms" where writers can meet and compose with other writers.

- **SPECIAL INSURANCE AND FINANCIAL PROGRAMS** -- In recent years, ASCAP has added innovative programs for its members and their families. Through ASCAP, songwriters have access to a variety of insurance programs for themselves and their families -- medical, dental and life insurance, and instrument insurance. Members also have access to a nationally respected credit union that offers a range of financial services from loans and interest-earning checking, savings and club accounts, to direct deposit of royalty checks and retirement plans.

- **COLLECTION OF DART ROYALTIES** -- ASCAP provides a special service to those members who wish ASCAP to collect and distribute home-taping royalties for them under the Audio Home Recording Act.

- **GENERAL INFORMATION** -- ASCAP's WorldWide Web Site contains information about ASCAP along with the latest news on ASCAP

membership, workshops and showcases. And, every day of the year, 24 hours a day, anyone can access ASCAP's "ACE" system on the Web and obtain quick and easy access to ASCAP repertory information.

- **OTHER MUSICAL AWARDS** -- ASCAP regularly honors its members and others for their successes. Examples include the ASCAP Founders Award, given to individuals who have had a significant impact on the history of music, the ASCAP Pied Piper Awards, given to entertainers who have made significant contributions in the field of music, and the ASCAP Deems Taylor Award, honoring outstanding music broadcasting and journalism.

Interestingly, each year during the past ten years, some public broadcasting entity has received a Deems Taylor Award.

ASCAP's Leadership in the Field of Performing Rights

33. ASCAP is a domestic and international leader in copyright and performing rights matters. ASCAP played an important role in the revision of the Copyright Law in 1976 and regularly appears before Congress, state legislatures and related regulatory agencies testifying on matters of importance to its members and the copyright community at large.

34. Internationally, ASCAP's President and Chairman of the Board, Marilyn Bergman, also serves as President of CISAC, the international confederation of performing rights.

35. The ASCAP Foundation, founded in 1975, nurtures the careers of aspiring songwriters and musical educators, and encourage musical education, cultural awareness and music appreciation. The Foundation offers many music scholarships and grants, sponsors competitions, offers additional songwriter workshops, and helps provide musical entertainment to the elderly, to school children and to the ill, indigent and disabled.

36. For more than fifty years, ASCAP has also sponsored a prestigious writing competition for law students interested in copyright. The Nathan Burkan Competition, named after ASCAP's first general counsel, has sparked interest in copyright law in literally thousands of young lawyers.

37. In addition, the ASCAP staff is involved in educating the public on copyright and performing rights and serves in many leadership roles in trade and professional organizations in the field. For example, senior staff serve or have served on the boards of the National Academy of Recording Arts and Sciences, the American Intellectual Property Law Association and the American Bar Association Section on Intellectual Property Law. Our information specialists are at the forefront of international efforts to establish a single system for the registration and tracking of performances of all copyrighted music in the world. In the area of new technology, our New Media Department licenses and monitors important new Internet uses.

38. Finally, ASCAP's business staff and lawyers frequently guest lecture at music and law schools, music seminars and other events.

39. In short, through the efforts of its members and staff, ASCAP works tirelessly to educate the public about music, copyright and intellectual property.

CONCLUSION

Thank you for giving me the opportunity to provide you with a brief overview of the critically important work ASCAP does for its members, music users and the general public. My colleagues and I are fiercely proud of ASCAP and continually strive to improve our organization. But, we cannot do so unless our members are fairly compensated for the use of their property. I hope you will bear in mind the special and valuable role music plays in the programming aired by public broadcasting when determining the fair value to be paid by them for the use of ASCAP's members' music.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 9/28/97

Mary Rodgers
Mary Rodgers

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of)

) Docket No. 96-6 CARP NCBRA

ADJUSTMENT OF THE RATES FOR)

NONCOMMERCIAL EDUCATIONAL)

BROADCASTING COMPULSORY LICENSE)

WRITTEN TESTIMONY
OF LAUREN IOSSA
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I, Lauren Iossa, make this statement on behalf of the direct case of the American Society of Composers, Authors and Publishers ("ASCAP").

2. I am presently an Assistant Vice President of Membership Marketing and Promotion at ASCAP. I joined ASCAP in 1984. My responsibilities at ASCAP now include compiling and maintaining information communicated to and from (as well as about) ASCAP's members, including the special honors, awards, achievements and other public recognition they receive. I also assist in compiling information and supporting various aspects of ASCAP's annual awards events, workshops and other ASCAP-backed activities -- all aimed at fostering and nurturing diversity in the musical arts and its contributions to our world's culture.

3. Counsel for ASCAP asked me to assemble for submission to the Panel documents which would be both illustrative and representative of: (a) ASCAP's membership; (b) the range and diversity of honors, awards and achievements bestowed on ASCAP members; and (c) ASCAP's efforts to foster the musical arts and culture (collectively, "ASCAP Membership Materials").

4. In response to this request, I supervised the gathering together and provision to Counsel of the following ASCAP Membership Materials, which bear the following ASCAP Exhibit numbers:

ASCAP Ex. 35. Directory, "ASCAP: List of Members" (published 1997)(Alphabetical list of ASCAP members)

- ASCAP Ex. 36. Highlights of Recent Awards, Honors & Achievements to ASCAP Members
- ASCAP Ex. 37. Awards, Honors & Achievements to ASCAP Members
- ASCAP Ex. 38. Information sheet, "Hats Off to Our 1997 Grammy Nominees"
- ASCAP Ex. 39. Prominent ASCAP Members
- ASCAP Ex. 40. "ASCAP Hit Songs" (Lists many popular ASCAP songs, and their writers, from the years 1892-1996. Also lists U.S. songs often performed abroad, and ASCAP songs and scores that won Oscar, Tony, and Grammy awards.) (Printer's Draft)
- ASCAP Ex. 41. ASCAP Foreign Affiliates
- ASCAP Ex. 42. Pamphlet and update, "Restoration of Copyright Protection under URAA: Its Impact on the ASCAP Repertory" (Lists works in the ASCAP repertory to which copyright protection has been restored for the balance of the current 75 year copyright term, pursuant to the Uruguay Round Agreements Act of 1992.)
- ASCAP Ex. 43. ASCAP Issued Awards
- ASCAP Ex. 44. Pamphlet, "1997 Biannual Highlights" (published before July 1997) (Discusses recent ASCAP developments.)
- ASCAP Ex. 45. Pamphlet, "1996 Highlights of Annual Events" (published 1997) (Discusses 1996 ASCAP developments.)
- ASCAP Ex. 46. Information Sheet, "The ASCAP Ear: A Semi-Regular Guide to All That Is ASCAP," September 3, 1997

(Discusses recent ASCAP developments and upcoming events.)

- ASCAP Ex. 47. Brochure, "The American Society of Composers, Authors & Publishers Jazz Wall of Fame, Dedication, September 16, 1997" (Accompanies induction into Jazz Wall of Fame of Benny Carter, in recognition of outstanding lifetime achievement.)
- ASCAP Ex. 48. Pamphlet, "1997 ASCAP Showcases, Workshops and Grants"
- ASCAP Ex. 49. Pamphlet, "The ASCAP Foundation: Programs"
- ASCAP Ex. 50. Brochure, ASCAP "Music for Money: Where The Bucks Come From For Writers and Publishers"
- ASCAP Ex. 51. Press Release, "ASCAP Adventurous Programming Awards Presented to Nine Groups at Chamber Music America Conference," dated February 4, 1997
- ASCAP Ex. 52. Press Release, "ASCAP and Chorus America Name Winners of the 1997 Awards for Adventurous Programming," dated July 7, 1997
- ASCAP Ex. 53. Press Release, "ASCAP and IAJE Name Winners of the 1997 Dizzy Gillespie Commissions," dated August 4, 1997
- ASCAP Ex. 54. ASCAP Awards for Programming of Contemporary Music "1997 Awards, Scholarships and Fellowships"
- ASCAP Ex. 55. Pamphlet, "ASCAP Rhythm & Soul Music Awards," June 3, 1997
- ASCAP Ex. 56. Pamphlet, "1997 ASCAP Film and Television Music Awards"

- ASCAP Ex. 57. Pamphlet, "1997 ASCAP Pop Music Awards"
- ASCAP Ex. 58. Pamphlet, "The Fifth Annual El Premio," ASCAP Latin Awards, September 8, 1997
- ASCAP Ex. 59. Pamphlet, "ASCAP 35th Annual Country Music Awards Dinner," September 22, 1997
- ASCAP Ex. 60. Publisher Member Packet (Blue ASCAP Logo Envelope - provides overview of ASCAP, membership application and agreement for publishers):

- (a) Form of ASCAP Publisher Membership Application Kit, and return envelope;
- (b) Form of ASCAP Membership Agreement;
- (c) Form of ASCAP Request for Publisher Name Clearance;
- (d) Form of ASCAP Title Registration Information Form;
- (e) ASCAP, Articles of Association, as amended through November 1994;
- (f) Form W-9;
- (g) Pamphlet, ASCAP, "We've Got Plans for You" (discussing various options for medical, dental, term life, and instrument insurance);
- (h) Pamphlet, ASCAP, "A Closer Look" (discussing ASCAP, how to join, royalties, licensing workshops, services and benefits, affiliated foreign societies, and the ASCAP board of directors);
- (i) Information sheet, ASCAP, "Essentials;"
- (j) Form Letter from ASCAP's Manager, Advertising & Promo Music re: information ASCAP needs for performances of commercials, and promotional and public service announcements."

ASCAP Ex. 61. Writer Member Packet (Red ASCAP Logo Envelope - provides overview of ASCAP, membership application and agreement for writer members):

- (a) Form of ASCAP Writer Membership Application Kit, and return envelope;
- (b) Form of ASCAP Membership Agreement;
- (c) Form of ASCAP Request for Publisher Name Clearance;
- (d) Form of ASCAP Title Registration Information Form;
- (e) ASCAP, Articles of Association, as amended through November 1994;
- (f) Form W-9;
- (g) Pamphlet, ASCAP, "We've Got Plans for You" (discussing various options for medical, dental, term life, and instrument insurance);
- (h) Pamphlet, ASCAP, "A Closer Look" (discussing ASCAP, how to join, royalties, licensing, workshops, services and benefits, affiliated foreign societies, and the ASCAP board of directors);
- (i) Information sheet, ASCAP, "Essentials;"
- (j) Form Letter from ASCAP's Manager, Advertising & Promo Music re: information ASCAP needs for performances of commercials, and promotional and public service announcements;
- (k) Information sheet, "ASCAP Digital Audio Royalty Form & Fact Sheet: Digital Audio Royalties and ASCAP -- A Fact Sheet."

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 9/29/97

Lauren Iossa
Lauren Iossa

WHITE & CASE

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SAO PAULO

December 8, 1997

BY MAIL

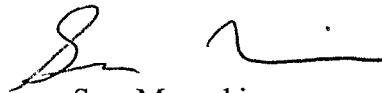
Tanya M. Sandros, Esq.
Copyright Office
Library of Congress
James Madison Memorial Building
Room LM-403
101 Independence Avenue, S.E.
Washington, D.C. 20540

Re: Noncommercial Educational Broadcasting
Compulsory License, Docket No. 96-6
CARP NCBRA

Dear Ms. Sandros:

In reviewing ASCAP's Direct Case we have realized that an error exists on page 9 of the written testimony of Richard Reimer. In the first paragraph of that page Mr. Reimer states that "[i]n 1996, [certain stations] paid ASCAP aggregate license fees of \$32.56 million." The testimony should read, however, "[i]n 1996, [certain stations] paid ASCAP aggregate license fees of \$32.45 million." We are enclosing a corrected page, reflecting the change, which we request be substituted for the original. We apologize for any inconvenience.

Sincerely,



Sam Mosenkis

SM:sm

Enclosure

cc: All parties and counsel

ABC petitioned the rate court for an adjustment of the fees to be paid under the network licenses both on a retroactive and prospective basis for periods through 1993. In 1993, the rate court issued a decision, which may be found at ASCAP Ex. 20, fixing network television license fees and the actual fees to be paid by the two networks. Following Judge William C. Conner's decision in that proceeding in 1993, the networks and ASCAP agreed to new license terms for periods through 1996. In 1996, ABC, CBS and NBC paid ASCAP aggregate license fees of \$32.45 million. For 1997, the networks are paying the same fees for interim licenses, subject to retroactive adjustment.

C. The Radio Blanket License

18. ASCAP's licensing of radio stations generally has been less litigious than that of the television stations and networks. Indeed, with one exception, ASCAP and the radio industry have had a succession of five-year license agreements since 1959. Agreements usually have been negotiated at the conclusion of one five-year term or at the beginning of the next five-year term.

19. That being said, there have historically been discrete groups of radio station operators that refused to accept the ASCAP industry licenses, most notably the broadcasters that initiated the *Salem Media* rate court proceeding.

WHITE & CASE

LIMITED LIABILITY PARTNERSHIP

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WARSAW

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JOHANNESBURG

February 6, 1998

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SAO PAULO

GENERAL COUNSEL
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VIA FACSIMILE AND MAIL

Tanya Sandros, Esq.
U.S. Copyright Office
P.O. Box 70977
Southwest Station
Washington, D.C. 20024

Re: Docket No. 96-6 CARP NCBRA

Dear Ms. Sandros:

Pursuant to your office's Order of December 30, 1997 (the "Order"), ASCAP was ordered to produce the documents and notes underlying the interviews conducted by Mr. Ledbetter with certain CPB employees, as referred to in footnote 40 on page 23 of his written testimony, and with certain network officials which was referred to in footnote 28 on page 16 of his written testimony. To the extent that ASCAP was unable or unwilling to produce those underlying documents, ASCAP was ordered to amend Mr. Ledbetter's written testimony to remove references to the interviews.

On January 16, 1998, ASCAP produced to the Public Broadcasters and BMI a tape cassette and written transcript of the interview with the CPB employees. ASCAP did not produce notes and documents underlying Mr. Ledbetter's interviews with network officials, nor did ASCAP identify the identity of the CBS employee referred to footnote 28.

Accordingly, ASCAP is submitting an amended page 16 to Mr. Ledbetter's written testimony which removes all reference to the network official interviews.

Sincerely,


Sam Mosenkis

SM:sm

Attachment

2. WGBH-Boston

WGBH is one of the largest and oldest stations in the public broadcasting universe. It employs 1,186 people, including 165 in fundraising, 160 in national programming, 125 in radio, and 40 in local television and production.^{27/} WGBH's annual revenues are \$145 million, the largest of any single station in public broadcasting. Both WGBH's employment figure and its annual revenues are as large as or larger than the vast majority of commercial stations in the United States. By means of comparison, the three major network affiliates in the Boston market—the sixth largest in America—had estimated annual revenues of \$85.4 million (CBS's WBZ-TV), \$118 million (NBC's WHDH-TV), and \$119 million (ABC's WCVB-TV).^{28/} As noted above, WGBH is the largest supplier of programming for national PBS distribution. It is responsible for *The American Experience*, *Frontline*, *Mobil Masterpiece Theatre*, *Mystery!*, *NOVA*, and *This Old House*, and several other nationally distributed programs.

^{27/} *Boston Globe*, June 23, 1997.

^{28/} The data here come from *Investing in Television 1997 Market report*, 2nd edition, based on May 1997 ratings (Chantilly, Virginia: BIA Publications, 1997), p. 6. The number of people employed by the commercial stations owned and operated by the Big Three networks in large markets (known as "O&O" stations) and their financial data are proprietary information.

WHITE & CASE

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FACSIMILE TRANSMISSION

Date: February 6, 1998

No. of Pages (including cover):

To: Tanya Sandros
U.S. Copyright Office

Fax Number:
Contact Number:

202-707-8366
202-707-9380

From: Sam Mosenkis

PLEASE NOTE: The information contained in this facsimile message is privileged and confidential, and is intended only for the use of the individual named above and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, or if any problems occur with transmission, please contact sender at call (212) 819-7583. Thank you.

Ms. Sandros:

Please see the attached letter and that letter's attachment. Thank you.

Sam Mosenkis

cc: Mark Stein, Esq.
David Sorgen, Esq.
Philip Schaeffer, Esq.
Joan McGivern, Esq.
Beverly Willett, Esq.
Chris Shore, Esq.
Tamala Boyd

UNITED STATES

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WARSAW

AFRICA

JOHANNESBURG

February 6, 1998

VIA FACSIMILE AND MAIL

Tanya Sandros, Esq.
U.S. Copyright Office
P.O. Box 70977
Southwest Station
Washington, D.C. 20024

Re: Docket No. 96-6 CARP NCBRA

WHITE & CASE

LIMITED LIABILITY PARTNERSHIP

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GENERAL COUNSEL
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Sam Mosenkis

SM:sm

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²⁷ *Boston Globe*, June 23, 1997.

²⁸ The data here come from Investing in Television 1997 Market report, 2nd edition, based on May 1997 ratings (Chantilly, Virginia: BIA Publications, 1997), p. 6. The number of people employed by the commercial stations owned and operated by the Big Three networks in large markets (known as "O&O" stations) and their financial data are proprietary information.

Before the
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

- - - - -)
In the Matter of)
)
ADJUSTMENT OF THE RATES FOR) Docket No. 96-6 CARP NCBRA
NONCOMMERCIAL EDUCATIONAL)
BROADCASTING COMPULSORY)
LICENSE)
- - - - -)

WRITTEN TESTIMONY
OF RICHARD H. REIMER
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I am an attorney employed by the American Society of Composers, Authors and Publishers ("ASCAP"). Currently, I hold the title of Vice-President - Legal Services. I joined ASCAP's Legal Department upon my graduation from New York University School of Law in 1971. I have been with ASCAP in the Legal Department since that time.

2. My duties at ASCAP include representing ASCAP and its members in litigation and other legal and legislative activities and providing counsel in respect of licensing matters, including the licensing of commercial broadcasters. I also supervise other staff attorneys and generally interact with ASCAP's management as necessary.

I.

BACKGROUND CONCERNING ASCAP'S ACTIVITIES

3. On behalf of its members and the members of 58 affiliated foreign performing rights societies, ASCAP licenses, on a nonexclusive basis, the right of nondramatic public performance of millions of copyrighted musical compositions in ASCAP's repertory (and the repertories of the affiliated foreign performing rights societies).

4. ASCAP's licensees include the commercial television networks, local television stations, commercial radio stations, non-commercial television and radio stations, cable program services and cable operators, satellite carriers, hotels and motels, symphony orchestras, concert promoters and concert halls, colleges and universities, sports arenas and teams, Internet providers, background and foreground music services, airlines, theme and amusement parks, and restaurants and nightclubs.

5. ASCAP has been in the business of licensing such commercial users since the early days of radio in the 1920's. Most music users have always sought an ASCAP "blanket" license, by which a user pays an annual fee for the use of any or all of the works in the ASCAP repertory during the license term. Quite obviously, no one licensee will use all of the millions of compositions in the ASCAP repertory over a given term. Rather, the blanket license and the annual fee assures a licensee of instant access to the entire ASCAP repertory -- the licensee may pick and choose whatever music in the ASCAP repertory he or she desires to use without incurring any additional fees.

6. Over the years, ASCAP has had to seek out and license many different users of music throughout the United States. As technology changes, there have been new forms of public performances to license, but one fact has remained constant: for both the users and a collective licensing organization, there are many efficiencies that are achieved by licensing on a blanket basis. Many of those efficiencies go by the wayside if one must account for particular performances of music, calculate license fees based on those performances, police those particular performances, and distribute monies on the basis of licensing of those performances. Those efficiencies were, I believe, recognized by the Copyright Royalty Tribunal in the only proceeding between ASCAP and

public broadcasting to be decided by the CRT. The Tribunal said: "The CRT determined that a blanket license is the most suitable method for licensing public broadcasting to perform musical works." 43 Fed. Reg. 25069 (6/8/78) (ASCAP Ex. 8).

7. Beginning in the 1930's, ASCAP and its licensing activities engendered anti-trust concerns on the part of music users and the U.S. Department of Justice.^{1/} In 1941, ASCAP and the Justice Department signed a consent decree. That decree was amended in 1950 and, to this day, the Amended Final Judgment entered in United States v. ASCAP (the "Consent Decree"), 1950 Trade Cas. ¶ 62,595 (S.D.N.Y. 1950), largely governs ASCAP's domestic activities. (A copy of the Consent Decree may be found at ASCAP Ex. 21).

8. The Consent Decree currently provides that ASCAP can only obtain from its members the nonexclusive right to license music, in that the members necessarily retain the right to license individual users to perform their music. The reason broadcasters, among others, sought to include this provision in the Consent Decree is so that they have an alternate source from which to acquire performing rights.

^{1/} The following prominent antitrust decisions involved ASCAP's licensing of commercial broadcasters: Broadcast Music, Inc. v. Columbia Broadcasting System, 441 U.S. 1 (1979), on remand Columbia Broadcasting System v. ASCAP, 620 F.2d 930 (2d Cir. 1980) (ASCAP Ex. 23); Buffalo Broadcasting Co. v. ASCAP, 744 F.2d 917 (2d Cir. 1984) (ASCAP Ex. 24); K-91, Inc. v. Gershwin Publishing Corp., 372 F.2d 1 (9th Cir. 1967) (ASCAP Ex. 25).

ASCAP is also required to offer each user a nonexclusive license to perform music at a rate that is both reasonable and non-discriminatory as to other "similarly situated" users.

9. The Consent Decree further provides for what is known as a "per program" license. Originally, the notion was that a radio broadcaster who used music infrequently ought to be able to obtain a license that would grant access to the entire ASCAP repertory, but at a fee applicable only to revenue generated by programs containing ASCAP music. The fee for that limited license was, and still is, calculated as a percentage of the revenue the broadcaster earns from those programs, generally defined by the clock hour, containing at least one "feature" performance of ASCAP music. In that way, a broadcaster who plays ASCAP music in a relatively few programs aired each day, or one who has obtained the necessary rights outside of ASCAP, may reduce the fees which would otherwise be paid under a blanket license.

10. As of 1941, when the per program license for radio stations was created, there was no commercial television industry in the United States -- that industry developed over the 1940's. When the Consent Decree was amended in 1950, the per program license alternative was expanded to include television broadcasting.

11. Another significant modification to the Consent Decree at that time was the creation of a mechanism for determining the appropriateness of ASCAP's license fees for commercial music users. Previously, if the fees could not be negotiated, individual users might simply stop playing ASCAP music, as certain radio stations had done in 1940, or they could continue to perform ASCAP music without a license and risk being sued as copyright infringers.

12. In 1950, the Consent Decree was modified to provide that a single Judge of the United States District Court for the Southern District of New York would be given responsibility for determining a reasonable ASCAP license fee upon the request of any commercial music user or group of users. One result of the creation of this judicial rate-making procedure was to have successive proceedings brought in the federal court by television and radio broadcasters seeking to determine the reasonable rate for the licenses offered to them by ASCAP.

II.

ASCAP'S LICENSES FOR COMMERCIAL BROADCASTERS

13. By way of background, there have only been four instances out of perhaps as many as two dozen rate court proceedings since 1950 in which the rate court has actually

determined the appropriate license fees for the particular applicant group or individual applicants. Rather, what has happened is that the Consent Decree mechanism has served as a framework for negotiations between ASCAP and the applicants. Thus, from 1950 forward, what has ensued is a pattern of litigation and negotiation which has resulted in the current ASCAP local television, television network, and radio licenses.

A. The Local Television Blanket License

14. Over time, ASCAP has licensed the television industry under two sets of licenses: (i) blanket licenses for television networks covering network programs aired by their affiliates and (ii) blanket and per program licenses for local stations covering their local, non-network programs. The first proceeding under the Consent Decree was known as the *Voice of Alabama* proceeding, by which some 60 local television broadcasters asked the Court to determine reasonable fees for per program licenses.^{2/}

15. As a result of extensive litigation and negotiation from the *Voice of Alabama* proceeding forward, each of the blanket-licensed commercial television stations in the United States pays an annual blanket license fee in an amount

^{2/} ASCAP tends to refer to various proceedings under Section IX of the Consent Decree by the name of the lead applicant in the particular proceeding.

calculated pursuant to a formula approved by the rate court in proceedings known as Buffalo Broadcasting.^{3/} The stations are billed on a monthly basis so that, under the current blanket license, each station simply gets a short billing statement telling them that they owe 1/12th of the annual fee.

16. A copy of the current local television blanket license, utilized by approximately 85% of the local commercial television stations in the United States, may be found at ASCAP Ex. 27. The license fee paid by each of these stations is set as a percentage of the overall industry's blanket license fee (calculated on the basis of each station's share of Arbitron ratings for its market). ASCAP and the industry have recently agreed on \$96.4 million as the amount of the industry-wide local television blanket license fee for the final year of the existing license term, which expires on March 31, 1998.

B. The Network Television Licenses

17. As has been the case with local television, the current network television licenses are the product of repeated negotiations and litigation. Most recently, CBS and

^{3/} Currently, approximately 150 commercial television stations in the United States are operating under the television per-program licenses. Virtually all of these stations are stations affiliated with ABC, CBS or NBC that have relatively little programming during the day which contains either ASCAP music, music not otherwise received, or indeed any music.

ABC petitioned the rate court for an adjustment of the fees to be paid under the network licenses both on a retroactive and prospective basis for periods through 1993. In 1993, the rate court issued a decision, which may be found at ASCAP Ex. 20, fixing network television license fees and the actual fees to be paid by the two networks. Following Judge William C. Conner's decision in that proceeding in 1993, the networks and ASCAP agreed to new license terms for periods through 1996. In 1996, ABC, CBS and NBC paid ASCAP aggregate license fees of \$32.56 million. For 1997, the networks are paying the same fees for interim licenses, subject to retroactive adjustment.

C. The Radio Blanket License

18. ASCAP's licensing of radio stations generally has been less litigious than that of the television stations and networks. Indeed, with one exception, ASCAP and the radio industry have had a succession of five-year license agreements since 1959. Agreements usually have been negotiated at the conclusion of one five-year term or at the beginning of the next five-year term.

19. That being said, there have historically been discrete groups of radio station operators that refused to accept the ASCAP industry licenses, most notably the broadcasters that initiated the *Salem Media* rate court proceeding.

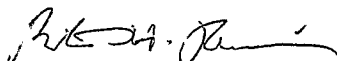
In that proceeding, which spanned three industry-wide license negotiations, the applicant broadcasters claimed that ASCAP's blanket and per program licenses were overly favorable to stations that played either all music or no music, respectively, and prejudiced those stations that played music intermittently throughout their broadcast day. Because the applicants claimed to comprise principally the latter group, they petitioned Judge Conner to alter the radio license rates to account for their music use.

20. In an opinion issued earlier this month, Judge Conner declined to fashion new rates and instead affirmed the blanket and per program rates agreed to by the industry, with the exception that the Court adjusted the so-called "incidental use" component of the per program license. A copy of the *Salem Media* opinion may be found at ASCAP Ex. 22.

21. A copy of the current radio industry blanket license, utilized by approximately 90% of the commercial radio stations in the United States, may be found at ASCAP Ex. 26. The fee charged for that license, as has virtually always been the case for radio blanket licenses, is calculated as a percentage of a station's revenues. For most stations, the 1997 rate is 1.615 per cent of a station's gross revenues less certain specified deductions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: New York, New York
September 26, 1997



Richard H. Reimer

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of

ADJUSTMENT OF THE RATES FOR
NONCOMMERCIAL EDUCATIONAL
BROADCASTING COMPULSORY LICENSE

)
)
) Docket No. 96-6 CARP
) NCBRA
)

WRITTEN TESTIMONY
OF BENNETT M. LINCOFF
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I am an attorney admitted to practice in the State of New York. I have been employed by the American Society of Composers, Authors and Publishers ("ASCAP") since 1986.

2. I am Director of Legal Affairs for New Media for ASCAP. The New Media Department was established in 1994 to license public performances of the copyrighted musical compositions in the ASCAP repertory by means of Internet transmissions and other technologies, and to develop and implement ASCAP's Internet site on the World Wide Web.

3. During my 11 years as an employee of ASCAP, among other things, I have been assigned the responsibility of (i) negotiating various license agreements with representatives of users of music from ASCAP's repertory, (ii) supervising copyright infringement actions against unlicensed users of such music, and (iii) representing ASCAP in proceedings similar to this one before other Copyright Arbitration Royalty Panels ("CARP's") and the Copyright Royalty Tribunal ("CRT"). My curriculum vitae is attached as Appendix A to my testimony.

4. The purpose of my testimony is to provide this Panel with background information about the prior dealings between ASCAP and public broadcasters pursuant to Section 118 of the Copyright Act.

The Framework for ASCAP's Licensing of Public Broadcasting

5. As my colleague Richard Reimer is testifying, since the advent of commercial broadcasting more than seven decades ago, ASCAP has conducted license negotiations with commercial broadcasters -- including television networks, local television stations and radio stations -- in the free marketplace, against the backdrop of regulation imposed by the antitrust consent decrees which have governed ASCAP's operations.

6. The licensing of noncommercial broadcasting has been different. Under the 1976 Copyright Act, effective January 1, 1978, Congress created a system of compulsory licensing for public performances of published nondramatic musical compositions by public broadcasting entities. 17 U.S.C. § 118 (1976).

7. Under Section 118, copyright owners and their representatives, like ASCAP, and the public broadcasting entities are encouraged to conduct good faith negotiations regarding license terms and rates. However, if the parties are unable to agree, CARPs (like the CRT before them) determine the rates and terms for such licenses for five-year periods. These rates and terms are binding on copyright owners, such as ASCAP's members, and the public broadcasting entities.

The Prior Licenses Between ASCAP and
Public Broadcasting -- 1978 to the Present

8. Prior to the effective date of the first proceeding before the CRT in 1978, ASCAP met with public broadcasters^{1/} to negotiate a license agreement as directed by Section 118, and thus avoid a CRT proceeding. The parties were unable to agree and, in early 1978, the CRT held the first proceeding for the determination of compulsory license fees to be paid by public broadcasting entities to ASCAP. Indeed, this was the first CRT proceeding to determine any compulsory license fee. The CRT concluded that the blanket license was the appropriate form of license for public broadcasting's performance of ASCAP-licensed music. It then fixed an annual flat license fee of \$1.25 million for the year 1978 to be paid by PBS, NPR and their stations for the right to perform music in the ASCAP repertory; that fee was subject to annual inflation adjustments for each subsequent calendar year from 1979 through 1982. Finally, the CRT required PBS,

^{1/} The discussion which follows relates to proceedings and negotiations with those public broadcasting entities represented by the Public Broadcasting Service ("PBS") and National Public Radio ("NPR"). It does not relate to the licensing of other noncommercial radio stations licensed under Section 118 which have not been represented by these entities. These include noncommercial educational radio stations licensed to colleges and universities (some of whom were represented at one time by the Intercollegiate Broadcasting System and are now represented by the American Council on Education) and noncommercial educational radio stations that are not licensed to colleges and universities and also are not members of NPR. This latter group has been represented by the National Religious Broadcasters Music License Committee, and its predecessor, and by the National Federation of Community Broadcasters.

NPR and their stations to furnish regular reports of music use to ASCAP. A copy of the CRT's decision, adopted in 42 Fed. Reg. 25068 (June 8, 1978), is being submitted as ASCAP Ex. 8.

9. For each subsequent five-year period until the present, ASCAP, PBS and NPR have reached voluntary license agreements. By doing so, the parties avoided the great time and expense associated with compulsory license fee rate adjustment proceedings.

10. Specifically, the parties agreed on terms and rates for the three five-year periods: (1) January 1, 1983-December 31, 1987, (2) January 1, 1988-December 31, 1992, and (3) January 1, 1993-December 31, 1997. These voluntary agreements were acknowledged by the CRT in 47 Fed. Reg. 57923 (December 29, 1982), 52 Fed. Reg. 44610 (November 20, 1987), 57 Fed. Reg. 60954 (November 19, 1992), and 57 Fed. Reg. 55494 (December 16, 1992).

Procedural History of the Instant Proceeding

11. On October 18, 1996, the Copyright Office (the "Office") published a notice in the Federal Register announcing the procedural schedule for this proceeding and setting December 13, 1996 as the deadline for filing notices of intent to participate. 61 Fed. Reg. 5448 (October 9, 1996). ASCAP, PBS, NPR and others filed notices of intent to participate. The procedural schedule set January 10, 1997 as the date for filing of direct cases.

12. The parties urged the Office to vacate its scheduling order to give them an opportunity to reach a voluntary agreement through good faith settlement negotiations, as they had for the prior 15 years. The Office agreed to do so and ten days later, by an order dated December 23, 1996, vacated its scheduling order and scheduled a status conference for May 1, 1997.

13. The parties conducted private negotiations and, at the May 1, 1997 status conference, asked the Office for a further extension, until July 1, 1997, to continue their negotiations.

14. On July 24, 1997, at the final status conference, the parties advised the Office that they had been unable to reach agreement. By an order dated July 30, 1997, the Office then directed the parties to file written direct cases no later than October 1, 1997 and set the procedural schedule for the remainder of the proceeding.

The Central Features of the Most Recent License Agreement Between ASCAP and PBS and NPR^{2/}

15. Each license negotiated between ASCAP and PBS and NPR in prior years covered the nondramatic public performance of music in ASCAP's repertory by PBS, NPR and the television and radio stations they represent. As the CRT held appropriate in its 1978 determination, the negotiated license agreement

^{2/} A copy of the most recent negotiated license agreement between ASCAP and PBS and NPR is attached as ASCAP Ex. 32.

provides a blanket license and grants the licensed public broadcasting entities access to the entire ASCAP repertory.^{3/} It permits them to give nondramatic public performances of any or all of the musical compositions in the ASCAP repertory. It is worth noting that a potential myriad of transactions are thereby accomplished, with an obvious efficiency, in a single transaction, covering a five-year period.

16. In addition to obtaining access to millions of copyrighted musical compositions, the ASCAP license permits PBS, NPR and their stations to administer the agreement centrally. Unlike commercial radio and television broadcasters, the PBS and NPR entities have a single license and pay a single license fee installment once a year. This results in a considerable administrative savings to the public broadcasting entities.

17. The license fee payable under the agreement is a flat fee for the five-year term, payable in installments on December 1 of each year of the term. (In its acknowledgement of the voluntary agreement negotiated by the parties in 1992, the CRT confirmed that the agreement provided for a single license fee for the entire five-year term, payable in five equal yearly installments. 57 Fed. Reg. at 55495.)

^{3/} The scope of the voluntary license thus exceeded that of a compulsory license. A compulsory license is limited under Section 118(d) of the Copyright Act only to published nondramatic music works, whereas the negotiated voluntary licenses have included all (i.e., even unpublished) works in ASCAP's repertory.

18. The license also calls for submission of music reports to assist ASCAP in distributing royalties to its members and annual reports updating the specific entities covered by the license.

19. Finally, the agreements are expressly to have no precedential value in setting future fees.

I declare under penalty of perjury that the foregoing
is true and correct to the best of my knowledge and belief.

Dated: _____

9/30/97

Bennett M. Lincoff

Bennett M. Lincoff

BENNETT M. LINCOFF
BIOGRAPHICAL MATERIAL

Mr. Lincoff is Director of Legal Affairs for New Media at ASCAP, the American Society of Composers, Authors and Publishers. ASCAP's New Media Department was established in 1994 to focus on two key areas: Development and implementation of ASCAP's Internet site on the World Wide Web; and ASCAP's efforts to license performances of the works in its repertory when presented by means of Internet transmissions.

In his 11 years with ASCAP, Mr. Lincoff has had responsibility for a wide range of matters on both the legal and business sides of the company's operation. These have included: Negotiation of license agreements with user industries; supervision of copyright infringement litigation against unlicensed users of ASCAP music; and representation of ASCAP in royalty distribution and rate adjustment proceedings under various compulsory licensing regimes.

He has also represented ASCAP in legislative matters, including opposition to anti-performing rights licensing legislation and the ongoing debate over the liability of web site operators and other online service providers for uses of copyrighted works on their systems.

Finally, Mr. Lincoff is a past Chairman of the Copyright Division of the Intellectual Property Law Section of the American Bar Association, and represented the ABA as its delegate to the meeting of the World Intellectual Property Organization which recently adopted two new treaties dealing with copyright protection in the digital electronic environment.

Mr. Lincoff has been a presenter at numerous conferences and seminars on the issues surrounding the licensing of Internet performances of copyrighted music, including: MUSICOM International, London, England; WIPO International Forum on the Exercise and Management of Copyright and Neighboring Rights in the Face of Challenges of Digital Technology, Seville, Spain; WIPO Regional Round Table on the Protection and Collective Management of Copyright and Neighboring Rights for Asian Countries, Jakarta, Indonesia; Country Music Association Music Industry & New Technologies Conference, Nashville, Tennessee; MIDEM 1997, Cannes, France; MUSICOM2, Santa Monica, California; Intellectual Property Conference of the Americas, Los Angeles, California; World Wide Web Artists Consortium, New York, New York; Artists Rights Foundation, Los Angeles, California; Federal Communications Bar Association, Washington, D.C.

Mr. Lincoff received his J.D. degree from Northeastern University School of Law (1978), and holds an LL.M. in Trade Regulation (Intellectual Property) from New York University (1984).

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of)
Adjustment of the Rates for the) Docket No. 96-6 CARP NCBRA
Noncommercial Educational Broadcasting)
Compulsory License)

WRITTEN TESTIMONY OF JAMES DAY
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

PUBLIVISION, INC.

One Lincoln Plaza, 2nd Floor New York, NY 10023 * TEL: (212) 875-6150 * FAX: (212) 875-6104

At the request of ASCAP¹ counsel, I have prepared the accompanying historical overview of public broadcasting in the United States with a particular focus upon public television's complex structure, internal relationships, programming mission, and the sources of its funding. Because it is unlike any other public broadcasting system in the world, American public television is best understood by viewing it through the perspective of the economic and political forces that have shaped it and given it a unique character and structure that even its supporters find puzzling. Our concern here is to provide a brief background as an aid to understanding how and why it functions as it does today, and to show how events in more recent years continue to affect its mission and methods.

I believe I can bring a broad perspective to this task. My experience with public broadcasting extends back to its birth the early 1950s. Less than a year after the Federal Communications Commission reserved the first television channels for the exclusive use of educational and nonprofit community groups, I was asked by group of citizens in the San Francisco Bay Area to undertake the activation of the channel reserved for that area (Channel 9). We put KQED on the air a year later (1954) as the nation's sixth educational TV station. Several years after activating the television channel, I acquired an FM frequency and put KQED-FM on the air. It has since become one of the key stations in National Public Radio.


I served for 15 years as president of KQED and KQED-FM before coming to New York as president of National Educational Television (NET). At the time, NET was public television's national network and principal leadership organization, the predecessor to PBS. When NET was merged into New York's Channel 13, I became president of WNET, the largest of public television's station outlets. I was invited at about the same time to become a founding board member of the Children's Television Workshop, producers of *Sesame Street*.

In 1995, the University of California Press published *The Vanishing Vision: The Inside Story of Public Television*. It is generally credited with being the definitive history of public television. I have lectured widely and written extensively on public broadcasting and for 12 years was a professor of television at the City University of New York until made Emeritus Professor in 1988.

I am attaching as Exhibit A a copy of my Curriculum Vitae which provides more detail about my years of experience with public television.

I declare under penalty of perjury that the attached report is true and correct to the best of my knowledge and belief.

Dated: 29 Sept 1997


James Day, President

I. THE ANATOMY OF AMERICAN PUBLIC TELEVISION: 1997

From its crude birth in the 1950's as "noncommercial educational television," public television in the United States has struggled for nearly 50 years to find accommodation with a media world dominated by the ideology of the marketplace, a sometimes skeptical public and press, and its own self-destructive internecine rivalries. That it has survived is rather remarkable. But it has not done so not without compromise to the ideals on which it was founded.

Ironically, it was a threat to its very existence, the resolve of the White House in the early 1970s to rein in PBS and bring its programming under political control, that forced a reorganization and brought some measure of stability to the bizarre structure of public television. Those structural reforms, however, did nothing to solve the medium's most critical problem, long-range funding free from the influence of politics. It was, in fact, the unpromising future of "insulated" federal funding that drove public television in the 80s and 90s to extend its reach into the market economy in search of support.

The four-part organizational structure that emerged from the political turmoil of the 70s and the financial pressures of the 80s remains with minor alterations the structure of present-day public television.

***The Corporation for Public Broadcasting**, a nongovernmental entity whose primary function is the receipt and disposition of those federal funds annually appropriated by the Congress for the support of public broadcasting. After a lobbying effort by the local stations during the Nixon Administration, Congress mandated that one-half of the funds for television (as distinct from those for public radio) must be passed on to the stations as Community Service Grants (CSGS).

Dependent upon but not a part of the federal establishment, the Corporation was to serve as a "heat shield," insulating public television against political pressures from the Congress or the White House. To further strengthen the "heat shield" function, the Corporation was reorganized in the early 80s to isolate programming from administrative functions with the creation of the semi-autonomous CPB Program Fund. In its earliest years, the Program Fund was responsible for the creation of several important PBS series (*American Playhouse*, *Frontline* and *Great Performances*). Though it continues to make grants to specific programs, the Program Fund's role has diminished somewhat since the role of PBS has increased.

CPB's governing board of 9 (reduced from 15 during the Reagan Administration) is appointed by the President and confirmed by the Senate. No more than 5 of its number can belong to the same political party.

*** Association of America's Public Television Stations (APTS)** serves as the Washington lobby for the public television establishment, but primarily for the stations that brought it into

being in 1980 in order to remove the lobbying function from PBS and return it to its primary function of program selection and distribution. APTS's primary focus of concern is the legislation affecting both the regulation and funding of public television. The president of APTS is responsible to a governing board of elected station managers.

***The Public Broadcasting Service (PBS)** is a membership organization whose function is the selection and distribution of programming. Although its program service includes systematic instruction for use in classrooms, PBS is more closely identified with its National Program Service which is comprised of its children's programs and the general audience programs normally aired by its stations in prime time. Member stations are free to select or reject any of the programs in the National Program Service, and, with few exceptions, to broadcast the selected programs on the days and at the hours best suited to local preferences. Significantly, PBS deliberately chose the term "service" over "system" to indicate that its purpose is more akin to a library service -- select what you want -- than a commercial network whose lock-step schedule of national programming is thrust upon the network's affiliated stations from Hollywood and New York.

PBS is distinct from commercial television not only in this respect, but in one other as well. Commercial network affiliates are paid by the network to air the network's shows, i.e., they share in the advertising revenue generated by the show in question. Public broadcasting's money flows in the opposite direction. PBS stations get nothing from PBS in return for airing the shows. They provide PBS with its operating budget through a dues structure that takes account of the individual station's size and reach.

The local stations, of course, *own* the network. The governing board of PBS, once made up entirely of professional station managers elected by their peers, is now a mix of station managers and local lay leaders who serve on the governing boards of their local stations. The circumstances and reasons for the change in the composition of the board will be described later in this paper. But even with the change, the members remain firmly in control of the national organization.

When PBS was created in 1969 its sole function was the scheduling and distribution of programming. The stations sought protection against the domination of programming by a centralized authority. To achieve that protection, they prohibited their own "network" from producing, acquiring or commissioning programs. The production and acquisition of programming was to be the exclusive domain of the stations, although PBS retained authority over which of the programs produced or acquired by the member stations would find a place in the PBS schedule.

For more than 15 years (1974-1990), the PBS program schedule was dominated by a selection process linked to an annual poll of station preferences. Each station, after scanning a fat catalogue of program proposals, voted for those it wished to see produced, agreeing at the same time to share in their costs of production. The dozen or so programs with the broadest

support won out, were produced, and went into the schedule. The exercise was gratifyingly democratic. But it proved stultifying to innovation and risk-taking as stations, year after year, returned the same old program series to the schedule. In desperation, it was scrapped in 1990. In its place local stations grudgingly accepted a modest degree of centralized programming authority in the hands of PBS. The process will be described in more detail later.

PBS is a membership organization whose members are:

***The Public Television Stations**, 352 outlets serving 99% of those American homes with television receivers. The 347 stations are operated by 173 licensee organizations that divide into four distinct categories:

- 26 are licensed to state authorities and operate as statewide networks of interconnected transmitters (e.g., South Carolina, Kentucky, Iowa). Although they depend in part on federal funding, they are also subsidized from state tax revenues.
- 62 are licensed to colleges and universities (e.g., Michigan State University, University of Nebraska, University of New Hampshire) and serve not only the educational interests of their licensee institutions but the community-at-large as well. In varying degrees they receive support from their institutions but rely increasingly on other sources of funding including federal appropriations, audience memberships, and revenue-generating activities.
- 8 are licensed to educational or municipal authorities (e.g., Government of Samoa, Dade County Unified School District) and generally serve the primary interest of their sponsoring institution.
- 90 are licensed to community nonprofit corporations (e.g., New York City, Los Angeles, Boston, Chicago, Washington, D.C. and Philadelphia). Lacking budgetary ties to a "parent" institution, the free-standing "community" stations, in contrast to the other categories of licensee organizations, are heavily dependent upon the support of their audiences and upon their ingenuity in creating or discovering revenue-producing activities.

The community stations are, for obvious reasons, the system's most influential, not only because of their numbers (they are the largest single group) but also for the size and importance of their big-city audiences, their affinity with the national print media, and the fact that among their number are the stations that currently produce the overwhelming majority of public televisions primetime programming fare. Although national production has been open to every station in the system since 1970 -- and, typically, about 50 participate with one or more programs each year -- more than 90% of PBS's national programming originates in only 6 stations located in New York, Boston, Los Angeles, Pittsburgh, Washington, D.C., and Maryland.

A glance at the divergent interests of the four licensee categories will explain why the individual stations in the system are not necessarily agreed on public television's mission nor the strategies needed to meet its problems. A prime example is the current dispute over accepting commercials. Institutionally-based stations, for the most part, are opposed to the idea. Some, in fact, may be prohibited by their governing institutions from selling airtime for commercial messages. On the other hand, community stations are generally more inclined to accept commercials. They are, however, they are far from unanimity on the issue. A number of community stations are already airing commercial messages that are virtually indistinguishable from the ads on private television. "Going commercial" is for many large-city stations the only way to go.

The dispute over commercials is one example of the issues dividing the three major categories of licensee institutions. Their differences are also manifest in the way similar types of licensees have formed subgroups of PBS member stations to pursue and protect the interests of their own licensee group.

2, THE UNIQUENESS OF AMERICAN PUBLIC TELEVISION IS THE PRODUCT OF ITS HISTORY

American public television has no counterpart among the world's public broadcasting systems. Where other industrial democracies built their public broadcasting systems from the top down, first creating a national institution and then providing local outlets, we moved from the bottom up, first creating local outlets, and then when the need arose, encouraging the local outlets to create their own national institutions. As a result, PBS is *sui generis*.

A. The seed for a locally-based system was planted in 1952 when the FCC set aside a body of television frequencies for the exclusive use of education and nonprofit community groups and left to each local community full responsibility for activating its reserved channel. Not only did the FCC and Congress refuse to provide for the funding and operation of these channels, they made no provision for a national entity to help with programming provided from a central outside source. As a result, educational television developed at a painfully slow pace. In many communities, more than fifteen years would pass before its citizens had their first glimpse of the new noncommercial medium.

B. The first stations to go on the air quickly realized the impossibility of filling their programming hours entirely from local resources. To ease their situation, the Ford Foundation took the lead in creating the Educational Television and Radio Center to serve as a central source of programming. But, clinging to the dogma that local stations alone have power to define the service to their respective communities, the ETRC was barred from creating its own programs. It was to act solely as an exchange center, selecting programs created by the local stations and arranging for their duplication and their exchange with other local stations.

When, after 5 years, it became painfully clear that locally-produced programming was not winning audiences for public television, the ETRC with Ford Foundation backing transformed itself into the system's center for national program production. Renamed **National Educational Television**, and removed from Ann Arbor to New York, NET recruited a staff of talented producers and set about supplying its affiliates (by U.S. mails) with a weekly schedule of original programming that included documentaries, dramas, performance and science programs. Although the program service was totally underwritten by the Ford Foundation, NET asked its affiliates for a modest annual fee to be used to augment its schedule with children's programming. By the mid 60s, NET was *the* national organization for noncommercial TV: spokesperson, lobbyist, fund-raiser and policy-setter. For the first time, the national press took due notice of public television. And NET began to refer to itself as America's "Fourth Network."

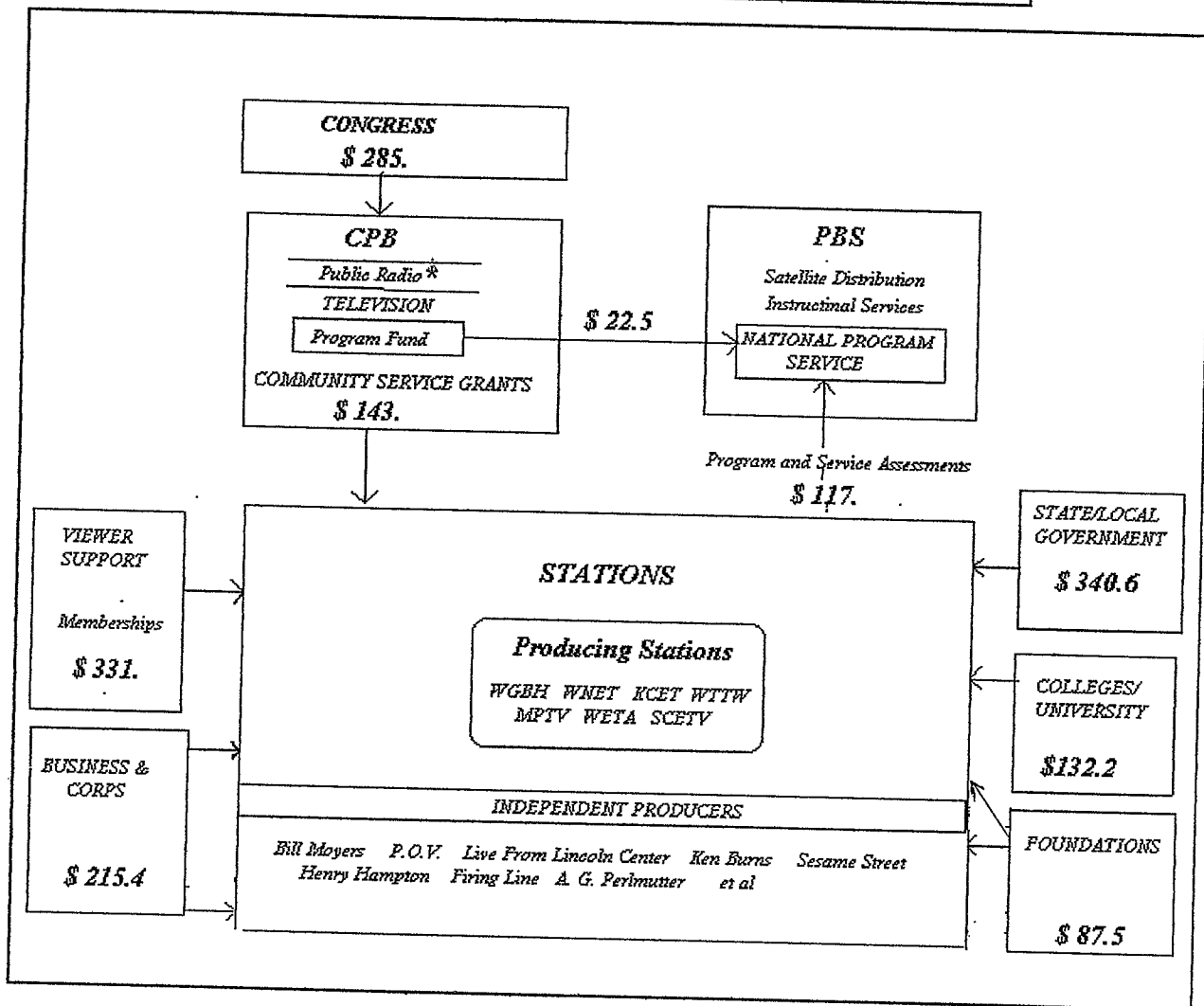
But the situation did not -- and could not -- last. The Ford Foundation's resources were finite. Their grants to NET could not be expected to grow as the public system grew and expanded. An alternative source of funding was needed. A philanthropic foundation, The Carnegie Corporation, created and funded the first **Carnegie Commission**, to study and recommend a future course for the medium. Its report and recommendations, issued in 1967, became the basis for the **Public Broadcasting Act**. The legislation, passed by Congress and signed by the President that same year, changed "educational" to "public" television and laid the foundations for today's system. For the first time, government funding (not "dedicated" funding, as the Carnegie Commission had recommended, but annual appropriations by Congress) became a part of the structure of public broadcasting. To provide "leadership" for the reconstituted movement, Congress created the **Corporation for Public Broadcasting** and charged it with, among other things, the creation of an interconnection linking the local stations by telephone lines (later, by satellite) for faster and more efficient delivery of programs.

c. The Corporation, in close consultation with the local stations, and (initially) with its own funds, created the **Public Broadcasting Service**. To insure there would be no more NET-type dictation of programming from the East Coast, PBS was established as a membership organization entirely controlled by an elected board of station managers and barred from either producing, acquiring by purchase, or commissioning its own programming. With the formation of PBS, control over the nature and content of the national program service was returned to the local stations. (NET, in the meantime, was merged into and made a part of New York's Channel 13.)

Not long after PBS was established, the service faced its own imminent demise but survived as a reorganized entity. The board, once composed entirely of professional station managers, was broadened to include lay community leaders who served on the boards of their local stations. With minor changes, the PBS structure (but not, as we shall see, its operations) remained substantially the same until the present.

PUBLIC TELEVISION ORGANIZATIONAL STRUCTURE

(Financial Figures for 1995 in millions)



* In addition to its Community Service Grants (CSGs) to television stations, the Corporation for Public Broadcasting also make grants to public radio stations for their support.

3. PBS PROGRAMMING: THEN AND NOW

A comparison of PBS's current primetime schedule with its program service in 1978 reveals remarkably little change in the series that form the core of its evening schedule. No fewer than six of today's mainstay series were in the schedule in 1978 and have survived as many as twenty years on the air: *Masterpiece Theater*, *Nova*, *Wall Street Week*, *Washington Week in Review*, *Great Performances*, and *Firing Line*. (A seventh, 1978's *MacNeil/Lehrer Report* has metamorphosed into *The NewsHour with Jim Lehrer*.)

Nevertheless, changes have taken place in the PBS programming over the past twenty years. But they are more subtle, reflecting the altered nature of public television's funding sources. As an example, 1978's primetime schedule contained a number of consumer-oriented programs (*Julia Child & Company*, *Crockett's Victory Garden*, *Consumer Survival Kit*, *Book Beat*, etc.). Programs of this sort have left the PBS primetime schedule and have been moved to fringe times where they are largely underwritten by corporations and made available to PBS members free as part of the PBS Plus service.

They have been replaced in prime time by programs with particular appeal to potential corporate underwriters either because (a) they are prestigious and noncontroversial (*Nature*, *American Experience*, *Live From Lincoln Center American Masters*, etc.), or (b) they are, like *Mobil Masterpiece Theater*, prestigious and acquired from abroad, thus a known quantity (*Sister Wendy's Story of Painting* and *Full Circle With Michael Palin*), or (c) they serve directly the interests of corporate business (*Beyond Wall Street*, *The Excellence Files*, *The Entrepreneurial Revolution*.) Gone from today's schedule are the costly, more risky, and less underwritable ventures of 1978: *Visions*, *Hollywood Television Theater*, and an original production of *The Scarlet Letter*.

Even among the six or seven series that have remained in the schedule for the past twenty years changes have taken place in the manner of their funding, reflecting public television's shift to a greater dependency upon corporate dollars to support primetime programming. In 1978, the principal source of program funding came from the stations through the **Station Program Cooperative (SPC)**, an ingenious device to obviate control of programming decisions in the hands of a single centralized agency. Each PBS local station voted upon a body of nominated program series and then shared proportionately in the costs of producing the dozen-or-so winning series. Nominated programs that had been partially underwritten by corporations or foundations were offered to the stations at "discounted" rates, thus giving them an advantage in the selection process.

The SPC was abandoned in 1990 and the power to make program decisions placed in PBS with the newly-created post of Chief Program Executive. The CPE has been given a modest program budget (p. 12) with which to initiate new projects or to support those programs in the schedule not fully underwritten by corporations or foundations. Because the largest part of the PBS fund is committed to existing series not fully underwritten, pressures are created to free these funds for new projects by seeking additional underwriting from corporations.

The following table records the shift in primetime program funding for those series that have remained in the schedule for the past 19 years.

PROGRAM	PRODUCER	FUNDING	
		[1978]	[1997]
<i>Masterpiece Theater</i>	WGBH/Boston	Mobil Corporation	Mobil Corporation
<i>Firing Line</i>	Southern Educ Communication Assn	Stations (SPC) + 20-30 corps	John Olin Foundation
<i>Washington Week In Review</i>	WETA/Washington	Stations (SPC)	PBS + Ford Motor Company
<i>Wall Street Week</i>	Maryland PTV	Stations (SPC)	PBS + /Prudential Securities, A. G. Edwards, Oppenheimer Funds
<i>Great Performances</i>	WNET/New York	Stations (SPC) + Ford Fndn + Exxon	PBS + Chase Manhattan/ + Natl s Endow Arts + CPB Prog Fund
<i>Nova</i>	WGBH/Boston	Stations (SPC)	PBS + Merck
<i>MacNeil/Lehrer [Report] NewsHour</i>	WNET/New York WETA/Washington	Stations (SPC) + Exxon + Allied Chem	PBS + CPB +/Archer-Daniels- Midland + /New York Life

4. PBS PROGRAMMING: WHAT LIES BEHIND THE CHANGES

Several factors, forced upon it by circumstances, or willed by the system itself, are moving public television from a nominally noncommercial medium, removed from the influences of the marketplace, to a medium resembling its commercial counterpart.

A. Of the forces shaping the character of public television's programming, none had greater impact than the political fallout from the Reagan presidency. In the course of his political campaign, Ronald Reagan pledged to get public television "off the back of government." It was not mere campaign rhetoric. As President, he took the first step by rescinding \$35 million of the \$172 million Congress had appropriated for public television's 1983 fiscal year. Ralph Engleman describes the President's goal:

Unable to get Congress to eliminate all funding, the Reagan administration embarked on a plan to put public broadcasting on a more commercial footing. Steps were taken in accordance with the emphasis of "Reaganomics" on deregulation, privatization, and market-based remedies. Legislation in 1981 calling for reductions in federal support for public broadcasting established the Temporary Commission on Alternative Financing for Public Telecommunications to explore new fund-raising stratagems and enterprises. *[Public Radio & Television in America: A Political History, 1994]*

The Temporary Commission on Alternative Financing was the key element in the effort to "privatize" public television. For an 18-month period in 1982-83, ten public television stations (New York, Philadelphia, Chicago, Pittsburgh, Miami, New Orleans, Erie PA, Muncie IN, San Mateo CA and Binghamton NY) were permitted to experiment with advertising messages to determine whether commercials (a) would provide public TV with significant support and (b) yet not alienate its audiences. Seven stations employed standard 30- or 60-second commercials while three limited themselves to "enhanced underwriting." Although the TCAF, in its final report, recommended against commercials, it found almost no negative reaction to the commercials from public television's audience. Equally significant, the 18-month experiment solidified support among a small group of station executives for ad-supported public TV.

B. The most consequential result of the TCAF was its recommendation that the FCC let down the barriers to corporate identification on the noncommercial medium, making the rules governing underwriting less restrictive. Willard Rowland, Jr., one of public television's most acute observers, has noted that the very existence of the TCAF and the advertising experiment gave considerable legitimacy to the notions for increasing privatization and commercialization of public broadcasting.

The report rejected limited advertising only for the time being largely on pragmatic grounds (i.e., that the private options would not generate enough revenue). It provided no ringing objection of principle to continuing commercialization of public broadcasting and, indeed, it recommended further steps toward "enhanced underwriting," provisions that the FCC has since adopted . . . and, which as implemented in 1985 and 1986, were resulting in numerous public radio and television stations underwriting messages that struck many observers, including the FCC itself, as commercials. (*Continuing Crisis in Public Broadcasting: A History of Disenfranchisement*, 1986.)

Prior to the 1984 changes permitting "**enhanced underwriting**," corporate credits permitted only a simple "made possible by" linked with the underwriter's legal corporate name (e.g., Minnesota Mining and Manufacturing but *not* the more familiar 3M). Nor did the FCC rules permit stylized fonts or corporate logos (e.g., Mobil's familiar red O). The aim was to keep noncommercial television noncommercial. The restrictions, however, acted to limit program underwriting to those few industries interested only in burnishing their public relations "image" - most notably oil companies whose image had been tarnished by the gas shortages of the 70s. (By 1981, oil companies were underwriting 70% of PBS's primetime schedule, prompting critics to refer to PBS as the Petroleum Broadcasting Service.) The revised rules opened the doors for a much closer identification of the corporate underwriter with the underwriter's product or services, and allowed for messages that, with some restrictions (no product comparisons or qualitative claims, no underwriter with direct interest in the program's content; no program interruptions, etc.) bore a very close resemblance to advertising messages on the private medium.

C. The rule changes permitting "enhanced underwriting" had the desired effect. It produced "an immediate increase of more than 30% in underwriting income," according to the 1993 study of The Twentieth Century Fund (*Quality Time?*).

"During the 1980s public television's income virtually doubled, rising from \$626 million in 1981 to about \$1.25 billion in 1990 . . . Easily the most spectacular increase came from the private sector, which rose from 41 percent of the whole in 1981 to 53.4 percent in 1990. And the biggest increases came from subscriptions and corporate funding . . ."

According to Ralph Engleman (*Public Radio and Television in America: A Political History*), corporate support from 1974-90, "increased from 4% to 17% of total income, surpassing the percentage of federal money." He adds that the 17% figure for corporate funding in 1990 may not appear disproportionate next to the 22% figure for subscriber income, however "member dollars primarily supported the operations or overhead of the local stations and had little direct impact on national or even local programming." By FY 1992, he reports, corporate support, the largest single source of funds for national programming, reached \$89.5 million, nearly 30% of total funding.

D. President Reagan's push to "privatize" public television, particularly the cutbacks in government funding enacted by Congress during his administration, brought about a second change in public television: PBS's method of doing business with its member stations.

For ten years the PBS primetime schedule was dominated by the **Station Program Cooperative**, a complex construct allowing member stations to design the national program schedule by voting their preferences from a catalogue of program proposals. In voting their preferences, each station agreed to share proportionately in the production costs of the programs or series selected. The system resulted in a primetime program schedule that changed very little from year to year, allowing for little or no risk-taking or innovation. Stations tended to vote for the tried and true and returned the same popular programs to the schedule year after year.

In the early 80's, the Reagan Administration, as part of its pledge to reduce the federal budget, rescinded \$30 million from the funds already appropriated by Congress. The dollars were needed to undertake the planning and production of "big ticket" (prestigious and long-range) programs that would in future years augment the more modest SPC-generated schedule. With nothing in the long-range production "pipeline," the Reagan "drought" years resulted in a 1985 PBS season that was described by television's critics as a "disaster." At the same time, stations, with fewer dollars from the CPB, cut back on their own local program production. The pressure was on for a more effective way of using limited funds to greater effect.

E. Public television's three national organizations -- the CPB, PBS and the Association of Public Television Station -- have rarely acted in concert. They are all too frequently at loggerheads over power, policy and money because each sees itself at the apex of the pyramid,

as the "principal" organization of public television. Thus, when crises erupt and changes are in the wind, the historical struggle for money and power is set in motion. By 1989, however, Congress had had its fill of public television's internecine infighting. It put the national organizations on notice: either get together on a plan of your own to resolve your internal disputes or Congress will sort them out for you. The deadline for submitting the plan was to be January 1, 1990.

The plan hammered out by the three major national organizations and submitted to Congress called for PBS to assume greater responsibility for the national program service. Rather than depend *exclusively* on its member stations, PBS would be free for the first time to work directly with program producers. Drawing upon a modest program fund, PBS could arrange for the production of programs and series needed to fill out and balance the primetime schedule. The modest program funds would be supplied by, first, the stations, and secondly, by the Corporation. The stations agreed to divert to PBS those dollars they had once invested in the now defunct Station Program Cooperative. The Corporation's contribution to PBS would come from the Program Fund, dollars set aside by CPB from its annual congressional appropriation and jealously protected in order to keep the Corporation in the programming picture. CPB agreed to transfer half of these funds (approximately \$22 million) to PBS.

SOURCES OF PBS INCOME (1996)

[in millions]

*Program Underwriting	139.	42%
Member Programming Assessments	94.	28%
Member Services Assessment	23.	7%
Corporation for Public Broadcasting	22.5	7%
Video Sales	16.5	5%
Adult Learning Services	9.9	3%
Other(unspecified)	25.4	8%

Total	\$ 330.
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Source: Public Broadcasting Service, Annual Report, 1996

In anticipation of the signing of the 1991 agreement, PBS appointed a Chief Program Executive with authority to commission, acquire or fund program productions. Once fully in charge, the newly-appointed executive, intentionally or not, blurred still further the distinction between public television and its commercial competition by turning to the commercial markets for new programs. *Barney & Friends* had begun as children's videos that were marketed commercially. Converting it to a public television children's show proved highly successful, both for the young audience and for the show's producers. David Bianculli

*Program Underwriting income represents the value of services "donated" to PBS in the form of program series underwritten in whole or in part by corporations and foundations. Although it does not represent real dollars -- those go to the producers of the program or series -- the IRS requires PBS to report it as Income.

(*Dictionary of Teleliteracy*, 1996) reports that "for the years 1993 and 1994, Forbes estimated Barney's combined earnings at a dino-mite \$84 million . . . in fact, the magazine ranks the fuzzy dinosaur third on its list of the richest Hollywood entertainers for those two years, ranked behind only Steven Spielberg and Oprah Winfrey."

Another popular children's series brought to PBS in 1992, *Lamb Chop's Play-Along* with Sheri Lewis, was a retread of a show that first appeared on NBC television in the early 1960s and had been a staple of the networks for many years. Another former NBC show, the hour-long dramatic series *I'll Fly Away*, ran in primetime on the network from 1991-93. When NBC cancelled it, PBS purchased and re-ran the 38 episodes the following year.

In a much bolder move to broaden public television's nighttime audience by following in the footsteps of the commercial medium, the Chief Program Executive commissioned a Hollywood producer to create a sitcom for PBS. But the plan was never realized. It should be noted that the freedom of the new Chief Program Officer to pursue independent projects was severely circumscribed. The bulk of her "discretionary" program funds were already committed to the continued support of many of PBS's "old favorites" (*Nova*, *Great Performances*, *Sesame Street*, etc.) which the stations were (and are) unwilling to see cancelled.

F. The emphasis upon corporate underwriting as a source of funding for PBS's programming is underscored by a supplemental service that PBS offers its member stations. Dubbed **PBS Plus**, it provides a roster of programs and program series outside the regular National Program Service that *are fully funded* from other sources and available to all PBS member stations for a one-time-only fee. The 70+ programs and series in PBS Plus (Exhibit C) include such popular shows as *Adam Smith's Money World* (MetLife), *Charlie Rose* (USA Networks + private foundations), *Jacques Pepin's Cooking Techniques* (Cambria Wines and Vineyards, Analon Cookware, and Near East Foods), *Newton's Apple* (3M), and *This Old House* (BankBoston, Nees Company, and Osran-Sylvania).

G. In its reach for increased audience support, PBS has created another instrument that serves to blur the distinction separating public from private television and cable. Several times each year, most (but not all) public stations cancel their regular programming to engage in a week or 10 days of on-air fund raising in which viewers are importuned to telephone their pledge of support to the station. During these "Pledge Weeks," regular PBS primetime programming is replaced by special programming -- programs frankly aimed at maximizing audience size. Although a handful of local stations began the practice of on-air "pledging" many years ago, it has become a national phenomenon only in recent years, supported and aided by a division of PBS called the **Station Independence Project (SIP)**.

The SIP is an anomaly. To attract viewer support for public television's more serious programming, PBS/SIP provides its member stations with a body of entertainment programs that are extremely similar to the commercial network "specials" than the standard fare on PBS. With an annual budget of \$7 million, all of it from the participating stations, the SIP commissions or

acquires programming from a variety of sources, including repeats of PBS's most popular specials of the past. Most, however, are special concert performances of music, dance and comedy, including the sensationally successful concert of "The Three Tenors." (Exhibit D)

SOURCES OF FUNDING: THEN AND NOW

The political uncertainty of sustaining public broadcasting's federal support has pushed the medium into an intensive effort to increase alternative sources of support. The result is a significant change in public television's funding picture over the last 15 years. As the role of federal dollars has declined, the role of voluntary viewer support and corporate underwriting has increased. A 15-year comparison of public television's principal income sources shows a decline of government funding from 26% in 1980 to 14.5% (less grants) in 1995, the latest year for which figures are available. At the same time, the proportion of support from viewers has risen from 12.6% in 1980 to 21.3% in 1995, while corporate support of public television has risen from 10% to 15% of the total funding for public television.

CHANGES IN PUBLIC TELEVISION INCOME FROM 1980-1995 (in millions of dollars)

	1980		1995	
Fed Government	152,396	26%	262,695	14.5% (less grants)
State & Local Government	176,953	30%	340,682	23%
Colleges and Universities	54,156	8%	132,233	9%
Foundations	19,518	3%	87,564	6%
Audience Support (subscrptn + auctions)	89,991	16%	331,161	22%
Business/Corporations	62,515	11%	215,442	15%
All Others	25,889	5%	94,248	6%
TOTAL	581,418		1,564,125	

Source: Corporation for Public Broadcasting

These figures represent the total sources of support for *all* of public television, including the operational support of its more than 300 stations. They do not provide a true picture of the sources that fund public television's *programming*. As Engleman points out, member dollars and funds from the Corporation for Public Broadcasting are used primarily to support "the operations

or overhead of local stations" and have "little direct impact on national or even local programming." Though corporate underwriting represents only 15% of public television's *total* income, it represents a disproportionate percentage of the dollars going into the production and distribution of PBS programs.

FUNDING SOURCES OF PBS FIRST-RUN PROGRAMMING - 1996
(in millions)

Member Stations (28.1%)	82.1
Corporate Underwriting (22.7%)	66.
Private Producers (21.3%)	62.
Corporation for Public Broadcasting (10.6)	31.
Foundations (7.8%)	22.7
Federal and State Governments (7.5%)	21.9
Others (2.0)	5.9
Total	\$ 291.6

Source: PBS Annual Report, 1996

These figures represent the 1,936 hours of first-run programming distributed by PBS in 1996 and include not only the nighttime shows but the daytime children's programs as well. Since fewer children's programs are underwritten by corporations, the percentage figure for the underwriting of primetime programming alone would be higher.

6. LOCAL STATIONS FOLLOW THEIR OWN RULES

Strangers to the American brand of public television, particularly those well acquainted with public television in other industrial democracies, are confused by the absence in PBS of an integrated structure with a single head and definable parts. "It is not so much a structure as a process," wrote one British writer, "composed of shifting factions . . . subject to almost constant change." (Paul Marath, *Public Visions: Private Voices*. Sight & Sound, Winter 1976-77). Americans are equally confused. "To talk about a 'public system'," former National Endowment for the Arts Director Lynne Cheney once observed, "is to verge on an oxymoron." (JD p. 355)

It was not an accident of history but deliberate planning that produced a loosely affiliated confederation of 173 licensees, sharing some things but differing widely in others. With very few exceptions, the public stations operate on channels set aside by the FCC. The primary allegiance of the stations, however, is not to a national system of public television but rather to the institution holding the license, whether a local community corporation, a college or university, a school system, or a state government. And since each licensee institution has its own mission, it is risky to generalize on the concept of "public television."

In addition to the differences that separate them from each other, the stations collectively

differ in two important respects from the concept of public television as it might be defined by the character of the PBS program service : (a) each station relies upon a variety of program services outside of PBS with which it shapes its own definition of public television, and (b) each station determines (within the limits of the applicable FCC regulations) its own standards of acceptance on commercial messages.

(a). Virtually all public television stations are members of PBS and actively participate in shaping the programming policies of that organization. Yet their use (and scheduling) of the program services that PBS offers varies widely. Every PBS station depends to some extent on programming from sources other than PBS to fill out its program schedule. The National Program Service from PBS consists of only 60 hours per week of programming (including children's programming), insufficient to fill out the broadcast day of the average station let alone those operating a 24-hour schedule. Stations must look outside PBS or else produce their own programs, a solution that has faded with the rising costs of television production.

The number and importance of these outside sources is increasing. The most important is the Boston-based **American Program Service**. APS began life more than 40 years ago as a regional network in the Northeastern U.S. But even then its success in acquiring programming to supplement the PBS service led other stations to join in until it was expanded into a national system embracing most PBS stations. APS's program offerings are a mix of shows acquired in the worldwide program markets, and shows produced jointly with other organizations, selected for the catalogue by the station program executives at thrice-annual screening sessions. Plans are currently underway to provide member stations a complete weekend schedule of programs delivered by satellite. (The PBS program service does not include Saturdays.) (See Exhibit E for a list of current APS offerings)

(b). PBS, as we have noted, has strict guidelines defining the acceptability of underwriter credits on its nationally-distributed programs. But, as the Twentieth Century Fund 1993 Report (*Quality Time?*) has noted, "local stations also have the right (and the need) to take on local underwriters" and "not all station observe such rigid guidelines on their own air as they are to observe for national programming . . . *it is perfectly possible for a station, while properly observing the PBS guidelines for national programs, to have a much more commercial 'look' than is normally associated with public broadcasting.* " (Italics added).

The Report points to a common practice among many stations of allowing "national programs (replete with credits for funders, some of whom may have contributed millions of dollars) to be preceded by credits for local sponsors that have contributed very small amount to cover just the local transmission costs of the stations." Thus, WNET in New York announces each weeknight that "*The NewsHour with Jim Lehrer* is made possible on Channel 13 by The CIT Group and the Montefiore Medical Center," each local underwriter with its own "enhanced underwriting" credit. The Twentieth Century Fund cites the practice as "potentially the most dangerous" and points out that since 1987 PBS has made this practice more difficult by designating some national programs that are underwritten by a single corporation or foundation

"exclusive."

Individual stations as well their national organizations have been affected by the political and economic forces of the past two decades. We examined three local public television stations to see whether these events may have modified their mission or influenced the character of their programming. The three stations -- WNET/New York, WTTW/Chicago and KQED/ San Francisco are among the larger and more important of the metropolitan community stations. As the system's primary producers of national programming, and with their large audiences and operating budgets, these stations (along with WGBH/Boston, KCET/Los Angeles and WETA/Washington) exert the strongest influence upon PBS and the course of public television.

A. KQED/San Francisco.

Founded in 1953, it is the oldest of the three. It is PBS's "most watched" station (measured by the program ratings) and with KQED members making up 9.6% of Bay Area households, it has the highest market penetration among the top-10 public television stations. KQED, once a major producer of programming for PBS, has in recent years largely limited national production to quick-and-easy cooking shows (*Jacques Pepin*, *Yan Can Cook*) in order to recover from a heavy burden of debt left by the construction of a new building, the project of an earlier administration. (Although KQED's current administration has succeeded in recovering the station's balance, it is still paying off a \$12 million mortgage.) A year ago it sold off its award-winning magazine and its book publishing business for approximately \$3 million. More recently, for reasons that were heavily financial, it became the West Coast bureau for the *NewsHour with Jim Lehrer*.

KQED FUNDING SOURCES AND EXPENSES (1996)

(in millions)

Individual Members	62%	18.687
Corporate Underwriting	18%	5.324
Government Support	9%	2.821
Foundation Grants	6%	1.752
Other	5%	1.363
Total Income		\$ 29.946
Television and Broadcasting Production	45%	11.681
Marketing and Development	25%	6.662
Support Services	13%	3.452
Radio Broadcast and Production	11%	2.959
Interest Expense	4%	.979
Program Information/Special Events	2%	.504
Total Expense		\$ 26.198

A comparison of the KQED evening program schedules from 1978 and 1997 (Exhibit F) reveals in both cases a heavy emphasis upon programs designed to attract the audience most likely to return its enthusiasm for the program with a pledge of support (i.e. the older and more affluent viewer with a habit of supporting good causes). The program schedule is a direct response to KQED's heavy dependence upon viewer support for the larger part of its income.

In recent years, KQED has introduced what some critics of the practice view as "commercials" but which management insists are "enhanced underwriting," 15- or 30-second announcements that, unlike commercials, permit no comparative claims, product offers, prices, etc. The station sets aside a limited number of 15- and 30-second periods between programs (no program interruptions are permitted). KQED reports that, of all the enhanced underwriting messages solicited by or offered to the station, on average only 1 out of 40 is acceptable for airing. The slots set aside for enhanced underwriting announcements were not entirely filled at this writing.

B. WTTW/Chicago

The Chicago station, known in its early years primarily for its "college of the air," has in more recent years been identified as "the most commercial" of the PBS stations. (The label may not be entirely accurate; a few other PBS stations are at least as "commercial.") The identification is due in large measure to the open advocacy of commercials on public television stations by WTTW's president William McCarter. In 1984, following the TCAF tests to determine the viability of commercials as a source of support for public television (WTTW was one of the nine participating stations) McCarter joined four other station managers in a petition to Congress.

As managers of public television stations, we are approaching Congress to seek authority to use limited advertising on a voluntary basis to enhance our financial stability. We believe this device can be used to promote the growth and vitality of a precious national asset -- public television. [*Memorandum to Congress signed by WTTW, WPBT/Miami; KCSM/San Mateo; WYES/New Orleans; and WIPB/Muncie, date January 4, 1984.*]

Describing WTTW as a "rugged individualist" station, *In These Times* reported in May 1983 that McCarter had publicly said "that the station envisions cutting loose from the system to be subscriber supported and free of accountability to smaller stations and to taxpayers."

As the originating station for several PBS series (*Lamb Chop's Play-Along*, *The Kidsongs Television Show*, *The New Explorers with Bill Kurtis*) and with several outside production contracts (*The McLaughlin Group*, *The America's Family Kitchen*), WTTW relies heavily for its support upon its production capacity and its partnerships with private enterprise.

WINDOW TO THE WORLD COMMUNICATIONS, INC (WTTW)
1996 REVENUES
(in millions)

Member/Subscribers	40%	\$ 16.6
Production Contracts	30%	12.5
Corporate Underwriting	15%	6.2
Corporation for Public Broadcasting	5%	2.1
State of Illinois	4%	1.7
Foundations	3%	1.2
Other	3%	1.3
Total Revenues		\$ 41.6

Source: Window to the World Communications, Inc.

C. WNET/New York

The largest of the public television stations, WNET was founded in 1962 as WNDT. Because there were no standard VHF channels available in New York City, the station was forced to purchase (for approximately \$6 million) a financially-strapped commercial station licensed to Newark, New Jersey and to accept Newark as its legal home though it identifies itself as New York/Newark. After its merger with National Educational Television in 1970 its name was changed to WNET. It shares with WGBH/Boston the distinction of being one of the two major producers of programming for the PBS system.

If WNET's primetime schedule today is somewhat less varied than it was in 1978 it may be less due to financial pressures than to the station's commitment to 4 five-days-a-week shows that together represent three hours of evening schedule. *The New Jersey Network News*, a requirement of WNET's licensing to that state, was not on the air in 1978. *The NewsHour with Jim Lehrer*, began before 1978 as a half-hour local show on WNET and was later distributed nationally by PBS. And *The Charlie Rose Show* which had its 1978 counterpart in 1978 in the shorter (30-minute) *Dick Cavett Show*. *The Nightly Business Report* acquired from American Program Service fills out the 3 hours.

Its primetime schedule is heavily weighted in favor of cultural programs, both performance and cultural documentaries, many of which it produces (e.g., *Great Performances*, *Dance in America*, etc.). Its principal local-only program is a weekly arts magazine. Unlike WTTW, it has not for some years had a nightly news program. And unlike many other viewer-supported stations, it has not been strong on British comedy series. Its orientation is very much in the direction of those kinds of programs that attract corporate underwriting, including its most recent production for PBS, *The Excellence Files*, a series of documentaries showing how eight leading business corporations (Southwest Airlines, Coca-Cola, Rubbermaid, etc.) are preparing to compete effectively 10 years from now. The series is underwritten by the Deloitte & Touche accounting firm.

The importance of production contracts and corporate underwriting to the financial health of WNET is apparent in the statement of their revenues for the fiscal year 1995-95 (the

most recently available figures).

EDUCATIONAL BROADCASTING CORPORATION (WNET)		
Revenue Summary - 1995-96		
(\$ in thousands)		
CPB Community Service Grant		4,072
CPB Program Grants		2,777
PBS National Program Service Grants		11,746
Underwriting		
*Corporations (incl \$10.1 million <i>NewsHour</i> pass-thru)	20,914	
Foundations and Govt Agencies	6,802	
Pre-sales	719	
Individuals and Other Support	1,133	
Membership Income	21,634	
Large Unrestricted Individual Contributions	7,549	
Unrestricted Corporate Contributions	1,158	
New York State Grant	4,890	
Non-Broadcast Sales (videos, program rights, etc.)	7,576	
Other Income (primarily interest)	939	
***Total Revenue	\$	91,909

*includes \$1,343 in revenue from "enhanced underwriting" spot announcements

Source: Educational Broadcasting Corporation 1997/1998 Business Plan

7. 1978-1997: TWENTY YEARS THAT MAKE A DIFFERENCE

In his 1994 book (*Public Television For Sale: Media, the Market and the Public Sphere*) William Hoynes notes that "since its earliest days, there has been a slow but steady privatization of public television." Its funding, he argues, "is increasingly influenced by market forces," crediting this in part to "the fact that fear of political control by the federal government has always outweighed fear of commercialization in public television circles."

There is substantial evidence of public television's move in the direction of increased commercialization over the past two decades but it is not easily found in its program schedules. Little has changed in that respect. Its dependence upon voluntary audience support has long skewed the programming in favor of older viewers with disposable income and a habit of charitable giving. Perhaps the most significant change in public television's program schedules, led

by its increasing dependence upon corporate support, has been the increase in shows and series of the type that business finds most effective in burnishing the corporate image: noncontroversial and prestigious performance, science and nature shows. It is less the program themselves than the "commercials" crediting their underwriters that produces the perception of the public medium's growing commercialization. That perception is magnified by a growing number of agencies -- some cooperative ventures among formerly competing public stations, some private agencies outside of public television -- engaged solely in the solicitation of corporate underwriters.

It is worth noting that among the world's major public television systems, only two -- Britain's BBC and Japan's NHK -- are strictly noncommercial and reject advertising. In most countries, the public systems, even when tied to the government, obtain part of their operating income from commercials. Within the American system, there are persons in influential positions convinced that public television can accept advertising without compromising its mission. One such, as we have noted, is WTTW's William McCarter. Another is Van Gordon Sauter, the former president of CBS News. Now president of the public station in California's capital city, Sauter believes he could provide Sacramentans with a much better public service if he were permitted to sell time on the station. Perhaps the most serious proposal for advertising on public television is the one put on the table recently by Lawrence K. Grossman, former president of both PBS and NBC News. Grossman's plan would confine the ads on public television to the weekend.

Apart from the introduction of "enhanced underwriting, the most significant change in public television over the past two decades is a change in the way it conducts its business off-the-air. Faced with rising costs and diminishing prospects for long-term Congressional subsidy, it has become increasingly entrepreneurial, seeking opportunities for income in the for-profit world to meet its growing needs. American public television is not alone in this respect. Public television worldwide has been forced -- in most cases by the introduction of private broadcasting -- to find new and effective ways of marketing its products, and to form partnerships with private business. In the United States, these activities are taking place at both the national and local level.

A. The Public Broadcasting Service.

According to its 1996 Annual Report, PBS engages in "independent initiatives and private-sector alliances which not only further its mission and defray operating costs, but also provide producers and member stations significant royalties and payments for services." In July of this year, addressing the newspaper critics at their annual gathering, PBS president Ervin Duggan told

the critics that the attempt at re-inventing PBS into a "modern media enterprise" is paying off. "Our budgets have risen by \$80 million in the last two fiscal years . . . a 46 percent increase . . . achieved without increasing our funding from the Corporation for Public Broadcasting or increasing the program dues that we charge our member stations."*

PBS has used its media identity -- rated by Young & Rubicam second only to Disney as the most distinctive brand name in America -- to market products under its own label. As pointed out in its 1996 Annual Report, in this pursuit it has the help of "alliances with strong media partners."

- PBS entered into a programming partnership with Disney's Buena Vista Television in 1994 to bring *Bill Nye the Science Guy* to public television. Also in 1994, PBS launched a joint venture with Turner Home Entertainment to market videotapes under the PBS HOME VIDEO label in retail outlets. In 1995, PBS announced a major program production alliance with The Reader's Digest Association, one of the premier direct-marketers of books, magazines and videotapes worldwide. Reader's Digest will contribute up to \$75 million during a five-year period, sharing revenues from video sales and other after-market ventures.** -- **PBS Annual Report, 1996**
- In addition, the 1996 Annual Report recorded a 20-year agreement that PBS entered into with the Wiltech Group, Inc. to create The Business Channel, Inc. Each party holds a 50% interest in developing and marketing education and training services to the business community for which PBS received \$5 million in 1996.
- Most recently, PBS announced that it is exploring with Creative Artists Agency, Hollywood's leading literary and talent agency, the creation of a PBS music label. In a PBS press release (July 27, 1997) announcing the plan, the network's chief operating officer said that "For nearly 30 years, PBS member stations have provided Americans a front-row seat to the world's finest musical talents. A PBS-branded music line is a natural extension of our renowned programming services and will add an important and exciting dimension to PBS's initiatives beyond the broadcast medium."

* Quoted in "PBS heavy on the spin" by Tim Goodman, SF Examiner, July 29, 1997

** PBS Annual Report, 1996

PBS GROWTH IN "OTHER REVENUE:" 1994-1996

1994	\$ 364,000
1995	945,000
1996	2,504,000

Source: *PBS Annual Report, 1996*

B. Local Stations

The entrepreneurial activities of PBS have limited financial benefit to the member stations except those holding rights to products distributed by PBS (e.g., videos). For the most part stations, particularly those not supported from tax revenues, must use their own initiative and ingenuity in tapping income sources beyond the standard sources of memberships, foundations, and production contracts. Most metropolitan community stations maintain an arm of their organization devoted to entrepreneurial activities.

Chicago's WTTW provides an example of this with their Chicago Production Center, "the largest full-service production facility in the Midwest." In addition to its contracts for the production of PBS series noted above, the Chicago Production Center actively solicits production contracts with private industry and cites its joint ventures with such production companies as Disney-Buena Vista Productions, Fox Television, NBC Productions, Warner Bros. Telepictures, Viacom International, Univision and Lifetime Cable Channel.

It has become common practice in public television for stations producing a nationally distributed program to market a video, audiotape, transcript or book in connection with their program series. WGBH/Boston, one of the two major producers of PBS programming, may have initiated this practice in the 1960's by offering Julia Child's cookbook in connection with the series *The French Chef*. The station's success with its marketing efforts over the years since reached a peak recently. The huge popular success of *Arthur*, a children's series produced by WGBH has led the station to license a wide variety of products based upon the animated Arthur character. Although the original purpose was to close a \$2 million deficit in the production budget, the merchandising coupled with the program's popularity has led to a windfall in income for the station. WGBH has not revealed the amount of this income, though the licensing institution generally earns 10% of the wholesale value of the products sold. The New York Times (Sept. 24, 1997) estimates that the wholesale value of the licensed products should reach at least \$50 million this year.

EXHIBIT A
JAMES DAY

115 East 86th Street
New York, NY 10028
TEL: (212) 831-9276

Publivision, Inc.
One Lincoln Plaza, 2nd Floor
New York, NY 10023
TEL: (212) 875-6150
FAX: (212) 875-6104

CURRICULUM VITAE

1. POSITIONS HELD

Current

Emeritus Professor of Television and Radio, Brooklyn College
President, Publivision, Inc. (consultancy)

Past

President, WNET/Channel 13, New York, 1971-73.
President, National Educational Television (NET), 1969-71.
President, KQED/Channel 9, San Francisco, 1953-69.
Deputy Director, Radio Free Asia, San Francisco, 1951-53.
Civilian Radio Specialist, Supreme Commander Allied Powers, Tokyo, Japan, 1949-51.
Director, Public Affairs & Education, NBC, San Francisco, 1946-49.

2. BOARDS

Current

Timely Productions for Television, Inc. (Chairman)
Press & the Public Project, Inc. (Chairman)
Board of Advisors, On Television, Inc.
Armstrong Research Foundation
Shirley Road Productions, Inc.

Past

Founding Member, Children's Television Workshop ("Sesame Street"), 1969-86.
Founding Member, Public Broadcasting Service (PBS), 1969-71.
Founding Member, International Public Television Screening Conference (INPUT), 1977-88.
Communications Improvement Inc. (WLBT, Jackson MS), 1971-80.
International Council, National Academy of TV Arts & Sciences, New York.
International Film Seminars, Inc.

Boards: *Past* (cont'd)

Cable Arts Foundation (Chairman)
Governor's Advisory Committee on Educational Television, State of California (Chairman)
Editorial Board, *Television Quarterly*.
Editorial Advisory Board, *Public Telecommunications Review*.
Western Radio & Television Conference (President)
Town School for Boys, San Francisco.
UNA-USA National Policy Panel on Space Communications and the United Nations

3. TEACHING

Professor of Television and Radio, Brooklyn College, City University of New York, 1976-88.
Adjunct Lecturer, Hunter College, CUNY, 1970-71.
Lecturer, Stanford University, 1947-49, 1951-64.

4. HONORS

Robert C. Kirkwood Award for Community Service, 1966.
American Academy of Achievement, 1968.
Paul Niven Award for Excellence in Electronic Journalism, 1970.
Doctor of Humane Letters, Newark State College, 1972.
Ohio State Golden Anniversary Director's Award, 1986.

5. EDUCATION

University of California, Berkeley, AB (Economics), 1941
Stanford University, School of Education, 1949.

6. FOREIGN TRAVEL

Consultant: Kenya, Tanzania, Malawi, Zambia, Uganda (1964)

Speaker:

Commonwealth Broadcasting Conference, Nairobi, 1972.
Italian Socialist Party Conference on TV, Rome, 1979.
Edizione Radiotelevisione Italiana Conference on TV and the Printed Word, Turin, 1979.
University of the Basque Country, Bilbao, 1989, 1994
Prix Italia, Rome, 1993

Delegate:

Asian Broadcasting Union, Singapore, 1966
European Broadcasting Union, London (1959), Paris (1971), Munich (1972),
Barcelona (1973).
Prix Italia General Assembly, Florence (1971) [Vice-President]

Foreign Travel: *Delegate* (cont'd)

International Public Television Screening Conference (INPUT), Milan (1978, (1979), Washington (1980); Liege (1981); Toronto (1982); Venice (1983), Charleston, SC (1984); Marseille (1985); Montreal (1986); Granada (1987); Philadelphia (1988); Edmonton (1990); Dublin (1991); Baltimore (1992); Bristol, UK (1993); Montreal (1994); San Sebastian (1995); Guadalajara (1996).

Scholar-in-Residence:

Rockefeller Foundation Study Center, Villa Serbelloni, Bellagio, Italy (1978)

7. TELEVISION (Host-Interviewer)

Conversations With ----- (NET)

Twenty 30-min interviews with Aldous Huxley, Buster Keaton, Louis B. Leakey, Bing Crosby, Robert Kennedy, Christopher Isherwood, Ruth St. Denis, Maurice Chavalier, Norman Thomas, Yehudi Menuhin, Rube Goldberg, J. D. Rockefeller 3d, etc.

Conversations With Eric Hoffer (NET)

Twelve 30-min conversations with the longshoreman-philosopher.

Conversations With Arnold Toynbee (NET)

Six 30-min conversations with the British historian.

Afterword (NET)

Twenty-six short interviews with the principal members of the cast of the BBC's production of *The Forsyte Saga* (used as a postscript to each episode).

Day At Night (PBS/Syndication)

130 half-hour interviews with Aaron Copland, Muhammed Ali, Richard Rodgers, Ayn Rand, Ray Bradbury, Sara Vaughan, Jonas Salk, Norman Cousins, Art Buchwald, Jesse Jackson and 120 other famous Americans in the arts, sciences, sports and entertainment.

8. PUBLICATIONS

The Vanishing Vision: The Inside Story of Public Television (Univ. of California Press, 1995)

Independent Documentary Producers and Public Television: A Task Force Report to the National News Council. [with Alden Whitman] 1980.

Various articles periodicals including *Television Quarterly*, *Pegasus*, *Public Telecommunications Review* and *Forum for Contemporary History*.

9. PROFESSIONAL ASSOCIATIONS

International Institute of Communications
American Association of University Professors
Association of Independent Video and Filmmakers

rev: 9-96

EXHIBIT B-1

PBS PROGRAM SERVICE AND FUNDING - 1978

Most of the PBS programs on this 1978 schedule were either funded entirely by the **Station Program Cooperative (SPC)** in which the participating PBS stations shared proportionately in the production costs, or they were funded *in part* by corporate or foundation underwriting. (Only *Masterpiece Theater* was entirely funded by the corporate underwriter.) The programs listed with partial underwriting by foundations or corporations were "discounted" to the participating stations, i.e., the stations were required to share only in that part of the production costs that were not underwritten.

Program	Program Source	Funding Source
<i>Firing Line</i>	Southern Educational Communications Assn. (SECA)	SPC + 20-30 corporations
<i>Great Performances</i>	WNET/New York	SPC/ Ford Fndn/ Exxon
<i>Masterpiece Theater</i>	WGBH/Boston/BBC	Mobil Corporation
<i>Nova</i>	WGBH/Boston	SPC
<i>MacNeil/Lehrer Report</i> WETA/Washington	WNET/New York	SPC/ Exxon/ Allied Chemical
<i>Evening at Symphony</i>	WGBH/Boston	SPC / Raytheon
<i>Washington Week in Review</i>	WETA/Washington	SPC
<i>Wall Street Week</i>	Maryland PubTV	SPC
<i>Crockett's Victory Garden</i>	WGBH/Boston	SPC/ Tupperware Home Parties
<i>Julie Child and Company</i>	WGBH/Boston	SPC/ Boston Gas
<i>Consumer Survival Kit</i>	Maryland PubTV	SPC
<i>Turnabout</i>	KQED/San Francisco	SPC/ Lane Bryant Inc.
<i>Anyone for Tennyson</i>	Nebraska Pub TV	SPC
<i>Dick Cavett Show</i>	WNET/New York	SPC/ Chubb Corp, Gulf&Western
<i>Captioned ABC Evening News</i>	WGBH/Boston	SPC
<i>Hollywood Television Theater</i>	KCET/Los Angeles	Ford Foundation
<i>Book Beat</i>	WTTW/Chicago	SPC

Program	Program Source	Funding Source
<i>Once Upon A Classic</i>	WQED/Pittsburgh	SPC/ MacDonald Local Restaurant Assn
<i>The Advocates</i>	WGBH/Boston KCET/Los Angeles	SPC/ J. S. Mott Fndn, J. M. Olin Fndn, Merrill Lynch, Inc., Polaroid
<i>Austin City Limits</i>	KERA/Austin TX	SPC/ Lone Star Brewing
<i>Black Perspective on the News</i>	WHYY/Philadelphia	SPC
<i>Lowell Thomas Remembers</i>	Southern Educ Communications Assn	Ford Foundation
<i>Royal Heritage</i>	WNET/New York/ BBC	SPC/ International Flavors/ Fragrances, Inc/ Harcourt, Brace & Javonovich
<i>Soundstage</i>	WTTW/Chicago	SPC
<i>World</i>	WGBH/Boston	SPC/ Merrill Trust Fndn/ Ford Fndn/ German Marshall Fund of America/ C. S. Mott Fndn
<i>Que Pasa?</i>	WPBT/Miami	SPC
<i>In Pursuit of Liberty</i>	WNET/New York	SPC
<i>Over Easy</i>	KQED/San Francisco	SPC/ Sun Company
<i>Visions</i>	KCET/Los Angeles	CPB/ Ford Fndn/ Natl Endow for the Arts

EXHIBIT B-2

PBS NATIONAL PROGRAM SERVICE 1997

Program	Producer	Funding Source
<i>Firing Line</i>	PBS/Indep Prodcr	John Olin Fndn
<i>Great Performances</i> Arts/PBS/CPB/Fndns	WNET/New York	Chase Manhattan/Natl Endow
<i>Mobil Masterpiece Theater</i>	WGBH/BBC	Mobil Corporation
<i>Nova</i>	WGBH/Boston	Merck, Prudential, CPB/ PBS
<i>NewsHour with Jim Lehrer</i>	WETA	ADM/New York Life, CPB/ PBS
<i>Washington Week In Review</i>	WETA	Ford Motor Company, PBS
<i>Wall Street Week</i>	Maryland PubTV	Prudential Securities A. G. Edwards/ PBS/ Oppenheimer Funds
<i>Mystery</i>	WGBH/Boston	Mobil Corporation
<i>Nature</i>	WNET/New York	Canon USA/ Ford Fndn/ PBS/ CPB
<i>Mark Russell Comedy</i>	WNED/Buffalo	PBS
<i>Sister Wendy's Story of Painting</i>	WGBH/BBC	Mutual of America/ PBS/ CPB
<i>Full Circle with Michael Palin</i>	PBS/BBC	PBS
<i>The American Experience</i>	WGBH	Sloan Fndn/ Scott's Miracle Grow/ PBS
<i>Live From Lincoln Center</i>	WNET/Lincoln Center	MetLife, PBS Natl Endow/Arts
<i>Voyage of the Mathew</i>	PBS	PBS
<i>American Masters</i>	WNET	
<i>The Merrow Report</i>	South Carolina ETV	Toyota + foundations
<i>The Excellence Files</i>	WNET/New York	Deloitte & Touche

Source: PBS Program Schedule, Sept 1997

EXHIBIT C:

PBS PLUS

The costs of production for the following programs and program series are fully underwritten by sources outside the PBS system. For a one-time-only fee, any and all of these programs are available to PBS member stations. The programs lie outside the regular PBS National Program Service and are supplemental to it.

Across the River	
About Your House with Bob Yapp	
<i>Adam Smith's Money World</i>	MetLife
Alfred I Dupont/Columbia Univ Awards	
<i>Alive TV</i>	Natl Endow/Arts, MacArthur Fndn, Jerome Fndn
Anyplace Wild	
Beyond Wall Street: The Art of Investing	
Biodiversity	
Birdwatch with Don & Lillian Stokes	
Boatworks	
<i>Charlie Rose</i>	USA Network + Small Foundations
Classical Visions	
Crisis in the Keys	
<i>Great Masters with Charlie Rose</i>	
Vermeer	Rosalind P. Walter Fndn
Picasso	Marie Josee & Henry Kravis
Cezanne	Steve Wynn
Healthweek	
Hide and Seek	
Historic Pennsylvania	
Hometime	
House of Girls	Porter-Cable Power Tools
In the Mix	
In the Prime	
Jackie Mason and Raoul Felder:	
Crossing the Line	
Jacques Pepin's Cooking Techniques	
Cookware, and Near East Foods	Cambria Wines and Vineyards, Anolon
Katie and Orbie	
Last of the One Room Schools	
Life on the Internet	
Listening at the Lucheonette	
M&M Smith: For Posterity's Sake	
MacDowell: An American Artist Colony	
Mi Puerto Rico	
Motorweek XVII	
National Geography Bee	

New Yankee Workshop	Thompson's MinWax, Delta Woodworking Tools, Porter-Cable
Newton's Apple	Power Tools
None of the Above	3M Company
On Tour	
Only in America	
Pass It On: The Mitchell/Ruff Legacy	
Peacemaker	
Pepper's Powwow	
Perspectives: The Newsweekly of Religion	
Pins and Noodles	
Plaza Sesamo	
Raising Your Dog with the Monks of New Skete	
Sacrifice Fly	
Science of Sports: A Newton's Apple Anniversary	
Sex and Other Matters of Life and Death	
Soap Box Derby: An American Classic (1997)	
Taste of Louisiana with Chef John Folse	
Technopolitics	
Theodore Tugboat	
Think Tank	
This Old House	BankBoston, Nees Company, and Osran-Sylvania
To the Contrary	
Tony Brown's Journal	Pepsicola Company
Tots TV	
Trial by Television	
United States of Poetry	
Utah: Struggle for Statehood	
Victory Garden	
Voices from the Village	
White Eagle: How Sweet the Sound	
Woodwright's Shop	State Farm Insurance
A World Transformed	

EXHIBIT D:

STATION INDEPENDENCE PROJECT

To assist its participating stations in their periodic "pledge drives" for new members, PBS/SIP offers a roster of special programs acquired or produced for the specific purpose of recruiting audiences during these periods. Those stations that have paid the one-time PBS fee may choose among the following roster which is updated each year -- though many of the shows, whose rights permit it, are repeated each year.

The Aging Parent: Planning for the Future
All Time Legends of Country Music
Andre Reiu: The Vienna I Love
The Backyard Birdwatcher
Barney Live
Benny Goodman's Greatest Hits
The Best of Bobbie Jones Gospel
The Best of Red Green (comedy)
Birds of the Backyard
Body, Mind and Soul
Brass Theater: The Canadian Brass
Caesar's Writers
A Carnegie Hall Concert
Carol King: A New Colour in the Tapestry
Three Tenors 1996: Carreras, Domingo and Pavarotti
The Chieftans in Concert
Chocolate Dreams: A Great Chef's Special
A Christmas Special: Tommy Makem
A Ciao Italia Concert
Colm Wilkinson Sings Les Mis: Phantom, etc.
A Conversation with Captain Peacock/Mr Slocum/Thomas Moore
Country Music: The Best of Austin City Limits
Country Music Legends
The Creation of the Universe
Danny Boy: In Sunshine and in Shadow
D-Day Remembered: A Musical Tribute from the QE2
Danny Kaye: A Legacy of Laughter
Dead Ahead: The Grateful Dead in Concert
Deeprak Chopra
Dr. Joyce Brothers
Elvis '56
Elmo Saves Christmas
Englebert Humperdinck: Love Unchained
Evening With Harry Belafonte and Friends
Evening with Patti LuPone
Feeling Good: Life After Stress
A Flight in Time: Story of the Memphis Belle
Frank Sinatra: Concert for the Americas
Frank Sinatra: The Main Event
Frank Yanko: The Polka King

From Lawrence Welk to America With Love
Garden Birds
George Winston: Seasons in Concert
Glenn Miller: America's Musical Hero
Glenn Miller: Greatest Hits No. 1
Glenn Miller: Greatest Hits No. 2
The Grateful Dead: Anthem to Beauty
Graham Kerr: A Tale of Three Chickens
Grand Night for Singing
Great American Inns
Great Moments in Opera
Gregorian Chants: Song of the Spirit
Guy Lombardo: and His Royal Canadians
Hats Off To Minnie: American Hero Minnie Pearl
Heart to Heart: Heart Disease
Helmut Lotti
Hot Off The Grill: The Ultimate Guide to Yearound Grilling
Hume Cronyn and Jessica Tandy: An African Love Story
Humor Your Stress
In Julia's Kitchen: Julia Child
In Search of Angels
The Incomparable Nat King Cole
Israel Philharmonic Orchestra: A 60th Anniversary Gala
Jackie Mason: Look Who's Laughing
Jacques Pepin
A Jerry Baker Gardening Special
John Bradshaw: On Family Secrets
John Inman In America
John Tesch: The Avalon Concert
John Tesch: Live at Redrock
The Joy of Stress
Katherine Hepburn: All About Me
Kathie Lee Gifford: Lullabies for Little Ones
Keep America Singing: Barber Shop Quartets
Keeping Up Appearances: A British Comedy
The Kennedy Center 25th Anniversary Celebration
Kidsong: A Holiday Special
Kitaro — An Enchanted Evening
Klondike and Snow: A Tale of Two Polar Bears
A Laugh a Tear a Mitzva
Lawns and Gardens With Jerry Baker
Lawrence Welk: A Family Christmas
Lawrence Welk: Then and Now
Linda Ronstadt: Cancions de mi Padre
Live Your Life's Music with Mary K. Solikowski
The Loons On Golden Pond
Making Money with the Beardstown Ladies
Marvin Hamlisch and the Pittsburgh Pops
May the Road Rise to Meet You: A Celebration of the Irish in America
Mary Chapin Carpenter: In the Spotlight Special
The Metropolitan Opera Presents: James Levine 25th Anniversary Special
Midlife Survival Guide
More Straight Talk On Menopause
Mozart by the Masters

Nature's Serenade
The New Reformation Dixieland Band
Nova: The Miracle of Life
Out of Ireland
A Passion for the Possible with Jean Houston
Pavarotti: On Miami Beach
Penelope Hobhouse: On Roses and Color in the Garden
Perry Como's Irish Christmas
Peter, Paul and Mary: 25th Anniversary Concert
Peter, Paul and Mary: Holiday Concert
Peter, Paul and Mary: Lifeline
Peter, Paul and Mommie Too
Placido Domingo: Covent Garden Gala
Polar Bear Alert
Red Green Live
Remembering When: (Americana nostalgia)
Riverdance
Save The Pandas
Seven Habits of Highly Effective People
The Seven Spiritual Laws of Success with Deepak Chopra
The Sewing With Nancy Special for Kids
Sister Wendy: Pains of Glass
Smart Money:
Speaking With Your Angels: A Guide
Stevie Ray Vaughn: A Retrospective
Stevie Ray Vaughn: A Tribute
The Story of Lassie
Straight Talk on Menopause
Swing Alive (from the Hollywood Palladium)
Tex Beneke and His Orchestra: Music in the Miller Mood
That's Entertainment I
That's Entertainment II
The 3 Sopranos
This Old Back: (back ailments)
TVTV at the Superbowl
Victor Borge: Then and Now
Voices in Harmony: More "Keep America Singing"
The Way of the Wizard
Wild Life Symphony
William Mitchell: The Man Who Would Not Be Defeated
The Women of Country Music
Woof! Woof!: Dog Training
The Writing Coach with Paula Lawrence

DUE TO ITS BULK

EXHIBIT E

TO THE TESTIMONY OF JAMES DAY

(AMERICAN PROGRAM SERVICE - SUMMER

1997 PROGRAM CATALOG & NEW

PROGRAM SUPPLEMENT)

APPEARS AS

ASCAP EXHIBIT 335

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of)
Adjustment of the Rates for the) Docket No. 96-6 CARP NCBRA
Noncommercial Educational Broadcasting)
Compulsory License)

**WRITTEN TESTIMONY OF JAMES LEDBETTER
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS**

Background and Qualification

White & Case, counsel for the American Society of Composers, Authors and Publishers ("ASCAP"), has asked me to provide this arbitration panel with an analysis of public television and radio as both have evolved since 1978. Among other things, I have been asked to discuss the financial development of both public radio and television and their comparability to commercial enterprise in television and radio.

My qualifications to perform this study are as follows:

As a professional journalist, I have covered print and broadcast media every week continuously since 1989. Currently, I write a weekly media criticism column for *The Village Voice*, where I have worked as a staff writer since 1990. I have been researching and writing about American public broadcasting since 1991, and am the author of *Made Possible By...: The Death of Public Broadcasting in the United States*, which will be published in November 1997 by Verso Books. My writing about media and politics has also been published in *The Washington Post*, *Newsday*, *Rolling Stone*, *The Nation*, *The Washington Monthly*, and many other periodicals. A copy of my resume is attached to the end of my report.

I declare under penalty of perjury that the attached report is true and correct to the best of my knowledge and belief.

Dated: Sept. 28, 1997

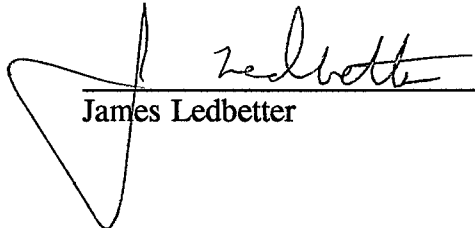

James Ledbetter

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Introduction

As the federally-funded system of American public broadcasting enters its fourth decade, it is a vastly changed enterprise from what it was ten or twenty years ago. No longer a mere alternative or adjunct to commercial television, American public television has become a commercial system of its own, generating billions of dollars per year in revenues and creating ancillary businesses that are mini-industries, some as large as the entire public broadcasting universe was two decades ago. Similarly, the growth of public radio has been nothing short of explosive; in addition to National Public Radio (NPR), the system now incorporates "secondary" programming providers which are at least as large today as NPR was in the late 1970s. This testimony seeks to delineate the tremendous expansion of the public television and radio world between 1978—when the last license fee between public broadcasting entities and ASCAP was set by the Copyright Royalty Tribunal—and the present, and to discuss the effects that growth has had on the programming and mission of public television.

Overall Income and Expenditures

In 1978, the total income for the American public broadcasting system—including both public television and radio—was \$552,325,000. Broken

down by component sources, this funding came from the following, in descending order of magnitude:

State government:	31.4 %
Federal government:	29.1 %
Auctions:	13.6 %
Business/industry:	8.9 %
Local government:	8.0 %
Other:	5.8 %
Foundation:	3.1 % ^{1/}

In 1978, the world of American public television—barely a decade old—was still recognizable as the product of a system of educational broadcasting. Nearly 70 percent of its funding came from the local, state, and federal government, because so much of its mission was directed by an educational mandate. (By statute, CPB may not spend more than 5 percent of federal allocations on administration and overhead expenses; CPB also spends a roughly comparable amount on "system support.")^{2/}

^{1/} These figures come from Marilyn Lashley's *Public Television: Panacea, Pork Barrel, or Public Trust?* (Greenwood Press, 1992).

^{2/} See *Frequently Asked Questions About Public Broadcasting 1997* (Washington, DC: Corporation for Public Broadcasting), p. 8. In fiscal year 1997, for example, 6 percent of the CPB budget, or \$13.0 million, was spent on "system support."

In the subsequent two decades, the public broadcasting world exploded: total income and expenditures now approach \$2 billion annually, more than triple what they were in 1978. Broken down into component sources, this funding came from the following sources, in descending order of magnitude:

Subscribers:	22.2 %
State government:	16.7 %
Business:	15.3 %
Federal government (CPB):	14.9 %
Public universities:	8.4 %
Foundations	5.7 %
Local government:	3 %
Federal government Other grants and contracts:	2.7 %
Private universities:	1.4 %
Other public colleges:	1.1 %
Auction participants:	1.1 %
All other sources:	7.4% ^{3/}

^{3/} These figures are contained in *Frequently Asked Questions About Public Broadcasting 1997* (Washington, DC: Corporation for Public Broadcasting), p. 7. It is vital to understand that these 1995 figures do not include so-called "excludable income" or "entrepreneurial income." According to CPB, the 1995 income from those areas totalled \$105 million (\$89.552 million from public television and \$15.27 million from public radio).
(continued...)

As is apparent from the comparison, the government funding of public broadcasting has been cut by more than 50 percent over the last twenty years, replaced in large part by private funds. Certainly one of the most dramatic shifts in the last twenty years has been the growth in public television "membership." In 1977, an estimated 2.7 million individuals and families donated money to public television and radio, contributing \$50 million to the system.^{4/} Today, PBS claims 97.5 million weekly viewers,^{5/} a viewership that is second only to the Big Three commercial networks. Of those, there are nearly five million individuals contributing to public television (and another 1.8 million to public radio), bringing in about \$418 million annually.^{6/} Obviously, both the number of individuals and the average amount they donate have skyrocketed over the last two decades.

^{3/}(...continued)

The range of items for which income is "excluded" illustrates the ways in which budgets are being augmented, including — (1) production, taping, (2) telecast, teleconferencing, (3) studio, equipment, tower, (4) sales of program rights, (5) public performances, (6) sales, rent, transcripts and records, (7) profit subsidiaries and non-profit subsidiaries and (8) licensing fees and revenues. (Source: *Public Broadcasting Revenue Fiscal Year 1995*, Corporation for Public Broadcasting, 1996, p. 3).

^{4/} *A Public Trust: The Landmark Report of the Carnegie Commission on the Future of Public Broadcasting* (New York: Bantam Books, 1979), p. 111.

^{5/} 1996 Annual Report (Alexandria, VA: PBS, 1997).

^{6/} *Frequently Asked Questions About Public Broadcasting*, op cit, pp. 7-9. The most dramatic growth in "membership" income has been in public radio. In 1975, public radio took in \$3.524 million in membership income (*Current*, September 11, 1995, p. 8); in 1995, it took in \$113.92 million (*Frequently Asked Questions*, p. 9), an increase of more than 3000 percent.

In order to get so many viewers to open their checkbooks, public television's mission has changed from an essentially educational, noncommercial model in the 1970s to an entertainment, audience-seeking model. Particularly during pledge drives, individual stations have a great incentive to air programs that are proven winners (as opposed, for example, to local community affairs or programming that serves niche audiences, both of which tend to be shunted aside during pledge drives because they do not garner sufficient donations). In essence, the increasing reliance on "member dollars" reproduces a version of the quest for ratings that commercial stations engage in.

Especially over the last ten years, many critics have argued that the quest to reach and maintain paying viewers has eroded the educational goals of public television and forced it to offer material that is no different from that available on commercial and cable television. During the 1980s and early 1990s, for example, the fastest growing show on public television was *The Lawrence Welk Show*, shown in reruns, and now broadcast on a majority of public television stations. Before authorizing the 1988 public broadcasting bill, Congress, having collected testimony from dozens of station and program managers, voiced its concern about public television's programming drift. "Some public television stations increasingly are turning away from traditional public, educational or informational programming and broadcasting [instead] programs which had originally appeared on commercial television years ago, such as *Disney*, *The Avengers*, *Lassie*, *Ozzie and Harriet*, and *Star*

Trek." Recognizing that such vital fare might be better suited to commercial cable channels, the Congressional committee said it was "concerned that public broadcasting, in an effort to secure alternative financing and to increase ratings and viewership, is sacrificing its identity and uniqueness."^{7/}

As part of public broadcasting's explosive growth, the system is now competitive with commercial television in many of its production fees. In the 1970s, one of the reasons that Mobil Oil, to use one prominent example, was attracted to public television underwriting was because the programming was so cheap to sponsor. Former Mobil vice president for public affairs Herb Schmertz has written that when WGBH first contacted him about underwriting *The Forsyte Saga*, he had never watched any of it, but he was attracted by the prospect of being able to purchase 39 hours of television at the price of \$390,000 (or \$10,000 per hour).^{8/}

It is now quite common for PBS and related public television entities to spend more than \$1 million acquiring or developing a single program. In 1994, for example, CPB and PBS spent \$1.5 million to develop 22 episodes of a game show called *Think Twice*, even though only four episodes were ever distributed on the PBS

^{7/} These comments are in the legislative history for the 1988 Public Telecommunications Act.

^{8/} Schmertz, *Goodbye to the Low Profile: The Art of Creative Confrontation* (Boston: Little, Brown and Company, 1986), p. 222.

national schedule.^{9/} Similarly, PBS paid more than \$1 million to acquire the rebroadcast rights to the canceled NBC series *I'll Fly Away*. Alvin Perlmutter, the longtime public television veteran, today receives more than \$1 million annually from WNET to produce the weekly *Adam Smith's Money World*. Public television documentaries funded through WGBH are budgeted at between \$500,000 and \$1,000,000 an hour, as opposed to \$150,000 per hour on such competitors as the Arts & Entertainment network.^{10/}

How Much is spent on Programming?

Such examples, while illustrative of the commercial-level funds that public television is willing to spend even on unsuccessful programming, do not answer the question of how much money public television spends overall on programming. Because the public television system is so decentralized and complex, a precise figure is hard to come by. In order to generate a reliable estimate, one must first understand how American public television is structured.

^{9/} "New Quiz Show Out of Schedule Come January," *Current*, November 14, 1994, p. 11. Programming is not the only area where public broadcasting entities spend large amounts of money. The CPB, for example, uses the most prestigious—and expensive—firms in the nation for its professional services. Its fiscal year 1995 expenses include more than \$200,000 to the financial firm Lehman Brothers, more than \$123,000 to the law firm Covington & Burling, more than \$86,000 to the law firm of Mudge, Rose, Guthrie, Alexander & Ferdon, and \$56,700 to the accounting giant KPMG Peat Marwick.

^{10/} Comparative figures cited in "WGBH emerges from 'Globe' spin cycle," *Current*, July 7, 1997, p. 10.

When public television first began receiving federal funds in the late 1960s, the funding for nationally provided programming was centralized in a few governmental and quasi-governmental entities; one of those entities, the Corporation for Public Broadcasting, also provided grants to stations for the purposes of building transmitters and other capital projects unrelated to programming. Thus, in 1972, stations received about 12 percent of CPB funds in the form of Community Service Grants (CSGs), while the national entities CPB and PBS received a combined total of 76 percent of national funding for program production and distribution.

A fundamental shift—indeed a reversal—in the method of funding public broadcasting programming occurred in 1974. In large part responding to the pressure to decentralize exerted by the Nixon White House, the public broadcasting system moved the bulk of its programming funding away from large, Washington-centered organizations—such as the Corporation for Public Broadcasting (CPB) and the Public Broadcasting Service (PBS)—and toward the individual stations themselves. The funding of public radio was not shifted as severely because National Public Radio (NPR), which began broadcasting in 1971, produces programs in addition to distributing them, and thus continued to receive substantial programming funds directly from Washington. Nonetheless, by the time the public broadcasting license fee for use of ASCAP's repertoire was set by the Copyright Royalty Tribunal in 1978, the funding pie for both public radio and television was being sliced dramatically in favor of local stations.

That situation still prevails today. For fiscal year 1997, the total budget for CPB was \$260 million, of which approximately \$170.7 million—or 65.65 percent—went directly to affiliated stations in the form of Community Service Grants (Radio CSGs \$40.5 million, TV CSGs \$130.2 million) and \$60.7 million—or 23.3 percent—in “programming support” (\$17.3 million for radio programming, and \$43.4 million for television programming).^{11/} Clearly, however, since CPB directly funds only a tiny portion of the offerings on public television, the true figure for programming expenditures is many times higher. The 1996 PBS annual report notes that the “1,936 hours of first-run programs distributed by PBS’s National Program Service in Fiscal 1996” cost an estimated \$291.6 million.

The overall, systemwide funding of public television programming, however, is much larger than these amounts would indicate. A large percentage of programming distributed through PBS is no longer paid for by the central organizations of PBS or CPB. It is paid for by the public television stations themselves. The programming burden is not shared equally among stations: although there are more than 340 television stations nationwide affiliated with PBS, the overwhelming majority of them produce no programming that is distributed throughout the

^{11/} These figures come from *Frequently Asked Questions About Public Broadcasting 1997* (Washington, DC: Corporation for Public Broadcasting, 1997), p. 8.

system.^{12/} Instead, a handful of large stations throughout the system—such as WGBH (Boston), WETA (Washington, DC), WNET (New York/New Jersey), KCET (Los Angeles)— provide a majority of hours that are distributed nationally.

One station alone, for example, WGBH, is responsible for the regular systemwide distribution of such PBS staples as *The American Experience*, *Frontline*, *Mobil Masterpiece Theatre*, *Mystery!*, *NOVA*, and *This Old House*, as well as several others. This indicates a system tilted in favor of the stations. As one marketing businessman who specializes in selling public television time to underwriters put it: "There are a few things producers have to realize about the process by which public television does business. The individual station is where the real authority lies ... though three stations in particular wield far more power than the others: WGBH, WNET in New York and WETA in Washington. PBS itself controls nothing. PBS does present itself as a purchaser of programming, and it is an important one. But that is because Congress funds it through the Corporation for Public Broadcasting. That money is disbursed by PBS to the stations, which, in turn, return some of that money to PBS to act as one source of acquired programming."^{13/}

^{12/} According to the 1996 PBS annual report, 304 of the 347 stations produced or presented no programs for the national program service in fiscal year 1996.

^{13/} Keith Thompson, President of Public Broadcast Marketing, quoted in "Babes in Adland," by Neal Winstock, *TV World*, September 1994. p. 13.

To get a clearer picture, then, of how much money the public television system spends on program production, one must go beyond the programming figures offered by PBS and CPB and look at the expenditures of the stations themselves. The top ten stations (measured by how many hours of programming they provide to the national system),^{14/} have a collective budget of approximately \$489 million. Of that, their collective programming budget is just below \$300 million^{15/}—or more than six times the figure that CPB says it spends on television programming.

That figure, however, only takes into consideration the programming that is distributed nationwide through PBS. What the viewer sees on public television at any given moment may well come from a number of different sources: it may be locally produced by the station; it may have been produced by an independent operator (such as the Children's Television Workshop); it may come from an outside underwriter (such as General Electric, which offers *The McLaughlin Group* to public

^{14/} According to *Quality Time? The Report of the Twentieth Century Task Force on the Future of Public Television*, the top ten programming-providing stations are: KCET-Los Angeles; KQED-San Francisco; WMPT-Maryland; WBGH-Boston; KTCA/KTCI-St. Paul; KCPT-Kansas City; WNET-New York; WHYY-Philadelphia; WQED-Pittsburgh; and WETA-Washington, DC.

^{15/} This figure is derived from adding the television programming and production figures in each of the ten stations' annual reports. In each case, the most recently available statistics were used as of mid-August 1997; depending on the station, those may be 1996, fiscal year 1996, or 1997 figures.

TV stations for free); or it may have been purchased from a program service other than PBS.^{16/}

In 1991, the Corporation for Public Broadcasting hired the Boston Consulting Group (BCG) to study, among other things, the complex funding of public television.^{17/} Using figures from 1989, the BCG determined that member stations spent \$467 million on program production and acquisition.^{18/} Even using conservative estimates, the overall programming budgets for public television's 347 stations today is almost certainly in excess of \$1 billion—which rivals the programming budget for the commercial networks.

A Look at Three Stations

1. WNET—New York/New Jersey

Although WNET has not been operating as a noncommercial station as long as some others in the system—it began its current life as WNDT in 1961—its location in the New York metropolitan area has helped it to become one of the largest stations, arguably the flagship of the American public television fleet. In 1995-96,

^{16/} The most notable rival is the Boston-based American Program Service (APS), a service that distributes on a per-program-basis such public TV staples as *Nightly Business Report* and a plethora of British sitcoms. APS is discussed in greater detail below.

^{17/} The final product was released as *Strategies for Public Television in a Multi-channel Environment* (Washington, DC: Corporation for Public Broadcasting, 1991).

^{18/} Ibid., "PTV Costs and Revenues By Function" section, p. 7.

WNET had an operating budget of over \$100 million, making it one of the largest charitable organizations in the New York area.

WNET spends \$55 million annually to produce programming for national distribution via PBS. This includes *Great Performances*, *American Masters*, *Nature*, *Adam Smith's Money World*, *Live from Lincoln Center*, and the nightly *Charlie Rose Show*. (That \$55 million production figure is not included in the approximately \$240 million that PBS reports spending on programming.) Collectively, these programs are watched by tens of millions of Americans, meaning that this single station operates like a mini-network.

WNET's resources and expenditures also resemble those of a big-time commercial broadcaster. WNET has access to substantial resources: for example, the building that WNET owns on West 58th Street in Manhattan is worth nearly \$37 million, and the television equipment it owns is worth nearly \$30 million.^{19/} In 1995-96, WNET spent upwards of \$1.5 million per year for telemarketing services, nearly \$750,000 for advertising services, and nearly \$600,000 for "membership consultants."^{20/} Many of WNET's employees and allied producers are also generously compensated. The station's director of science programming makes more than

^{19/} These figures come from the WNET's 1995-96 financial report Form 990 (Page 3, Part IV, line 57: depreciable assets), on file with the State of New York, Office of the Attorney General, Charities Bureau.

^{20/} Ibid. According to one trade publication article, WNET actually spent \$1 million on its advertising in 1996, primarily on outdoor spots that ran on trains and buses. "Campaign goal: remind viewers they can relax with public TV," *Current*, February 12, 1996, page 6.

\$300,000 per year, and both the station's president and chief financial officer receive over \$200,000 per year in compensation.

Moreover, WNET has turned some of its seemingly marginal assets into genuine money-makers: in 1995-96, the station made almost \$157,000 from the sale of its mailing lists, up from \$8,500 in 1991-92. The station's impressive production studios no longer produce a significant amount of local programming; however, they have in recent years been rented out to commercial broadcasters, including *The Montel Williams Show*. In 1995-96, the station took in more than \$266,000 in renting its facilities for teleconferences. And although public television stations continue to maintain that they do not broadcast advertisements, many sell advertising space in their members' program guides; in 1996, WNET took in \$296,495 in advertising revenue.^{21/}

What makes WNET most extraordinary is its ability to raise sums of money not normally associated with educational broadcasting. In a single March 1996 pledge drive, for example, WNET raised more than \$2.8 million;^{22/} that single fundraising take represents more than one-third of the average PBS licensee's budget.^{23/} Because of the tremendous wealth concentrated in the New York metro-

^{21/} Ibid., p. 6.

^{22/} "'Les Mis' sets station records for March pledge," *Current*, March 25, 1996. p.4.

^{23/} According to the 1996 PBS annual report, the average licensee's budget is \$7,530,455.

politan area, underwriters are willing to spend fortunes to associate themselves with WNET's cultural offerings; in 1997, Chase Manhattan pledged \$4.5 million to be the sole corporate sponsor for three years of *Great Performances*.^{24/} Beginning in 1992, WNET announced The Campaign for Thirteen, an endowment that would give the station "the resources to develop new programming for the future, undertake bold educational initiatives, and continue the role as the station that sets the pace for American public television."^{25/} The goal for the endowment was initially announced as \$65 million; in April 1997, WNET board chairman Henry Kravis announced that the station had raised \$70 million, a sum deemed "unprecedented" in public television for a single station.^{26/} Indeed, \$70 million is larger than the entire annual budget of most commercial television stations. In this capacity, WNET has recently become a major institutional investor. As of mid-1995, WNET held some \$11.4 million in bond funds. As of mid-1996, however, WNET's investments totaled more than \$27.2 million, distributed among a dozen mutual funds, including global hedge funds and emerging country debt funds.

^{24/} "Chase Backs PBS Performances," *Media Week*, August 4, 1997.

^{25/} From WNET annual report, 1995-96, page 3.

^{26/} "'Unprecedented' \$70-Million Endowment for WNET N.Y.C.," *Public Broadcasting Report*, vol 19 no 9, May 2, 1997, p. 2.

2. WGBH-Boston

WGBH is one of the largest and oldest stations in the public broadcasting universe. It employs 1,186 people, including 165 in fundraising, 160 in national programming, 125 in radio, and 40 in local television and production.^{27/} WGBH's annual revenues are \$145 million, the largest of any single station in public broadcasting. Both WGBH's employment figure and its annual revenues are as large as or larger than the vast majority of commercial stations in the United States. By means of comparison, the three major network affiliates in the Boston market—the sixth largest in America—had estimated annual revenues of \$85.4 million (CBS's WBZ-TV), \$118 million (NBC's WHDH-TV), and \$119 million (ABC's WCVB-TV).^{28/} As noted above, WGBH is the largest supplier of programming for national PBS distribution. It is responsible for *The American Experience*, *Frontline*, *Mobil Masterpiece Theatre*, *Mystery!*, *NOVA*, and *This Old House*, and several other nationally distributed programs.

^{27/} *Boston Globe*, June 23, 1997.

^{28/} The data here come from *Investing in Television 1997 Market report*, 2nd edition, based on May 1997 ratings (Chantilly, Virginia: BIA Publications, 1997), p. 6. The number of people employed by the commercial stations owned and operated by the Big Three networks in large markets (known as "O&O" stations) and their financial data are proprietary information. However, author interviews with network officials indicate that there are very few O&Os that employ more than 350-400 people. In a confidential interview, a CBS executive told the author that annual revenues of \$145 million make WGBH "extremely competitive" with network O&Os in markets significantly larger than Boston.

WGBH has long been on the cutting edge of converting its name and assets into a business. In the early 1990s, WGBH invested nearly \$1 million in a partnership with Learningsmith stores. Learningsmith sells a variety of material related to public broadcasting: every manner of Sesame Street paraphernalia, Carl Sagan books, a video called My Heart, Your Heart with Jim Lehrer. The first Learningsmith opened in Boston and was directly affiliated with WGBH. The station received a percentage of each sale in the store; in return, Learningsmith was prominently promoted between programs on WGBH. While that affiliation no longer exists, WGBH still owns a four percent share in Learningsmith, which has since expanded to a chain of 50 stores nationwide. Learningsmith has discussed a public stock offering; should the company go public, WGBH stands to make "a lucrative profit."^{29/} WGBH has also stretched the limits of noncommercial television with the dozens of merchandising arrangements for *Arthur*; the wholesale value of Arthur-related products in 1997 is expected to be \$50 million.^{30/}

In 1995, WGBH teamed up with Time Warner in a unique arrangement to turn the popular *This Old House* into profit. For probably the first time in public television history, an arrangement was made for WGBH's *This Old House* to be syndicated to commercial television while it was still being broadcast on public

^{29/} *Boston Globe*, June 24, 1997.

^{30/} "A Star is Licensed: With Arthur, Public TV Stretches Its Commercial Limits," *New York Times*, September 24, 1997, p. D1.

television. This syndication project was spun off from *This Old House* magazine, an every-other-month publication. As of 1996, *This Old House* had a rate base of 300,000, and charged advertisers nearly \$16,000 for a color page of advertising—about the same amount that the *This Old House* program charged for thirty seconds of advertising.^{31/} Telepictures Distribution, a division of Time Warner, handles ad sales for both the program and the magazine. Since *This Old House* has been produced for more than a decade, WGBH is sitting on a goldmine of more than 400 episodes, representing a potential of \$89.6 million in advertising revenues. Given how valuable this program is for WGBH, it is perhaps not surprising that host Norm Abrams received compensation of \$352,397 in 1996.^{32/}

3. KCET-Los Angeles

KCET began broadcasting in 1964, making it one of the West Coast's oldest public television stations. Because it is situated in the Los Angeles market, it has one of the largest audiences of any American television station. Although KCET's

^{31/} "‘This Old House’ goes commercial," *Advertising Age*, January 22, 1996.

^{32/} This figure is disclosed in the Annual Report that WGBH files with the Massachusetts Attorney General, Division of Public Charities. Although lower-level employees—such as technicians, engineers, and support staff—in public broadcasting are sometimes paid at rates less than their counterparts in commercial broadcasting, Mr. Abrams is one of many public broadcasting personalities who are quite handsomely rewarded. In 1996 it was disclosed that WQED president and onetime CPB director Lloyd Kaiser earned \$277,000 per year ("Uproars over exec salaries blow up, then blow over," *Current*, April 22, 1996, p. 1); Bill Kling, president of Minnesota Public Radio, supplemented his \$67,000 salary with a fee of \$291,752 in 1996, for a total of \$358,752 ("Not so nonprofit," *Minneapolis-St. Paul Star-Tribune*, September 22, 1996, p. D1).

budget is approximately half of WNET's and a little more than one-third of WGBH's (*see above*), its salaries are nonetheless quite competitive with those East Coast stalwarts. William Kobin, until recently the part-time president of KCET, received more than \$175,000 in annual compensation, and an executive vice-president received nearly \$200,000.^{33/}

Perhaps because KCET is located near the nation's film capital, it is savvier than most stations in securing its commercial rights and in merchandising itself. For example, KCET holds a 49% interest in a joint venture with Lancit Media "to license the use of the Puzzle Place name and characters for the purpose of various merchandising activities."^{34/} Having created the children's hit *Puzzle Place*, KCET now has grand plans for a new children's program called *The Charlie Horse Music Pizza*, a music program aimed at 2-to-8-year-olds. According to its initial promotional literature, a season's worth of 15-second promotional credits were selling for \$1 million, a rate competitive with the most successful children's programs.^{35/}

On August 30, 1996, KCET entered into an agreement to receive a \$2 million royalty payment from Dimac Direct—a direct marketing firm—in return for

^{33/} From *Financial Statements: Community Television of Southern California*, year ended June 30, 1996.

^{34/} *Ibid.*, p. 10.

^{35/} "The Charlie Horse Music Pizza Underwriting Opportunity," promotional material from KCET and PBS.

Dimac's right to use the KCET name and trademark. The station anticipates receiving additional such payments in every subsequent year until year 2000. KCET and Dimac teamed up to form a direct marketing firm to raise funds for public television stations. KCET owns 40 percent of the company, called KCET/DIMAC Communications; DIMAC owns the rest. Revenues for KCET/DIMAC Communications were expected to be more than \$ 10 million in the first year of operations.^{36/}

Probably the biggest success chapter in the history of KCET's marketing blitz is the development of the Store of Knowledge, a largely mall-based retail outlet that, like WGBH's Learningsmith, features a wealth of products associated with public television. Originally founded by in collaboration with KCET in 1994, the store now has partnerships with 15 stations and maintains more than 30 stores nationwide.^{37/} Partner affiliates generally receive a 1% royalty on local grosses and a share of ownership in local stores. In 1996, KCET became one of several stations in the public television world to offer underwriters the opportunity to deploy 30-second promotions, similar to those on commercial television (see section below).

^{36/} "DIMAC Forms Venture With KCET," *DM News*, July 8, 1996.

^{37/} *Marketing News TM*, January 6, 1997.

Underwriting Becomes Advertising

One of the most dramatic changes in public television over the last twenty years has been the shift in both the form and the prevalence of corporate underwriting. The changes are apparent to anyone who watches public television: whereas in the 1970s underwriters were confined to mere "tombstone" announcements that showed only their names written in plain block letters, today's public television underwriters are given fifteen and thirty-second blocks of time in which to show full-blown promotional spots, in some cases versions of the very advertisements that run on commercial television.

PBS has progressively liberalized the guidelines for underwriters' identification, increasingly eroding public television's status as a noncommercial medium. Consider, for example, the following prohibitions from the 1976 PBS underwriting guidelines:

"Underwriting of a program will not normally be accepted from an organization having a direct and immediate interest in the content of a program. For example, underwriting of a program about the benefits of gardening would not be accepted from a seed company; underwriting of a program about the alleged dangers of sugar substitutes would not be accepted from a sugar manufacturer; and so on....PBS will not accept a program on the history of the computer by a computer manufacturer. The interest is less that the connection will lead to the potential of control of the content of the program (though this danger may indeed be present), but that the program is so self-serving of the interest of the funder that a reasonable public could conclude that the program is on public television principally because of the existence of the funding or that public television is in fact no different than

commercial television, but simply that its advertising of products is more subtle."^{38/}

Today, such prohibitions no longer apply. Beginning in the early 1980s, Congress encouraged public television to experiment with "enhanced underwriting" credits which were a step closer to commercial television's advertisements, and in 1984, the FCC approved a new, liberalized set of underwriting guidelines that allowed for the use of corporate logos and moving images. Not surprisingly, this had a profound effect on companies' desire to use public television as part of their marketing strategies, and therefore the amount of money public television takes in from corporate underwriting. In 1977, public television took in \$38 million in corporate underwriting revenues; by 1995, that figure had more than quintupled, \$215,442,000.^{39/}

Moreover, the corporate underwriters now recognize that public television expenditures are genuine marketing expenses: according to two CPB officials, a noticeable shift in funding patterns took place in the late '80s as private funders stopped giving to public broadcasting out of their charity/philanthropic arms; instead the "donations" to public television came out of the companies' advertising and

^{38/} These guidelines were published by PBS in 1976; a copy can be found in the Corporation for Public Broadcasting files in the Carter Library, Atlanta, Georgia.

^{39/} The 1977 figure comes from *A Public Trust*, op cit, p. 104; the 1995 figure from *Public Broadcasting Revenue Fiscal Year 1995* (Washington. DC: Corporation for Public Broadcasting, 1996), p. 5.

marketing divisions^{40/}. Accordingly, PBS has dropped whatever fears it had expressed about being used as a promotional tool. Almost as if to show that the era of the above-cited guidelines had ended, in 1992, PBS did accept a program on the history of the computer from a computer manufacturer: it was called *The Machine That Changed the World*, and was underwritten with a \$1.9 million grant from computer manufacturer Unisys.

Not surprisingly, then, underwriters seeking to get the maximum message for their expense have leaned on PBS and individual stations to provide them with cutting-edge identification spots that more and more resemble commercial TV spots. Today, the distinction between advertising and "enhanced underwriting" on public television is essentially moot. Most of the largest PBS affiliate stations already allow 30-second underwriting messages (including WNET-New York, KCET-Los Angeles, KQED, San Francisco, WTVS-Detroit, and KRMA-Denver.)^{41/} At KETC in St. Louis, nearly half of the station's entire underwriting income comes from 30-second spots. Keith Thompson, president of Public Broadcast Marketing, estimated in early 1997 that 80 percent of the U.S. population could be reached through 30-second spots on public TV. In mid-1997, fourteen large public TV

^{40/} This observation was made by Jeannie Bunton and S. Young Lee, both of the CPB, in an interview with the author.

^{41/} "The question of length is really settled," by Karen Everheart Bedford, *Current*, February 17, 1997.

stations reportedly signed letters of intent with an underwriting spot sales company which planned to sell local "corporate support announcements" much like ads.^{42/}

One of the reasons public television historically has resisted advertising is that commercialism has long been felt to be incompatible with educational broadcasting. Hence, both PBS and the Federal Communications Commission retain stricter rules for children's programming than in other areas. Despite these restrictions, corporate advertisers have flocked to public television's children's programming in recent years, competing with one another to see who can most creatively circumvent the spirit of these restrictions.

In the fall of 1996, Frito-Lay created a controversy by attempting to promote Cheetos snacks through an insertion of its "Chester Cheetah" character into underwriting segments of the PBS program *Wishbone*; after some outcry, this was abandoned, and in early 1997, PBS announced new guidelines forbidding audio or visual elements that resemble corporate mascots, as well as "credits with [the] main purpose of increasing brand awareness in children."^{43/} Nonetheless, it is hard to imagine what other purpose Chef Boyardee is seeking through its multimillion dollar

^{42/} "Williams starts up rep firm to sell 'CSAs' for local stations," *Current*, July 21, 1997, p. 12. According to this article, some stations charge cost-per-thousand-viewer rates that are competitive with commercial television, while others are able to charge "three or four times" the commercial rate by emphasizing public television's uniqueness and relative lack of on-air clutter.

^{43/} "PBS Board Issues New Restrictions on Kid TV Underwriting," *Public Broadcasting Report*, February 7, 1997.

production grant to both *Barney* and *Puzzle Place*,^{44/} and both Gap Kids and Libby's Juicy Juice prominently display their logos on the Website for WGBH's *Arthur* series.

Although currently PBS does not accept 30-second spots accompanying programs in its national schedule, it is facing increasing pressure—even from public television producers—to do so. Even without accepting advertising spots, PBS now actively engages national corporate sponsors to coordinate spots with programs. In 1996, PBS made a coordinated pitch to advertisers, reportedly offering season-long sponsorship spots on *Barney* for between \$250,000 and \$1.2 million.^{45/} In 1997, a consortium of the major producing stations (WNET, WGBH, KCET and WETA) banded together into the PBS Sponsorship Group, which toured the country to meet with advertising executives offering custom-designed packages in which advertisers could purchase time on a variety of PBS programs. "Welcome to the new PBS," WNET president Bill Baker told the ad execs. "Corporate messages on PBS get more creative every year. You can show products. You can use slogans."^{46/}

Perhaps inevitably, a public discussion has begun to create a full-blown commercial PBS service. In the fall of 1996, former PBS president Lawrence

^{44/} "Chef Boyardee To Underwrite New Seasons of PBS's "Barney and Friends" and "The Puzzle Place," PBS press release, June 23, 1997.

^{45/} Broadcasting & Cable, "PBS puts more effort into selling itself: it sets goal of boosting corporate sponsorship money by \$25 million annually by 2000," August 5, 1995.

^{46/} "Tour aims to correct ad world's notions about PBS," *Current*, May 12, 1997, p. 1.

Grossman announced his proposal, developed with a grant from the Markle Foundation, for a two-nights-a-week commercially supported network. In Grossman's proposal, the second channel, tentatively called P-2, would supplement PBS broadcasts on Friday and Saturday nights (when PBS currently has no mandated programs fed to its affiliates).^{47/} P-2 would be capitalized and part-owned by large corporations (in all likelihood, related companies from the telecommunications industry) and by affiliated public TV stations. It would charge \$10 to \$15 per thousand viewers in the 25-54 age range for 30-second spots; Grossman has estimated that this would require a minimum of seven minutes per hour of advertising, thus guaranteeing the commercial interruption of programs.

There is no guarantee that the Grossman scheme will come to fruition. But even without it, the CPB has estimated that more aggressive underwriting will bring in an additional \$64.7 million annually by the year 2000.^{48/}

"Strategic Business Partnerships"

In the first decade or so of its existence, public television was to a large extent a self-contained entity. Stations did business with the CPB, PBS, National

^{47/} The details of the Grossman proposal are cited in "Two-night commercial net discussed for public TV," by Steve Behrens, *Current*, November 25, 1996.

^{48/} This figure comes from the Lehman Bothers analysis assembled for CPB in 1995 and released as *Common Sense for the Future* (Washington, DC: Corporation for Public Broadcasting, 1995), p. 9. The \$64.7 million additional annual funds includes public radio (\$29.1 million) and public television (\$35.6 million).

Educational Television, and regional networks, and tended to keep their distance from the rest of America's commercial media.

Today, that relationship has changed dramatically. Both PBS and individual public television have embraced the American and international media business, so much so that public television has begun to look like a marketing arm for commercial media companies. (Indeed, there are virtually no major media conglomerates that lack some form of strategic business partnership with public television.)

This multimillion dollar embrace of commercial media has not come about by accident: it is a purposeful, deliberate decision made by public television's leaders. When Ervin Duggan took over the presidency of PBS in February 1994, he announced 16 initiatives he intended to accomplish in his first 120 days; these were known collectively as "Operation Momentum."^{49/} Operation Momentum included a number of multimillion dollar strategic partnerships, including:

- An agreement between PBS and Turner Home Entertainment to market and distribute PBS Home Video. The terms of this deal included an agreement from Turner to match PBS's investment in new programming dollar for dollar up to \$10 million for new titles to be aired on PBS and marketed under the PBS Home Video label. Thus

^{49/} *Taking Stock: A Report on 'The Conversation' Among PBS Member Stations*, PBS booklet, May 25, 1994, p. 6.

Turner—now a division of media giant Time Warner—is seeding its own video distribution business by helping to create programs on public television.

- PBS, KCTS (Seattle), and Buena Vista Television unveiled a joint venture to bring *Bill Nye, The Science Guy* to public television. During weekday afternoons, the program runs on public television stations; on weekends, it runs on commercial television stations, courtesy of Buena Vista, which is a division of Disney-Capital Cities-ABC.
- To produce *PBS Mathline*, PBS secured a \$3.2 million grant from the CTIA Foundation, and \$2 million from AT&T, one of the world's largest telecommunications companies; US West also announced in 1995 that it was hooking up with CPB for a similar project.

The existence of such alliances is largely kept secret from the viewing public, the members of which are no doubt unaware of these commercial relationships. In September 1996, PBS announced an alliance with the energy and communications conglomerate Williams Companies to expand the already existing PBS Business Channel. Williams pledged an infusion of \$20 million "to greatly expand [the Business Channel's] array of business-oriented programming, live seminars,

videoconferences, and other educational resources, including specialized, industry-targeted services."^{50/}

Today, much of the programming being developed by PBS and other public television entities is done in conjunction with private, commercial media firms. This takes the degree of corporate influence and input a step beyond underwriting—where a private company agrees to sponsor previously produced programs—and makes the companies more like executive producers, by picking up all or most of the production costs. One of PBS's best-known successes of the 1990s, Ken Burns's *The Civil War*, was primarily paid for by General Motors.^{51/}

More recently, commercial producers have agreed to pick up the cost of PBS-sponsored series, effectively using public television as one more distributing arm. For example, in November 1995, PBS announced a partnership with Readers Digest Association to produce 20 nature documentaries called *Living Edens* a five-year deal expected to infuse some \$75 million into the PBS program budget.^{52/} The program broker and developer Devillier Donegan Enterprises, which is owned by Disney/Capital Cities/ABC, is coproducing a three-part science series called

^{50/} "PBS and Williams Form Multimedia Venture to Develop On-Demand and Interactive Educational Services for Workplace Desktops," PBS Press release, September 12, 1996.

^{51/} "When Agencies and Clients Produce the TV Programs," *New York Times*, July 8, 1991, p. D6.

^{52/} "First series debuts with 'Digest' backing," *Current*, January 20, 1997, p. 1.

Coming of Age, with PBS, to be aired in 1998.^{53/} All told, Devillier Donegan is scheduled to produce some \$50 million worth of programming for PBS.

Such developments have blurred the lines between what are public television entities and what are commercial media entities, making it impossible for the untrained viewer even to distinguish one from the other. The best example of this confusion is *The NewsHour with Jim Lehrer*, the star of PBS's public affairs programs. The program is produced by the Washington, DC-based MacNeil/Lehrer Productions, which in late 1994 sold two-thirds of itself to Liberty Media Corp., which is a subsidiary of TCI, the country's largest cable provider.

Additional Public Television Programming Providers

While most lay viewers do not distinguish between public television, their local station, and PBS, it is important to remember that PBS is merely one distributor among many in the public television universe (albeit the largest and one of the oldest). The world of public television has added several important components since 1978. One of them, the Minnesota-based Independent Television Service (ITVS), is the result of a legislative mandate. As Congress debated the 1988 reauthorization of public broadcasting's appropriation and authorization, it determined that the system was excessively dominated by a small number of producers and stations, and created a separate system designed for "independent" producers

^{53/} "PBS announces projects with Deviller, Kratts," *Current*, July 7, 1997, p. 6.

i.e., those outside the normal channels of PBS and its largest stations. It was slated to receive \$6 million annually for three years.^{54/}

Another public television program service that now reaches most PBS-affiliated stations is the Boston-based American Program Service (APS), founded in 1980. Unlike PBS, APS is not a membership organization; rather, stations purchase programming from APS on a program-by-program basis. The Summer 1997 APS catalogue offers hundreds of hours of programming to public television stations. The bulk of its programming—including documentaries, crafts, how-to and children's programming—are free to local stations because program costs are picked up by local underwriters and by 800-number merchandise offers linked to the programs. APS refers to this service as "one of the most successful marketing platforms available in the U.S." Nearly all of public television's 350 stations pick up some programming from this exchange. Although most APS programming is purchased after it has been produced by an outside party (often the British Broadcasting Corporation or an American cable channel), in recent years APS has begun some co-production work.

APS is responsible for the wide distribution of a number of programs generally associated with PBS, including Monty Python's Flying Circus and the wealth of British comedies on public television, The Three Tenors, and Nightly

^{54/} James Day, *The Vanishing Vision* (Berkeley: University of California Press, 1995), p. 324.

Business Report, the latter being two of the most-watched programs on all television. Beginning this year for the first time, APS began offering a "fall schedule" of programs, consisting of entire blocks of programs to be run on weekends when there is no PBS nationally scheduled programming; it claims to have signed up 150 public television stations for this material, potentially reaching 80 percent of the American viewing public. APS did not receive any money from CPB in 1996; it is listed, however, in CPB literature as a "principal source of programming."^{55/} APS, which operates as a nonprofit, had a reported \$11.14 million in sales in fiscal year 1994.^{56/}

More recently, a group of smaller PBS-affiliated stations have formed the Program Resources Group (PRG), which have pooled their resources to help distribute programming that PBS does not. Originally founded with 14 members in the summer of 1992, the PRG now has 23 members. PRG, which is run out of the offices of New York's WLIW, organizes group buys of syndicated and imported programs to give its member stations exclusive and unduplicated programming.^{57/}

^{55/} *Frequently Asked Questions about Public Broadcasting*, op cit, p. 4.

^{56/} This figure comes from Dun & Bradstreet; APS, a division of the Eastern Educational Network, is assigned the Dun & Bradstreet number 04-940-8271.

^{57/} Information about PRG comes from the online directory of public broadcasting organizations published by *Current* (www.current.org).

New Revenue Streams

Since 1978, public broadcasting has fundamentally reoriented itself: from a nonprofit, noncommercial model that relied heavily on government funds toward a model that actively seeks nongovernmental (especially non-Federal) sources of revenue. To a great extent this shift can be traced to 1981; the Reagan administration, for both policy and economic reasons, declined to approve increases in CPB appropriations, and in fact demanded--through a veto--that the levels be cut.^{58/} As a consequence, the enabling legislation for public broadcasting that Congress passed in 1981 explicitly directed public broadcasting licensees "to seek and develop new sources of non-Federal revenues, which will be necessary for the long term support of the system as Federal funding is reduced."^{59/} At the same time, Congress created the Temporary Commission an Alternative Financing (TCAF), which allowed ten stations to experiment with "limited advertising," and explored a variety of non-Federal funding methods, including increased individual contributions, facilities leasing, teleconferencing services, commercial use of satellite facilities, and even a national lottery.^{60/} Not all of these methods have proven viable; nonetheless, in 1995, as noted above, public broadcasting's "entrepreneurial income" was

^{58/} This shift is discussed in John Witherspoon and Roselle Kovitz, *The History of Public Broadcasting* (Washington, DC: Current, 1987), pp. 55 ff.

^{59/} Public Broadcasting Amendments Act of 1981, H.R. Rep. No. 97-82, 97th Congress, 1st session, p. 7.

^{60/} *The History of Public Broadcasting*, op cit, pp. 55-6.

more than \$105 million, as compared to zero when the Copyright Royalty Tribunal set the last licensing fee between public broadcasting entities and ASCAP in 1978.

As public television looks to its future, it seeks methods whereby it can squeeze maximum income from already existing operations. Throughout the 1990s, public television officials were chastised by Members of Congress and other critics for failing to tap the full marketing power of its more merchandisable programs (most notably, its children's programs).

As a consequence, PBS has striven to insure that potential ancillary revenues from its programs will not slip through its fingers in the future. Instead, public television, acting like Disney or some similar private media giant, seeks to line up business deals with merchandisers before its news shows ever air. Take, for example, the 1995 debut of the PBS children's show *Puzzle Place*: months before *Puzzle Place* came on the air, PBS had arranged with the national toystore Toys 'R' Us to reserve a certain amount of retail space in all 619 of its stores for *Puzzle Place* merchandise.^{61/} Part of this agreement included PBS getting a cut of the toy merchandise licensed to Fisher Price. CPB estimates that these improved licensing agreements will bring in \$5.2 million annually by the year 2000.^{62/} And public television viewers need not leave their homes to purchase PBS-related material; the

^{61/} *Inside Media*, March 1, 1995.

^{62/} *Common Sense for the Future*, op cit, p. 9.

online ShopPBS Web Store offers 200 products and has 3,500 "visitors" each week.^{63/}

PBS is also making commercial entries into areas wholly outside television production. In 1997, PBS officials announced that they were consulting with Creative Artists Agency, one of Hollywood's largest and most powerful talent agencies, to establish a music label. PBS President Duggan said he was considering the move "so that our viewers and the public can bring home the quality that they associate with our arts and performance programming."^{64/} Similarly, PBS officials have recently announced that they have contracted with a book publishing arm called PBS Books.^{65/} And Mr. Duggan has also announced that the organization will soon be pitching its programs to airlines through a service called PBS Aloft.^{66/}

As discussed in a previous section, public television—now a mature medium—has found itself in possession of thousands of hours of programming that did not exist in 1978, which represents a significant source of actual and potential revenue. Over the last two years, for example, the CPB collected an average of

^{63/} PBS Annual Report, 1996.

^{64/} "CAA: PBS's matchmaker to start record label," *Current*, August 4, 1997, p. 4.

^{65/} See the comment from PBS executive vice-president Robert G. Ottenhoff in "PBS Behind the Lines," *Mediaweek*, September 22, 1997.

^{66/} "PBS boasts doubling of ancillary income," *Current*, July 7, 1997, p. 8.

more than \$3.5 million in royalty revenues,^{67/} primarily from cable companies, which were in relative infancy two decades ago.

PBS has also become an aggressive seller of satellite and teleconferencing services. Through the operation of PBS Enterprises, PBS offers private clients (including *Newsweek* and Bell & Howell) the ability to hold conferences across the country for a fee. Because of the advanced capability offered by digital compression of spectrum space, PBS projects that it can begin receiving an additional \$6.8 million per year by the year 2000.^{68/}

The transformation of public television facilities into for-pay providers of teleconferencing and other corporate communications uses is not limited to the national level. In Grand Rapids, Michigan, for example, station WGVU offers the use of its studio and satellite uplink in return for a donation, a service called "Business Television." The local businesses which use the service—including Fortune 500 companies, none of which the station will disclose—use their time to broadcast meetings, which can then be viewed by those at remote sites. "It's kind of the Cadillac of teleconferencing," boasts assistant manager Chuck Furman.^{69/} Business Television has been around for about six years, and as of 1995, brought in

^{67/} Corporation for Public Broadcasting Annual Report, 1996, p. 54.

^{68/} *Common Sense for the Future*, op cit, p. 9.

^{69/} Furman said this in an interview with the author, January 1995.

approximately \$200,000 a year, about four per cent of the station's annual budget. The service is not made available to community or nonprofit organizations.

Even the managers of public television have expressed qualms about the development of such services. The Lehman Brothers study commissioned by CPB in 1995 noted that "The leasing of any excess capacity...will diminish the ability of public television to serve its fundamental educational mission, and would potentially displace other members of the educational community that utilize the transponder capacity of public broadcasting for distance learning, instructional television, and educational outreach."^{70/}

Overall, public television has nearly doubled the revenue its makes from "entrepreneurial" sources in just five years, from \$46.3 million in 1990 to \$89.6 million in 1995.^{71/} Indeed, in announcing that the campaign to maximize ancillary revenues was on track, PBS president Ervin Duggan said in mid-1997 that PBS was ahead of schedule, and would finish the fiscal year with a projected surplus of \$2.1 million.^{72/} For a meaningful comparison, 1995's revenues of \$89.6 million from

^{70/} *Common Sense for the Future*, op cit, p. 8.

^{71/} Cited in *Public Broadcasting Revenue Fiscal Year 1995* (Washington, DC: Corporation for Public Broadcasting, 1996), p. 7. Public radio's growth in entrepreneurial revenue experienced an even larger growth during the same period, from \$7.96 million to \$15.27 million.

^{72/} "PBS boasts doubling of ancillary income," *Current*, July 7, 1997, p. 8.

entrepreneurial sources alone is larger than the total cost of the PBS national programming service twenty years ago.

Public Radio

In 1978, public radio in America was still largely in its adolescence. Although the history of American noncommercial and "community" radio goes back to the early part of the twentieth century, the system we recognize today as public radio—in which nonprofit stations receive federal funds and some amount of centrally distributed programming, primarily through National Public Radio (NPR)—dates only to 1971. In the spring of that year, NPR began offering the regular weekday news and public affairs program All Things Considered.

Although the public radio system grew dramatically in the 1970s, in 1978 it still consisted of only 217 CPB-affiliated stations (also called NPR member stations).^{73/} The annual budget for NPR in 1978 was \$8.1 million, of which \$5.6 million was spent on programming.^{74/} Total income for the public radio system (all the member stations plus NPR) was approximately \$65.5 million, of which the federal government supplied \$21.5 million. At that time, 34 of the largest 100 metropolitan markets could not receive a public radio signal.^{75/} Although estimates

^{73/} A Public Trust, op cit, p. 190.

^{74/} Ibid.

^{75/} Ibid., p. 192.

vary, between 50 percent and 60 percent of the United States population could receive an NPR station signal as of 1978—dramatically larger than when the system began in 1971, but still considerably short of a truly national service.

Today, the number of NPR member stations is nearly triple what it was in 1978, with more than 550 stations now affiliated with NPR. Virtually the entire population can receive at least one signal from an NPR station, and the service claims a listenership of 17 million Americans per week—rivaling that of the nation's largest commercial radio networks. In 1996, the Corporation for Public Broadcasting disbursed \$17.5 million to hundreds of stations for programming, and \$40.28 million in CSGs to public radio stations—again, nearly triple the amount it spent in 1978.^{76/} The total operating budget for NPR in 1996 was just under \$66 million—more than eight times what it was in 1978.^{77/} If not for a fiscal crisis NPR experienced in 1983—in which it was bailed out only via very favorable loans from the CPB—it is highly likely that the system would have grown even further.

As with public television, the nature of public radio has shifted as the medium reached out to a new, broader audience. In 1978, public radio stations licensed to states or local authorities devoted more than ten percent of their 1978

^{76/} Corporation for Public Broadcasting annual report (Washington, DC: Corporation for Public Broadcasting, 1996), pp. 21 ff.

^{77/} Combined Statement of Activities, year ended September 30, 1996 (Washington, DC: National Public Radio, 1997), p. 3.

schedules to instructional programming. By 1984, local authority stations reported that instructional programming accounted for just 1.5 percent of broadcast hours, while other public radio licensees reported 0.2 percent or less.^{78/}

National Public Radio is now a major media organization, with hundreds of employees and reporters around the globe. Its Washington, D.C. office is worth more than \$38.7 million after depreciation and amortization.^{79/} The office was purchased and equipped with the help of \$34.7 million worth of bonds issued by the District of Columbia.^{80/}

Additional Public Radio Program Providers

Just as public television has over the last two decades spawned a number of services to compete with PBS (see "Additional Public Television Program Providers" section above) so, too, is the public radio universe larger than simply NPR. The oldest continuously existing public radio system in the nation is the group of Pacifica stations. Pacifica consists of six stations operating in five markets (Berkeley, Los Angeles, Houston, New York, and Washington, D.C.). The Pacifica Foundation received \$1.14 million from the CPB in 1996, and just under \$240,000

^{78/} John Witherspoon and Roselle Kovitz, *The History of Public Broadcasting* (Washington, DC: Current, 1987), p. 67.

^{79/} Independent Auditors' Report, National Public Radio, prepared by Deloitte & Touche, December 20, 1996, p. 8.

^{80/} Ibid.

from other federal agencies.^{81/} In addition, approximately 40 stations nationwide are subscribers to Pacifica's news service, and in 1996 Pacifica began offering audio broadcasts over a Worldwide Web service. Although the service is obviously limited by being in only a handful of spots, in those markets the Pacifica stations are often very prominent (notably in Washington, D.C., where WPFW operates at a very powerful 50,000 watts, and at times has been the largest and most listened to black community station in the United States).

As with the larger public television stations detailed above, individual public radio licensees operate as mini-networks within the public radio system. Minnesota Public Radio (MPR) is a chain of 26 stations operating in three states in the northern Midwest. MPR produces no fewer than nine programs for national distribution, including the famous *A Prairie Home Companion*, which boasts more than two million listeners nationwide.^{82/} MPR makes nearly \$2 million annually from licensing fees and royalties, out of a total of \$19.886 million in annual revenues.^{83/} The MPR board completed an \$11 million capital fund-raising campaign in 1996,

^{81/} This information comes from the annual financial report for charitable organizations that Pacifica filed with the New York State Attorney General's office. The other federal agencies are: Department of Energy (\$172,143); National Science Foundation (\$59,070); and the National Endowment for the Arts (\$13,500).

^{82/} *1996 Report to Funders* (St. Paul: Minnesota Public Radio, 1997), p. 15.

^{83/} *Ibid*, p. 18.

allowing MPR to "convert to state-of-the-art, computerized, digital broadcast production studios."^{84/}

A larger and more widely available public radio service is Public Radio International (PRI), which was founded in 1981 as American Public Radio and changed its name in 1994. American Public Radio was originally founded because NPR initially declined to distribute Garrison Keiller's Prairie Home Companion series. Today, PRI is a formidable public radio producer and distributor with worldwide reach. PRI's annual budget in 1996 was more than \$14.5 million^{85/}— meaning that this single secondary radio service today has a budget almost twice as large as what NPR's was in 1978. PRI's best-known program, The World, is a daily news magazine coproduced with WGBH-FM and the BBC, which now airs on more than 100 stations. Because *The World* is underwritten by AT&T, Merck, and other sponsors, stations receive it for free.^{86/}

PRI is also active in cultural programming: by 1985, APR became public radio's leading supplier of cultural programming (especially classical music), offering close to 200 hours per week. In a joint partnership with Minnesota Public Radio, PRI began offering in 1996 a feature called Classical 24, which claims to be

^{84/} Ibid., p. 3/

^{85/} This figure comes from the PRI annual report, fiscal year 1996.

^{86/} "PRI Will Keep *The World* Free to Stations Carrying It as of July 1," *Public Broadcasting Report*, vol. 18 no. 11, May 31, 1996, p. 7.

"public broadcasting's first 24-hour classical music service, offering stations cost-effective, high-quality music programming around the clock."^{87/}

In 1989, PRI premiered *Marketplace*, a daily news program with an emphasis on business news and worldwide reporting. With nearly three million listeners, *Marketplace*, now underwritten by General Electric, is the fourth most-listened-to noncommercial program in the country.^{88/} By 1993, APR surpassed NPR both in the number of affiliate stations and in the hours of programming distributed each week.^{89/} In 1996, PRI received a total of \$700,000 from CPB for support of two programs, *The World* and *Sound and Spirit*.^{90/}

New Radio Revenue Streams

As with public television, the leaders of public radio have recently begun using their assets to generate additional commercial-based revenue. In 1995, public radio stations generated more than \$15 million in "entrepreneurial revenues," almost

^{87/} Ibid.

^{88/} *Frequently Asked Questions About Public Broadcasting*, op cit, p. 12.

^{89/} These facts, while striking, can be somewhat misleading: NPR still supplies a greater percentage of public radio programming actually broadcast. In addition, a station need only purchase one program from PRI in order to be deemed an affiliate. As a balancing statistic, it's worth noting that today approximately 23% of all public radio broadcast hours come from NPR, compared to about 19% from PRI.

^{90/} CPB annual report, 1996, op cit.

double the amount from 1990.^{91/} As with public television, the leasing of studio and broadcasting equipment is proving to be a steady moneymaker, bringing in \$2.6 million in 1995; the sale of program rights and public performance fees also brought in \$2.36 million.^{92/}

Beginning in 1993, public radio stations began running a regular spot for Public Radio MusicSource, a service which offers to find listeners any compact disk in print via an 800-number. Participating stations get a cut of up to 10 percent of the CD price; member stations collectively earned \$300,000 from MusicSource in 1994.^{93/} In fiscal year 1996, MusicSource achieved profitability, with sales of \$3.5 million.^{94/} Philadelphia public radio station WHYY, which originates the NPR program *Fresh Air*, has begun a corresponding experiment called Book Source to sell books of authors interviewed on the program.^{95/}

By far the largest producer of "entrepreneurial" revenue connected to public radio has been the retail catalogue business. A Minnesota-based company called Greenspring, a for-profit affiliate of MPR, is responsible for the *Signals* and

^{91/} *Public Broadcasting Revenue Fiscal Year 1995*, op cit, p. 7.

^{92/} Ibid.

^{93/} This figure was given to *Village Voice* staff writer Thomas Goetz by MusicSource vice-president Rolf Hansen in a 1995 interview.

^{94/} "Book Sales by Public Radio Raise Protests," *New York Times*, August 26, 1996, p. D7.

^{95/} Ibid.

Wireless catalogues, which offer a variety of merchandise--much of it public broadcasting related--through mail orders. In fiscal year 1997, Greenspring had gross sales of \$175.2 million, and net income of \$4.9 million. As a for-profit company, Greenspring is able to compensate its executives at commercial rates; as noted above, William Kling, who is president of both Greenspring and MPR, earned \$358,752 in 1996.^{96/}

NPR's Studio 4A, which calls itself "one of the largest and best equipped recording studios on the East Coast," announced in 1996 that it was available for rent, along with technicians, during unused periods.^{97/} In July 1996, the NPR board approved the launch of NPR Enterprises, a unit to "aggressively seek out revenue-making business ventures." In effect, NPR was beginning to behave like a record label: one example of such a venture was a CD entitled *Performance Today Spirit of '96*, that stations would promote on the air, in return for a percentage of the sales.

Conclusion

November 1997 marks the thirtieth anniversary of the Public Broadcasting Act. When President Johnson signed that legislation into law, he pledged that it

^{96/} "Not so nonprofit," *Minneapolis-St. Paul Star-Tribune*, September 22, 1996, p. D1.

^{97/} "'For rent' sign goes up at NPR's big Studio 4A," *Current*, February 26, 1996, p. 4.

would serve the nation's educational and cultural needs, and that it could even help Americans understand and deal with conflicts across the globe.

Today, there is no consensus among critics about how effectively public broadcasting has met those goals, even though public television still pledges fealty to them. Public television today operates as a multibillion dollar business, seeking in every instance to maximize its revenue streams and exploit its assets for the highest return. With many of the largest stations already running 30-second advertisements, the system may well see a future in which PBS operates a fully commercial service.

Among many leading public broadcasting figures, this full-blown commercialism has been portrayed as a pragmatic response to the cutbacks in government funding—especially on the federal level. Even if one accepts this survival rationale, however, there are inevitable consequences in this transformation. The most obvious and immediate consequence is that public television will fulfill the prophesy it proposed for itself: that is, when legislators see that public television is acting like a business, they will continue to move to cut off government funds. Concomitant with such a move is that, since the system has ceased to behave like a charity, it will lose its long-standing tax-exempt status.

In the end, the calls among Members of Congress for public television to become self-sufficient by relying on private income sources are practically redundant. Public television retains its federal subsidy primarily out of custom and

convenience; acting on its own, public television has already become a completely commercial enterprise.

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Staff Reporter, New York Observer, 1989-1990. Wrote weekly articles on politics and media. Created press column "Off the Record."

Staff Writer, 7 Days, 1988-1989. Covered the 1989 mayoral race for weekly New York City magazine.

Research Director, The Democracy Project, 1987-88. Coordinated research for thinktank, run by Mark Green. Directed research for and edited "Issues '88" booklet, a guide to presidential candidates' positions on 15 key issues. Researched and wrote several articles for publication in Mother Jones, The Nation, New York Times, and other publications.

Speechwriter, Brooklyn District Attorney's office, 1986-1987. Researched and wrote speeches, articles, and testimony for District Attorney Elizabeth Holtzman.

Education: Bachelor of Arts, Yale College, 1986, cum laude. Majored in history, wrote senior thesis on theories of education and the state in the writings of Matthew Arnold and Thomas Hill Green. GPA: 3.2.

Other publications: Author of Made Possible By...: The Death of Public Broadcasting in the United States (Verso Books, Fall 1997), a political history of public television and radio. Co-authored, with Mark Green, Ideas That Work: 60 Solutions for America's Third Century (1988, Democracy Project), a compendium of policy proposals culled from local, state and international sources. Have written numerous freelance articles for The Washington Post, Newsday, The New Republic, The New York Times, The Nation, Vibe, Rolling Stone, GQ, and several other publications.

Awards: Received a Goldsmith Research Award from Harvard's Joan Shorenstein Center for Press, Politics, and Public Policy (1995, for public broadcasting book). Gerald R. Ford Foundation Research Grant (1995, for public broadcasting book). Project Censored Award for coverage of significant neglected news story (1995). Received Yale's John Hersey prize for undergraduate writing (1986).

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, DC 20024

In the Matter of

ADJUSTMENT OF THE RATES FOR
NONCOMMERCIAL EDUCATIONAL
BROADCASTING COMPULSORY
LICENSE

)
) Docket No. 96-6 CARP NCBRA
)
)
)
)

TESTIMONY OF ROBERT UNMACHT
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I am the president of M Street Corporation ("M Street"), a firm specializing in research and publishing concerning radio stations broadcasting in the United States. M Street is located in Nashville, Tennessee. I have been retained by ASCAP to formulate and provide expert opinions as to several facets of the operation of non-commercially licensed radio stations in the United States. In particular, I have been asked to provide an analysis of the operation of radio stations in the United States which operate under non-commercial FCC licenses and (a) currently receive, or are eligible to receive, funding from the Corporation for Public Broadcasting ("CPB") or (b) are affiliated with National Public Radio ("NPR") (collectively, "Public Radio Stations").

Background

2. As for my qualifications to provide such opinions, I have been involved, in one way or another, with the radio broadcast industry since 1974, when I was program director for KNHC, a public radio station in Washington State. I received a business degree from Bellevue Community College in Bellevue, Washington in 1978. Beginning in 1984, I became involved with the M Street Journal, a weekly trade newsletter tracking developments in the operations of radio stations in the United States. In 1990, I helped form M Street, a Washington State corporation, which bought the M Street Journal from its previous owner.

3. Currently, M Street has eight employees, each of whom is charged with monitoring the operation of the over 12,000 commercial and non-commercial radio stations in the United States. As the current president of M Street, I am primarily responsible for (i) supervising the writing and publishing of the weekly M Street Journal, which has a current annual distribution of over 38,000 copies, (ii) supervising the writing and publishing of the M Street Directory, a yearly directory of radio stations with an annual distribution of 4,000 copies, (iii) providing radio station data for a number of other monthly and yearly broadcasting industry publications and (iv) supervising the maintenance of several computer databases which track information on each radio station in the United States in over one hundred categories including size, ownership, location and format.

4. These databases are the result of over a decade of M Street's monitoring of the radio industry. The data contained in them has been gathered from a myriad of sources including the FCC, radio stations themselves, station owners, trade publications, and field representatives, or stringers, associated with M Street who listen to radio broadcasts in their area. The process of maintaining and updating the information in M Street's databases requires that I be in

almost daily contact with our sources of information. In part because of the breadth, depth and accuracy of the information recorded in the databases as reported in M Street's publications, I have increasingly become a sought-after source of general historical and operational information on radio stations and trends in the radio industry.

5. I also spend considerable time consulting with or providing technical support for a number of private clients interested or involved in the radio industry. I recently testified on behalf of ASCAP as an expert witness in the trial of the rate court proceeding entitled, Applications of Salem Media of California, et al. and New England Continental Media, et al., involving approximately 420 commercial radio stations.

Summary of Opinions

6. As set forth more fully herein, it is difficult to speak in absolutes about the diverse group of radio stations that comprise the Public Radio Stations that are to be licensed in this proceeding. That being said, nearly three-quarters of the over 700 Public Radio Stations are sophisticated, well-managed, fully-staffed stations which operate for the most part in Arbitron's 268 rated radio markets in the United States. The stations have generally used a fairly rigid programming formula to carve out niches

within their markets and compete quite successfully with commercial stations and, in some cases, with each other.

7. With a few exceptions discussed below, these public "formula" stations fall into one of two programming categories. Either they play classical, jazz or a variety of contemporary music nearly all of the time, or they play a mix of music and talk -- on weekdays generally airing NPR's Morning Edition during the morning drive time, music during the mid-day, NPR's All Things Considered, Marketplace and other talk shows during the evening drive time and finally music programs, often syndicated, from 7 p.m. through the night. The stations, which generally have multiple marketing and fund-raising employees (or are part of a radio network which does), are able to generate significant business underwriting and listener support revenues through their on-air activities and are the bread and butter of public radio.

The Public Radio Station Database

8. In addition to being based upon my twenty-plus years of experience in the radio industry, my opinions in this testimony have been derived largely from (a) a computer database, described below, which was specially created for this proceeding and (b) certain materials collected at ASCAP Exs. 506-507, 520, 523, 601-622, 711 and 714-719. This

printed material consists largely of news articles reported in Current, a bi-weekly trade magazine produced by public broadcasting stations, and other industry publications, individual stations' financial reports and filings and excerpts of materials published by Public Radio Stations on their individual Internet web pages.

9. As for the database of Public Radio Stations, I created it by first entering the call letters of each of the radio stations listed in CPB's 1996 annual report as having received funds from CPB in 1996. I next added in the call letters of those radio stations which NPR lists as being either NPR-affiliates or non-NPR affiliates having received (or deemed eligible to receive) CPB funds. Because the data in the CPB and the NPR lists did not match, I cross-checked the lists with ASCAP's list of Public Radio Stations. Once duplicate stations were removed from the database, it contained my final list of radio stations which I understand are being licensed in this proceeding. A copy of that list is attached hereto as Appendix A.

10. With the station call letters in place, I then added to the database fields to contain the following substantive information regarding the operations of each of the stations:

- (a) the format, or daily programming, of the station;
- (b) the station's market;
- (c) the call letters of stations affiliated with the station (a number of Public Radio Stations are members of centralized radio networks which have one operating station and several rebroadcast sites);
- (d) whether the station broadcasts live or on feed from an affiliate;
- (e) the station's broadcast frequency;
- (f) whether the station received CPB funding in 1996 (as opposed to merely being qualified to receive funding) and the amount thereof;
- (g) whether the station is an NPR affiliate; and
- (h) whether the station purchases programs from Public Radio International ("PRI"), an independent producer which produces shows such as Marketplace and Prairie Home Companion.

Except as set forth herein, the information in the fields was downloaded from M Street's most recent radio database, using M Street's format and market designations.

Basic Facts About Public Radio Stations

11. Based upon the materials discussed above, there currently appear to be 707 radio stations in the United States that qualify as Public Radio Stations (again, those that receive or are eligible to receive CPB funds or are NPR affiliates). In 1996, 408 of the stations received funds

directly from CPB. An additional 275 stations, largely those that simulcast or relay programming as a part of an area public radio network, shared CPB money with the stations receiving the direct funding. 24 stations were qualified to receive CPB funding but did not. Many of these 24 stations used some NPR programming.

12. 379 of all Public Radio Stations are owned by 97 public radio networks (groups with more than one station in more than one market). The largest of these networks include Minnesota Public Radio (47 stations including booster stations), Wisconsin Public Radio (21 stations), Oregon Public Broadcasting (17 stations), Mississippi Public Broadcasting (6 stations), the Tri-Star Network (6 stations in Ohio, Kentucky and Indiana), Maine Public Broadcasting (6 stations) and the South Dakota Board for Educational Television (8 stations).

13. 614 of all Public Radio Stations are FM stations with a frequency of between 88 and 92 megahertz, the band set aside by the FCC for non-commercial licensees. 93 stations are either FM or AM stations operating as public stations on commercial frequencies.

14. 429 of the 707 total stations are located in an Arbitron rated radio market. 278 are located outside a rated market. (Currently, about half of all commercial stations

operate outside Arbitron markets.) Based on industry sources, Public Radio Stations often carry a reasonably large share of their rated market, as shown at ASCAP Ex. 711. For example, KSJN-FM is a classical station at 99.5mHz in Minneapolis. Before Minnesota Public Radio bought the station, it used to operate as WLOL, a commercial top-40 station. KSJN recently averaged about 2% of the Twin Cities market, which would rank it 13th of 46 stations. KCFR-FM in Denver ranks about 11th out of 47 stations in its market with about a 4% share -- its commercial classical competitor currently ranks 17th. KBHM-FM in Birmingham, Alabama ranks about 12th of 32 stations in its market. WCVE-FM, a news, jazz and classical station in Richmond, Virginia, averages about a 4% share, which would put it 9th of 32 stations. KCEP-FM in Las Vegas traditionally averages between a 3 1/2% to 4% share of its market with a rhythm & blues format, which would rank it 12th out of 34 stations and the top rated urban format station in Las Vegas.

15. According to NPR's data, 551 of the 707 Public Radio Stations air some form of programming provided by NPR and are thus characterized as "NPR affiliates." According to

PRI, an alternate provider of programs funded by CPB, 535 stations air PRI programming and are thus "PRI affiliates."^{1/}

16. There are currently 69 distinct variations of primary formats utilized within the Public Radio Station group including such formats as gospel, country, oldies, rhythm and blues, soft adult contemporary (Lite-FM) and Spanish variety. On a groupwide basis, however, the formats of Public Radio Stations are not that diverse -- approximately two-thirds of all stations limit their programming to one or more of the following six formats: news, jazz, classical, talk, variety and alternative.

The Small, Eclectic Public Radio Station

17. Although difficult to quantify in the data, by my estimate, approximately 66 of the Public Radio Stations are what I would call "eclectic stations," or "mom and pops." The stations are generally low-budget, smaller coverage stations run by numerous volunteers, often students, who generate nearly all of the station's programming. These "mom and pops" include WCHG-AM in Hot Springs, Virginia, which simulcasts country music and mixed music programs with WLVS-FM in Monterey, Virginia and WVMR-FM in Frost, West Virginia. KMHD-

^{1/} Data regarding PRI affiliates comes from a recent website list which may be found at ASCAP Ex. 323.

FM in Portland, Oregon is a typical student-run station, as is WEOS-FM in Geneva, New York. KZMU-FM in Moab, Utah has a total potential audience of approximately 5,600 people.

18. What tends to set these eclectic stations apart from the "formula" Public Radio Station discussed below is the diverse programming created by the stations themselves. As but a few examples, WEOS-FM carries student-created rock programs. KAOS-FM, located outside Olympia, Washington, broadcasts such weekly programs as What's That Smell?, Cycle Babble, Exposing the Apologetic Predator and Stop that Freaking on the Dance Floor! WERU-FM in Blue Hill, Maine broadcasts a wide variety of music programs from a post office address and location simply known as the "Hen House."

The "Day Parting" Formula

19. Again, however, these eclectic stations are a narrow exception to the rule. The majority of all Public Radio Stations (approximately 640) follow one of three fairly rigid and largely successful formulae for gathering listeners and raising revenue: (i) those that day part music and news, (ii) those that air music programs substantially all the time and (iii) those that air news and talk programs substantially all of the time.

20. As stated in my summary of opinions, the largest subset of the "formula" stations (over 360) are distinguished by their split programming, or "day parting," between news and music during the week and music, talk and variety over the weekends. Take for example WETA-FM, one of the public radio stations covering Washington, D.C. and one of the highest rated public stations in the nation. During the week, WETA plays classical music interspersed with NPR reports from 5 a.m. to 3 p.m., All Things Considered (an NPR program) and Marketplace (PRI program) from 3 p.m. to 7 p.m. and classical music throughout the evening and night. On the weekends, it plays a mixture of music and variety shows with a few talk programs such as Car Talk.

21. KUHF-FM in Houston, Texas has a very similar schedule to WETA's, as does KUT-FM in Austin. KCRW-FM, Santa Monica's largest public station, carries the same news line-up except it concentrates on jazz and alternative rock instead of classical. WGBH-FM in Boston is the same except it airs classical in the morning and jazz and blues at night. KPLU-FM in the Seattle market carries jazz in its music day parts. WBEZ-FM in Chicago, WLRN-FM in South Florida and WBFO-FM in Buffalo concentrate on jazz and blues. KERA-FM in Dallas carries World Beat and Alternative music in its music day

parts. WNYC-FM in New York airs classical during the days and over nights, while its sister station, WNYC-AM, airs mostly talk shows -- both carry Prairie Home Companion on weekends. About half of Minnesota Public Radio's stations and Wisconsin Public Radio's stations carry classical mixed with NPR's news programs. KUNM-FM in Albuquerque, which carries NPR news programming, currently describes itself as broadcasting

22 specialty shows playing specific types of music: Gospel, Native American, Local, New Instrumental, Jazz, Classical, Latin, World Beat, Folk, Alternative Rock, Blues, Heavy Metal, Reggae, Salsa, Rap, Children's and American Oldies [and] 45 hours of "Freeform" which includes music from every category in our record library.

22. The day parting formula is applied in smaller markets as well. WMUB-FM in Oxford, Ohio breaks up its jazz programming with Morning Edition and All Things Considered. KPVU-FM, affiliated with Prairie View A&M University in Texas, inserts the same two programs into its gospel, jazz and light rhythm & blues music line-up. Nearly all of Idaho is reached by public stations playing classical, jazz, folk and blues music interspersed with news and variety programs. Listeners of South Dakota's Public Radio Stations hear largely classical during the day and jazz at night. WPSU-FM, covering State College, Pennsylvania, airs almost the same programming as WGBH-FM in Boston (classical/jazz).

23. The use of formula day parting on public radio has not been without criticism from some public radio listeners. There are numerous instances of stations flipping formats as a result of listener protests, as happens occasionally in commercial radio. Indeed, the prevalence of day parting in public radio pre-dates the current rise of the same phenomenon in commercial radio, where it is becoming increasingly more common to hear stations, such as WXRK-FM ("K-Rock") in New York, air several hours of a syndicated news or talk show like Howard Stern's morning show. About 1,000 commercial stations in the U.S. currently day part their broadcasts between news, talk and music.

24. A public radio station has a tremendously wide selection of syndicated programming from which to construct its weekly broadcasts. NPR currently offers its affiliates over thirty programs including All Things Considered, Morning Edition, Weekend Edition, Car Talk, Jazz from Lincoln Center and The Thistle & Shamrock. PRI, which receives funding from CPB and competes with NPR in the United States, offers its affiliates programs such as A Prairie Home Companion, Marketplace, Classical 24 (the most popular over-night classical program), and over twenty other music programs. (A collection of advertisements and articles about NPR's and

PRI's programs are collected at ASCAP Exs. 506 and 507.) I understand that both NPR and PRI charge for their programs based upon affiliates' revenues.

25. In addition to commercial providers, many of the stations themselves offer programming via satellite to other public stations. WGBH-FM currently offers Church of the Sonic Guitar. WWOZ-FM in New Orleans syndicated Sounds of New Orleans last year. Last month, WBEZ-FM in Chicago offered four days of the Chicago Jazz Festival on satellite free of charge. Hearts of Space, a new age music show which claims to be "the most successful new music program in public radio history," has been carried by as many as 275 stations.

The Successful All-Music Stations

26. The other two subsets of the successful "formula" stations move to the two extremes of programming utilized by the day parted station -- either they play news and talk programs substantially all of the time, such as KQED-FM in San Francisco, or they play music programs substantially all of the time. (This is not to say that "talk" stations do not play music -- programs like All Things Considered often offer music as interludes between news segments, as demonstrated in ASCAP Exs. 320 and 321.) About 230 stations fall into the "all-music programs" category. WQED-FM in

Pittsburgh plays classical programs all day, as does KSJN-FM in Minneapolis -- both are the top rated classical stations in their markets. WBGO-FM in Newark, New Jersey, with an audience of 350,000, is jazz and blues all day. KLON-FM in Long Beach, California is an all jazz station which syndicates its programs to public and commercial stations throughout the country. In February of this year, KLON and WBGO ran a pledge drive challenge against each other -- the two stations raised more than \$1 million in ten days. WMOT-FM, "Jazz 89 FM" in Nashville, airs jazz all day as does WBRH-FM in Baton Rouge. (In fact, WMOT was day parted with NPR news until recently.) WXPB-FM in Philadelphia is an Adult Alternative music station aimed at 25 to 54 year-olds.

Marketing on a Day-Parted Station

27. Perhaps the greatest similarity between all three groups of the 640 or so "formula" stations is in their raising of revenues. Leaving aside grants from CPB and local and state funding, these stations have been very successful at raising money from their listeners and businesses in their markets. The stations raise funds through well-organized and publicized membership drives, making on-the-air pleas for listener support during their popular programs. The stations sell station merchandise, such as coffee cups and CD's, and

sponsor local concerts and music festivals. They seek out, and are quite successful at obtaining underwriting by local and national businesses, often having fifty or more program sponsors. (A collection of fundraising materials may be found at ASCAP Exs. 615, 617 and 714.)

28. In addition, in order to facilitate and streamline fundraising, NPR and CPB have commissioned a 300-plus-page underwriting guide, The Public Radio Guide To Business & Corporate Support Success, which may be found at ASCAP Ex. 312. The guide, distributed to NPR Stations essentially walks station membership and marketing employees through the various steps necessary to compete with commercial stations for audience revenue.

Conclusion

29. In that regard, I end by noting that with the increasing sophistication and market penetration of the 640 or so "formula" Public Radio Stations, there has been a parallel rise in their value in the marketplace. Public radio, which I understand grossed over \$500 million in 1995, is big business. WDCU-FM in Washington, D.C., a public station which used to broadcast jazz, was recently sold to C-SPAN for \$13 million. WPLN-FM in Nashville announced this year that it would be building a brand-new \$5 million studio. WFBE-FM in Flint,

Michigan is a public station on a commercial frequency that is being sold to Rainbow Radio for \$6.8 million. WAJC-FM, a former public station in Indianapolis, was sold to Sesquahanna Radio in 1993 before the FCC's revocation of duopoly regulations (which has led to the current explosion in radio consolidation) for \$7,150,000. The Tri-Star Network (6 stations in Ohio, Indiana and Kentucky) is currently seeking FCC approval to spin off three of its stations into a commercial branch of the network, in the expectation those stations branch can generate \$500,000 a year in profits.

30. The potential market value of Public Radio Stations, particularly those 93 stations on commercial frequencies, is also demonstrated by the recent sale of WNYC-FM and WNYC-AM. At the time of the sale, estimates of those stations' commercial value exceeded \$100 million. Ultimately, in 1995, the City of New York sold the two stations, which will remain public stations subject to the same revenue generating restrictions as other public stations, to a public radio foundation for approximately \$24 million. With the consolidation of the commercial radio industry that is still in progress, I would expect to see one or more similar sales of public stations in the next few years.

I hereby certify under penalties of perjury that
the foregoing is true and correct to the best of my
knowledge and belief.

Dated: Nashville, Tennessee
September 29, 1997



Robert Unmacht

APPENDIX A

ALL CPB/NPR Stations

29-Sep-97

408 CPB stations with 275 sisters and 24 NPR/non-CPB stations

\$0 = NPR/non-CPB, \$2 = sisters sharing resources with a CPB station.
Source codes "N" Network, "S" Simulcast, "R" Re-broadcasts

A "+" ahead of an owner name indicates it is group owned

WUSF	Tampa	FL	\$262,189	University of South Florida	Classical/Jazz	
KBRW	Barrow	AK	\$271,518	Silakkuagvik Communications	Variety	
KPLU	Tacoma	WA	\$271,936	Pacific Lutheran University, Inc.	News/Jazz	
WVXU	Cincinnati	OH	\$272,846	+Xavier University	Variety	
WRTI	Philadelphia	PA	\$276,353	+Temple University	Classical/Jazz	
WCPN	Cleveland	OH	\$278,594	Cleveland Public Radio	News/Jazz	
WPKT	Meriden	CT	\$285,099	+CT Educ. Telecomctns Corp.	News/Classical	
KPBS-FM	San Diego	CA	\$289,418	San Diego State University	News-Talk	
KPFA	Berkeley	CA	\$290,713	+Pacifica Foundation	Variety	
WXPB	Philadelphia	PA	\$293,590	+University of Pennsylvania	Alternative/Variety	
WAMC	Albany	NY	\$304,079	+WAMC	News/Classical	
KCFR	Denver	CO	\$310,702	+Public Bcstg of Colorado, Inc.	News/Classical	
WBGO	Newark	NJ	\$316,211	Newark Public Radio, Inc.	Jazz	
WERN	Madison	WI	\$318,899	+State of Wisconsin	News/Classical	
WPLN	Nashville	TN	\$322,647	+Nashville Public Radio	News/Classical	
WNYC	New York	NY	\$329,470	WNYC Broadcasting Foundation	News-Talk	
WJSP-FM	Warm Springs	GA	\$329,831	+GA Public Telecommunications Com	News/Classical	N
WHYY-FM	Philadelphia	PA	\$341,200	WHYY, Inc.	News-Talk	
WKSU-FM	Kent	OH	\$344,395	+Kent State University	News/Classical	
KNOW-FM	St. Paul	MN	\$404,664	+Minnesota Public Radio	News-Talk	
WIPR	San Juan	PR	\$407,370	P. Rico Public Bcstg Corp.	Spanish Variety	
WGBH	Boston	MA	\$417,211	WGBH Educational Foundation	News/Classical/Jazz	
WBAI	New York	NY	\$420,580	+Pacifica Foundation	Variety	
KQED-FM	San Francisco	CA	\$423,673	KQED, Inc.	News-Talk	
WAMU	Washington	DC	\$442,653	American University	News-Talk/Bluegrass	
WHA	Madison	WI	\$446,764	+University of Wisconsin	News-Talk	
KUT	Austin	TX	\$458,670	University of Texas at Austin	News/Classical/Variety	
WETA	Washington	DC	\$477,068	+Greater Wash. Ed. Telecom Assn	Classical/News	
WNYC-FM	New York	NY	\$489,047	WNYC Broadcasting Foundation	News/Classical	
KCRW	Santa Monica	CA	\$617,927	+Santa Monica Community College	Variety	
WBUR-FM	Boston	MA	\$624,507	+Boston University	News-Talk	
WBEZ	Chicago	IL	\$653,409	The WBEZ Alliance, Inc.	News-Talk/Jazz	
KUSC	Los Angeles	CA	\$767,446	+Univ. of Southern California	Classical	
KSJN	Minneapolis	MN	\$1,698,717	+Minnesota Public Radio	Classical	

* Dollar figures relate
stations' 1996 CPB funding

ALL CPB/NPR Stations

29-Sep-97

408 CPB stations with 275 sisters and 24 NPR/non-CPB stations

\$0 = NPR/non-CPB, \$2 = sisters sharing resources with a CPB station.
Source codes "N" Network, "S" Simulcast, "R" Re-broadcasts

A "+" ahead of an owner name indicates it is group owned

KOAC	Corvallis	OR	\$182,068	+State of Oregon	News/Classical/Variety	
WITF-FM	Harrisburg	PA	\$183,250	WITF, Inc.	News/Classical	
WBJC	Baltimore	MD	\$183,784	Community College of Baltimore	Classical	
WOSU-FM	Columbus	OH	\$184,569	+Ohio State University	Classical	
WLRN-FM	Miami	FL	\$184,596	Dade County School Board	News/Jazz/Ethnic	
KOPB-FM	Portland	OR	\$185,963	+State of Oregon	News/Classical	
WFUV	New York	NY	\$187,888	Fordham University Board of Trustees	Folk/News	
WMPN-FM	Jackson	MS	\$188,203	+MS Authority for Educ. TV	News/Classical	
WEVO	Concord	NH	\$189,288	+New Hampshire Public Radio	News/Classical	
WABE	Atlanta	GA	\$191,734	City of Atlanta Board of Education	News/Classical	
KWMU	St. Louis	MO	\$195,308	+University of Missouri	News/Classical/Jazz	
KSJV	Fresno	CA	\$197,273	+Radio Bilingue, Inc.	Spanish Variety	
WQED-FM	Pittsburgh	PA	\$197,429	Metro. Pittsburgh Public Bcstg	Classical	
WIPR-FM	San Juan	PR	\$197,604	P. Rico Public Bcstg Corp.	Spanish Classical	
WUFT-FM	Gainesville	FL	\$199,165	+University of Florida	News/Classical/Jazz	
WKAR-FM	East Lansing	MI	\$201,533	Michigan State University	News/Classical	
WNED	Buffalo	NY	\$201,758	+Western NY Public Bcstg Ass'n	News	
WRTU	San Juan	PR	\$202,394	+University of Puerto Rico	Spanish Variety	
WNYE	New York	NY	\$207,173	City of New York Board of Ed.	Variety	
WCMU-FM	Mount Pleasant	MI	\$207,796	+Central Michigan University	News/Classical/Jazz	
KCUR-FM	Kansas City	MO	\$207,864	+University of Missouri	News-Talk/Jazz	
WMFE-FM	Orlando	FL	\$207,924	Community Communications Inc.	News/Classical	
KJZZ	Phoenix	AZ	\$208,409	Maricopa County Comm. College	News/Talk/Jazz	
KPFK	Los Angeles	CA	\$209,673	+Pacifica Foundation	Variety	
WCLK	Atlanta	GA	\$209,809	Clark Atlanta University	Jazz	
WFCR	Amherst	MA	\$212,496	+University of Massachusetts	News/Classical/Jazz	
WJHU-FM	Baltimore	MD	\$214,836	The Johns Hopkins University	News/Classical/Jazz	
WUOM	Ann Arbor	MI	\$219,281	+University of Michigan	News/Classical	
KLON	Long Beach	CA	\$223,667	Cal. State Univ.-Long Beach	Jazz	
WCAL	Northfield	MN	\$225,951	St. Olaf College	Classical	
WUNC	Chapel Hill	NC	\$227,016	University of NC at Chapel Hill	News/Classical/Jazz	
WDUQ	Pittsburgh	PA	\$227,736	Duquesne University	News/Jazz	
WDET-FM	Detroit	MI	\$230,104	Wayne State University	News/Variety	
WVPN	Charleston	WV	\$235,545	+WV Educ. Bcstg Authority	News/Classical/Jazz	
KANU	Lawrence	KS	\$244,515	University of Kansas	News/Classical/Jazz	
KERA	Dallas	TX	\$244,682	North Texas Public Bcstg, Inc.	News/Talk/Alternative	
KBYU-FM	Provo	UT	\$245,505	Brigham Young University	Classical	
KUOW	Seattle	WA	\$247,631	University of Washington	News/Talk	
WVPR	Windsor	VT	\$248,129	+Vermont Public Radio	Classical	R
KHPR	Honolulu	HI	\$250,580	+Hawaii Public Radio	News/Classical	
KUHF	Houston	TX	\$253,681	University of Houston	News/Classical	
WGUC	Cincinnati	OH	\$260,244	University of Cincinnati	Classical/News	

ALL CPB/NPR Stations

29-Sep-97

408 CPB stations with 275 sisters and 24 NPR/non-CPB stations

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WCBU	Peoria	IL	\$147,426	Bradley University	News/Classical	
WMEH	Bangor	ME	\$147,485	+Maine Public Broadcasting	News/Classical/Jazz	
WILL-FM	Urbana	IL	\$147,972	+Univ. of Illinois at Springfield	Classical	
WLTR	Columbia	SC	\$148,196	+S. Carolina Ed. TV Commission	News/Classical	
WKNO-FM	Memphis	TN	\$148,611	+MidSouth Public Communications	Classical	
KBIA	Columbia	MO	\$148,694	+University of Missouri	News/Classical	
WUWM	Milwaukee	WI	\$149,197	University of Wisconsin-Milwaukee	News-Talk	
KXJZ	Sacramento	CA	\$149,302	+Cal. State Univ.-Sacramento	News/Jazz	
KYUK	Bethel	AK	\$149,562	Bethel Broadcasting, Inc.	News/Variety	
WBHM	Birmingham	AL	\$150,002	+University of Alabama	News/Classical	
KCSN	Northridge	CA	\$150,401	Cal. State Univ.-Northridge	Classical	
WUGA	Athens	GA	\$150,621	+GA Public Telecommunications Com	News/Classical	
KXPR	Sacramento	CA	\$151,585	+Cal. State Univ.-Sacramento	Classical	
KHKE	Cedar Falls	IA	\$151,652	+University of Northern Iowa	Jazz/Classical	
WOUB-FM	Athens	OH	\$151,800	+Ohio University	News/Classical/Jazz	
WDAV	Davidson	NC	\$151,810	Davidson College	Classical	
KUNI	Cedar Falls	IA	\$152,435	+University of Northern Iowa	News/Variety	
WILL	Urbana	IL	\$152,890	+Univ. of Illinois at Springfield	News-Talk	
WUIS	Springfield	IL	\$153,058	+Univ. of Illinois at Springfield	News/Classical/Variety	
WEMU	Ypsilanti	MI	\$154,404	Eastern Michigan University	News/Jazz/Alternative	
WMEA	Portland	ME	\$155,209	+Maine Public Broadcasting	News/Classical/Jazz	R
WEAA	Baltimore	MD	\$156,060	Morgan State University	R&B/Jazz	
WMUK	Kalamazoo	MI	\$157,544	Western Michigan University	News/Classical	
WUWF	Pensacola	FL	\$158,647	+University of Florida	News/Classical/Jazz	
KHCC-FM	Hutchinson	KS	\$160,599	+Hutchinson Community College	News/Classical/Altern.	
WOSU	Columbus	OH	\$161,000	+Ohio State University	News-Talk	
WIAA	Interlochen	MI	\$161,597	+Interlochen Ctr for the Arts	News/Classical/Jazz	
WFSU-FM	Tallahassee	FL	\$162,478	Florida State University	News-Talk	
WFIU	Bloomington	IN	\$162,648	Indiana University	News/Classical/Jazz	
WFAE	Charlotte	NC	\$165,050	+University Radio Foundation, Inc.	News-Talk/Jazz	
KRFA-FM	Moscow	ID	\$165,441	+Washington State University	News/Classical	
WMUB	Oxford	OH	\$166,825	Miami University	News/Standards/Jazz	
WHRV	Norfolk	VA	\$171,351	Hampton Roads Ed. Telecomctns	News/Variety	
WCBE	Columbus	OH	\$172,524	School District of Columbus	Variety	
WXXI-FM	Rochester	NY	\$173,066	Rochester Area Educ. TV Ass'n	Classical	
WVTF	Roanoke	VA	\$173,121	+Virginia Tech Foundation Inc.	News/Classical/Jazz	
KNPR	Las Vegas	NV	\$173,218	+Nevada Public Radio Corp.	News/Classical/Jazz	
WBFO	Buffalo	NY	\$173,404	+State University of New York	Jazz/Variety	
WSHU	Fairfield	CT	\$173,868	+Sacred Heart University, Inc.	News/Classical	
KPCC	Pasadena	CA	\$174,136	Pasadena Area Comm. College	News-Talk/Variety	
KUER	Salt Lake City	UT	\$175,160	University of Utah	News/Classical/Jazz	
KOTZ	Kotzebue	AK	\$178,861	Kotzebue Broadcasting, Inc.	Variety	

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29-Sep-97

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KNAU	Flagstaff	AZ	\$126,965	+Northern Arizona University	News/Classical	
KDLG	Dillingham	AK	\$128,562	Dillingham City School Dist.	Variety	
KUWR	Laramie	WY	\$128,817	+University of Wyoming	News/Altern./Classical	
WPFW	Washington	DC	\$128,978	+Pacifica Foundation	Jazz/Talk	
WFSS	Fayetteville	NC	\$129,075	Fayetteville State University	News/Jazz	
WOI -FM	Ames	IA	\$129,427	Iowa State University	News/Classical	
WTSU	Troy	AL	\$129,608	+Troy State University	News/Classical	
WQCS	Fort Pierce	FL	\$129,647	Indian River Community College	News/Classical	
KMXT	Kodiak	AK	\$129,936	Kodiak Public Bcstg Corp.	Variety	
WUMB-FM	Boston	MA	\$130,167	+University of Massachusetts	Folk/Jazz	
KCKK	Cedar Rapids	IA	\$130,685	Kirkwood Community College	Jazz	
WAER	Syracuse	NY	\$130,759	Syracuse University	News/Jazz	
KBBI	Homer	AK	\$131,147	Kachemak Bay Broadcasting Inc.	Variety	
WPRL	Lorman	MS	\$131,213	Alcorn State University	Jazz	
KSUT	Ignacio	CO	\$131,603	KUTE Inc.	News/Variety/Ethnic	
WKYU-FM	Bowling Green	KY	\$131,886	+Western Kentucky University	News/Classical	
KCHU	Valdez	AK	\$131,939	+Terminal Radio, Inc.	News/Variety	
WUOT	Knoxville	TN	\$132,296	+University of Tennessee	Classical/Jazz	
WRVO	Oswego	NY	\$132,666	+State University of New York	News-Talk/Variety	
WUKY	Lexington	KY	\$133,698	University of Kentucky	News/Jazz/Classical	
WGTE-FM	Toledo	OH	\$134,374	+Public Bcstg Found. of NW OH	News/Classical	
KALW	San Francisco	CA	\$137,300	San Francisco Unified S. D.	News-Talk	
WVIK	Rock Island	IL	\$137,312	Augustana College	News/Classical	
KSKA	Anchorage	AK	\$137,831	Alaska Public Television, Inc.	News-Talk	
KUOM	Minneapolis	MN	\$138,243	University of Minnesota	Alternative	
WSVH	Savannah	GA	\$138,635	+GA Public Telecommunications Com	News/Classical	N
KMUW	Wichita	KS	\$139,146	Wichita State University	Jazz/Classical	
KBSU-FM	Boise	ID	\$139,341	+Boise State University	Classical	
WDCB	Glen Ellyn	IL	\$140,298	College of DuPage	News/Jazz	
WGCU-FM	Fort Myers	FL	\$140,334	+University of Florida	Classical	
KPRG	Agana	GU	\$140,380	Guam Educational Radio Found.	News/Classical/Jazz	
KSTX	San Antonio	TX	\$140,439	Texas Public Radio	News	
KLCC	Eugene	OR	\$141,433	+Lane Community College	News/Jazz	
WIUM	Macomb	IL	\$141,631	Western Illinois University	News/Classical	
KUAC	Fairbanks	AK	\$143,088	+University of Alaska	News/Classical	
WSKG-FM	Binghamton	NY	\$143,909	+Southern Tier Educ. TV Ass'n	News/Classical/Jazz	
WWNO	New Orleans	LA	\$144,031	+Louisiana State University	News/Classical	
KCND	Bismarck	ND	\$144,704	+Prairie Public Bcstg, Inc.	News/Classical/Jazz	
WNMU	Marquette	MI	\$145,438	Northern Michigan University	News/Classical	
WJCT-FM	Jacksonville	FL	\$145,894	WJCT, Inc.	News/Classical	
KTOO	Juneau	AK	\$145,962	Capital Community Bcstg, Inc.	News/Variety	
KUCV	Lincoln	NE	\$146,042	+Nebraska Ed. Tel. Commission	Classical	

ALL CPB/NPR Stations

29-Sep-97

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KVPR	Fresno	CA	\$114,738	+White Ash Broadcasting, Inc.	Classical
WSIU	Carbondale	IL	\$115,051	+Southern Illinois University	News/Classical/Jazz
WEKU-FM	Richmond	KY	\$115,111	+Eastern Kentucky University	News/Classical/Jazz
WJSU	Jackson	MS	\$115,124	Jackson State University	News/Jazz
WESM	Princess Anne	MD	\$115,146	University of MD-Eastern Shore	News/Jazz
WFYI-FM	Indianapolis	IN	\$115,163	Metropolitan Indpls Pub. Bcstg	News/Classical
KOSU-FM	Stillwater	OK	\$115,307	Oklahoma State University	News/Classical
WXXI	Rochester	NY	\$115,431	Rochester Area Educ. TV Ass'n	News-Talk/Jazz
KCEP	Las Vegas	NV	\$116,393	Economic Opportunity Board	R&B
WCNY	Syracuse	NY	\$116,414	+Pub. Bcstg Council of Cen. NY	Classical
KHNS	Haines	AK	\$116,611	Lynn Canal Broadcasting	Variety
KSOR	Ashland	OR	\$116,825	+State of Oregon	News/Classical
KSUI	Iowa City	IA	\$116,893	State University of Iowa	Classical
WURC	Holly Springs	MS	\$116,961	Rust College, Inc.	Black Gospel
WSLU	Canton	NY	\$117,665	+St. Lawrence University	Variety
WLRH	Huntsville	AL	\$118,361	AL Educ Television Commission	News/Classical
KCSM	San Mateo	CA	\$118,463	San Mateo Community College	Jazz
WBST	Muncie	IN	\$118,505	+Ball State University	News/Classical
KRBD	Ketchikan	AK	\$118,906	Rainbird Community Bcstg Corp.	News/Variety
WSHA	Raleigh	NC	\$119,248	Shaw University	Jazz
KTEP	El Paso	TX	\$119,480	University of Texas at El Paso	News/Classical/Jazz
WOUB	Athens	OH	\$119,642	+Ohio University	News/Rock
KUVO	Denver	CO	\$120,575	Denver Educational Broadcasting	Jazz/Variety
WTEB	New Bern	NC	\$120,652	Craven Community College	News/Classical
WXEL	West Palm Beach	FL	\$121,154	South FL Public Telecommunications	News/Classical
KUSD	Vermillion	SD	\$121,261	+State Board for Educ. TV	News/Classical/Jazz
WCQS	Asheville	NC	\$122,024	+Western NC Public Radio	Classical/Jazz
KPAC	San Antonio	TX	\$122,080	Texas Public Radio	Classical
KPBX	Spokane	WA	\$122,136	Spokane Public Radio, Inc.	News/Variety
KCAW	Sitka	AK	\$122,145	Raven Radio Foundation	Variety
KUAT-FM	Tucson	AZ	\$122,549	University of Arizona	Classical
KUNC	Greeley	CO	\$122,795	Univ. of Northern Colorado	News/Variety
WBAA	West Lafayette	IN	\$123,183	Purdue University	News/Jazz
WMHT-FM	Schenectady	NY	\$124,298	+WMHT Educ. Telecommunications	Classical
WCVE-FM	Richmond	VA	\$124,355	Central Virginia Ed. TV Corp.	News/Classical/Jazz
WOI	Ames	IA	\$124,413	Iowa State University	News-Talk
WWFM	Trenton	NJ	\$124,689	+Mercer County Community College	Classical
WFDD	Winston-Salem	NC	\$124,726	Wake Forest University	News/Classical
KUFM	Missoula	MT	\$124,810	+University of Montana	News/Classical
KTDB	Ramah	NM	\$124,962	Ramah Navajo School Board	Ethnic-Country
KUNR	Reno	NV	\$125,651	+University of Nevada	News/Classical/Jazz
KPCW	Park City	UT	\$126,630	+Community Wireless - Park City	News/Altern./Classical

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WYEP	Pittsburgh	PA	\$100,118	Pittsburgh Community Broadcasting	Alternative
WFPL	Louisville	KY	\$100,137	Louisville Free Public Library	News-Talk
KPVU	Prairie View	TX	\$100,673	Prairie View A&M University	Urban AC/Variety
KXCV	Maryville	MO	\$100,901	+Northwest Missouri State Univ.	News/Classical/Jazz
KWIT	Sioux City	IA	\$101,093	Western Iowa Tech Com. College	News/Classical/Jazz
KUAR	Little Rock	AR	\$101,744	University of Arkansas	News/Classical/Jazz
WKGC-FM	Panama City	FL	\$102,160	Gulf Coast Community College	News/Classical/Jazz
WBNI-FM	Fort Wayne	IN	\$102,398	Public Bcstg of Northeastern Ind.	News/Classical/Jazz
KUAF	Fayetteville	AR	\$102,567	+University of Arkansas	News/Classical/Jazz
KIOS	Omaha	NE	\$102,697	City of Omaha School District	News/Classical
KVNO	Omaha	NE	\$102,802	University of Nebraska-Omaha	Classical
WGLT	Normal	IL	\$103,269	Illinois State University	News/Jazz
KGOU	Norman	OK	\$104,040	University of Oklahoma	News/Classical/Jazz
KAWC	Yuma	AZ	\$104,114	Arizona Western College	Variety
KUMR	Rolla	MO	\$104,208	+University of Missouri	News/Classical
KSTK	Wrangell	AK	\$104,490	Wrangell Radio Group	News/Variety
WUAL	Tuscaloosa	AL	\$105,166	+University of Alabama	News/Classical/Jazz
WCSU-FM	Wilberforce	OH	\$105,572	Central State University	R&B
WOJB	Reserve	WI	\$105,606	Lac Courte Oreilles Ojibwa Bcstg	News/Variety/Ethnic
WKAR	East Lansing	MI	\$106,455	Michigan State University	News-Talk
KDAQ	Shreveport	LA	\$106,680	+Louisiana State University	News/Classical
WSCL	Salisbury	MD	\$106,707	Salisbury State University	News/Classical
WMNF	Tampa	FL	\$106,839	+Nathan B. Stubblefield Foundation	Variety
KUAZ	Tucson	AZ	\$107,373	University of Arizona	News/Jazz
WQLN-FM	Erie	PA	\$107,405	Public Bcstg of Northwest Penn.	News/Classical/Jazz
KCHO	Chico	CA	\$107,578	+Cal. State Univ.-Chico	Classical/Jazz
KFSK	Petersburg	AK	\$107,964	Narrows Broadcasting, Inc.	Variety
WNCW	Spindale	NC	\$108,019	Isothermal Community College	Alternative
KSKO	McGrath	AK	\$109,517	Kuskokwin Public Broadcasting	Variety
WVAS	Montgomery	AL	\$109,778	Alabama State University	Jazz
WWOZ	New Orleans	LA	\$110,597	Friends of WWOZ, Inc.	Jazz/Variety
WHQR	Wilmington	NC	\$111,369	Friends of Public Radio, Inc.	Classical/News
KSMU	Springfield	MO	\$111,373	+Southwest Missouri State Univ.	Classical
WSUI	Iowa City	IA	\$111,879	State University of Iowa	News-Talk
KCBX	San Luis Obispo	CA	\$112,283	KCBX, Inc.	News/Classical/Jazz
KEMC	Billings	MT	\$112,519	+Montana State University	Classical/Jazz
KEYA	Belcourt	ND	\$112,599	KEYA, Inc.	Country
KSJK	Talent	OR	\$112,877	+State of Oregon	News-Talk
WJAB	Huntsville	AL	\$112,917	Alabama A & M University	Jazz
KRCC	Colorado Springs	CO	\$112,995	Colorado College	News/Variety
WMKY	Morehead	KY	\$113,898	Morehead State University	News/Classical/Altern.
WBLV	Twin Lake	MI	\$114,109	+Blue Lake Fine Arts Camp	News/Classical/Jazz

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WMRA	Harrisonburg	VA	\$84,647	+James Madison University	News/Classical	
WLSU	La Crosse	WI	\$84,750	+University of Wisconsin	News/Classical	
KUSP	Santa Cruz	CA	\$85,469	Pataphysical Broadcasting Foundatio	News/Variety	
WDPR	Dayton	OH	\$85,623	+Dayton Public Radio, Inc.	Classical	
KUND	Grand Forks	ND	\$86,389	University of North Dakota	News/Jazz	
KRPS	Pittsburg	KS	\$86,465	Pittsburg State University	News/Classical/Jazz	
KBPS-FM	Portland	OR	\$87,445	School District #1	Classical	
WRKF	Baton Rouge	LA	\$87,494	Public Radio, Inc.	News/Classical	
KCCM-FM	Moorhead	MN	\$87,931	+Minnesota Public Radio	Classical	
KCSC	Edmond	OK	\$88,076	University of Central Oklahoma	Classical	
WUTC	Chattanooga	TN	\$88,574	+University of Tennessee	Jazz	
KEDM	Monroe	LA	\$88,632	Northeast Louisiana University	News/Classical/Jazz	
KUMD-FM	Duluth	MN	\$88,826	University of Minnesota-Duluth	Variety	
KEDT-FM	Corpus Christi	TX	\$89,411	+South TX Pub. Bcstg System	News/Classical/Jazz	
KHSU	Arcata	CA	\$89,916	Humboldt State University	News/Variety	
WSCD-FM	Duluth	MN	\$90,015	+Minnesota Public Radio	Classical	
KVLU	Beaumont	TX	\$90,517	Lamar University	News/Classical/Jazz	
WFRG	Atlanta	GA	\$90,704	Radio Free Georgia Bcstg Found.	Variety	
KUNM	Albuquerque	NM	\$90,771	University of New Mexico	News/Variety	
WNIJ	De Kalb	IL	\$90,994	+Northern Illinois University	News/Jazz	
KPFT	Houston	TX	\$91,260	+Pacifica Foundation	Variety/Ethnic	
KRWG	Las Cruces	NM	\$91,400	New Mexico State University	News/Classical/Jazz	
KIWR	Council Bluffs	IA	\$91,685	Iowa Western Community College	Alternative	
KBBG	Waterloo	IA	\$91,948	Afro-American Community Bcstg	R&B	
KUOP	Stockton	CA	\$92,700	University of the Pacific	Jazz/Classical/R&B	
WYSO	Yellow Springs	OH	\$92,803	Antioch University	Jazz/Variety	
KVCR	San Bernardino	CA	\$92,876	San Bernardino Community Col.	News/Classical	
WNKU	Highland Heights	KY	\$92,936	Northern Kentucky University	News/Alternative	
KBEM-FM	Minneapolis	MN	\$93,436	Special School Dist. #1	Classical/Jazz	
WHAD	Delafield	WI	\$93,663	+State of Wisconsin	News-Talk	N
WETS	Johnson City	TN	\$93,757	East Tennessee State University	Variety	
KNCT-FM	Killeen	TX	\$94,217	Central Texas College	Easy Listening/Classical	
KSLU	Hammond	LA	\$94,958	Southeastern Louisiana University	News/Jazz/Variety	
WGVU-FM	Allendale	MI	\$95,143	Grand Valley State University	News/Jazz	
KBBF	Santa Rosa	CA	\$95,586	Bilingual Bcstg Foundation	Spanish Variety	
WMOT	Murfreesboro	TN	\$95,961	Middle Tennessee State Univ.	Jazz	
WKMS	Murray	KY	\$96,224	Murray State University	News/Classical/Jazz	
KWGS	Tulsa	OK	\$96,416	University of Tulsa	News/Classical/Jazz	
WFPK	Louisville	KY	\$97,081	Louisville Free Public Library	Adult Alternative/Jazz	
WHIL-FM	Mobile	AL	\$98,584	Spring Hill College	Classical	
WYMS	Milwaukee	WI	\$98,905	Milwaukee Board of School Dir.	Jazz	
WVIA-FM	Scranton	PA	\$99,938	Northeast PA Ed. TV Associates	News/Variety	

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WYPL	Memphis	TN	\$65,704	Cossitt Library	Reading Service	
KDIX	St. Louis	MO	\$67,085	Double Helix Corp.	Variety	
WERU-FM	Blue Hill	ME	\$67,704	Salt Pond Community Broadcasting	Variety	
KENW-FM	Portales	NM	\$67,814	+Eastern New Mexico University	News/Easy Listening/Clas.	
KUND-FM	Grand Forks	ND	\$67,944	University of North Dakota	News/Alternative	
WFIT	Melbourne	FL	\$67,945	Florida Inst. of Technology	News/Jazz	
KTPR	Fort Dodge	IA	\$68,841	Iowa Central Community College	News/Classical/Jazz	
KFAI	Minneapolis	MN	\$69,868	Fresh Air, Inc.	Variety	
KAXE	Grand Rapids	MN	\$71,440	Northern Community Radio	Variety	
KETR	Commerce	TX	\$72,229	Texas A&M University - Commerce	Oldies	
KLSE-FM	Rushford	MN	\$72,262	+Minnesota Public Radio	News/Classical	
KZYX	Philo	CA	\$72,441	Mendocino County Public Bcstg	News/Variety	
KOHM	Lubbock	TX	\$72,449	Texas Tech University	News/Classical	
KCMW-FM	Warrensburg	MO	\$73,271	Central Missouri State University	News/Jazz	
KAMU-FM	College Station	TX	\$73,903	Texas A&M University	Classical/Jazz	
WMNR	Monroe	CT	\$75,520	+Monroe Board of Education	Classical	
KANW	Albuquerque	NM	\$75,538	Albuquerque Board of Education	Variety	
KMBH-FM	Harlingen	TX	\$75,591	RGV Educational Broadcasting, Inc.	News/Classical	
WCEL	Plattsburgh	NY	\$76,139	+WAMC	News/Classical	R
KGNU	Boulder	CO	\$76,507	Boulder Community Bcst Ass'n	Variety	
KGAC	St. Peter	MN	\$76,736	+Minnesota Public Radio	Classical	
KRVS	Lafayette	LA	\$77,014	University of Southwestern LA	Variety	
KANZ	Garden City	KS	\$77,052	+Kanza Society, Inc.	Variety	
WXPR	Rhineland	WI	\$77,133	+White Pine Community Bcstg Inc.	News/Variety	
KRCL	Salt Lake City	UT	\$77,544	Listeners Community Radio	Variety	
KBOO	Portland	OR	\$78,537	KBOO Foundation	Variety	
KIDE	Hoopa	CA	\$78,864	Hoopa Valley Telecomctns Corp.	Variety	
KUSU-FM	Logan	UT	\$79,365	Utah State University	News/Classical	
WVUB	Vincennes	IN	\$79,618	Vincennes University	Soft AC	
KSJR-FM	Collegeville	MN	\$80,498	+Minnesota Public Radio	Classical	
WSMC-FM	Collegedale	TN	\$80,945	Southern College	News/Classical	
WNIN-FM	Evansville	IN	\$81,300	S.W. Indiana Public Bcstg Inc.	Classical	
WSIE	Edwardsville	IL	\$81,415	+Southern Illinois University	News/Jazz	
KTPB	Kilgore	TX	\$81,623	Kilgore Junior College	Classical	
WUOL	Louisville	KY	\$82,042	University of Louisville	Classical	
KDNA	Yakima	WA	\$82,377	+Northwest Communities Educ. Cente	Spanish Variety	
KDSU	Fargo	ND	\$82,462	North Dakota State University	Jazz	
WICN	Worcester	MA	\$82,538	WICN, Inc.	News/Jazz/Classical	
WVPE	Elkhart	IN	\$83,011	Elkhart Community Schools Corp.	News-Talk/Jazz	
KWSU	Pullman	WA	\$83,015	+Washington State University	News-Talk	
WUCF	Orlando	FL	\$83,040	University of Central Florida	Jazz	
KCCU	Lawton	OK	\$83,891	Cameron University	Classical	

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WAPS	Akron	OH	\$29,600	Akron City School District	Jazz/Alternative	
KVMR	Nevada City	CA	\$29,600	Nev. City Community Bcst Group	Variety	
WQUB	Quincy	IL	\$29,600	Quincy College Corp.	News/Classical/Altern.	
WNIU	Rockford	IL	\$33,055	+Northern Illinois University	Classical	
WYSU	Youngstown	OH	\$35,117	Youngstown State University	News/Classical	
KMUD	Garberville	CA	\$37,000	+Redwood Community Radio, Inc.	Variety	
KUNV	Las Vegas	NV	\$37,000	+University of Nevada	Jazz/Alternative	
KABR	Alamo Community	NM	\$37,000	Alamo Navajo School Board Inc.	Ethnic-Variety	
KIYU	Galena	AK	\$37,000	Big River Public Bcstg Corp.	Classical/Variety	
KDNK	Carbondale	CO	\$37,000	Carb. Community Access Radio	Variety	
KBUT	Crested Butte	CO	\$37,000	Crested Butte Mtn Educ. Radio	Variety	
KILI	Porcupine	SD	\$37,000	Lakota Communications, Inc.	Ethnic-Variety	
KJLU	Jefferson City	MO	\$37,000	Lincoln University of Missouri	Jazz/R&B	
KBAQ	Phoenix	AZ	\$37,000	Maricopa County Comm. College	Classical	
KMHD	Gresham	OR	\$37,000	Mount Hood Community College	Jazz	
KVNF	Paonia	CO	\$37,000	North Fork Valley Public Radio	News/Variety	
KZAZ	Bellingham	WA	\$37,000	Northern Sound Public Radio	News/Classical	R
WVMR	Frost	WV	\$37,000	Pocahontas Communications Co-op	Country/Variety	
KUHB-FM	Saint Paul	AK	\$37,000	Pribilof School District	Variety	
KAJX	Aspen	CO	\$37,000	Roaring Fork Public Radio	Classical/Jazz	
KSJD	Cortez	CO	\$37,000	San Juan Basin Area VT School	News/Variety	
KOTO	Telluride	CO	\$37,000	San Miguel Educ. Foundation	Variety	
KSDP	Sand Point	AK	\$37,000	Sand Point Broadcasting, Inc.	Variety	R
KTNA	Talkeetna	AK	\$37,000	Talkeetna Community Radio Inc.	News-Talk	R
KMUN	Astoria	OR	\$37,000	Tillicum Foundation	News/Variety	
WUSM-FM	Hattiesburg	MS	\$37,000	Univ. of Southern Mississippi	Classical	
WNED-FM	Buffalo	NY	\$42,204	+Western NY Public Bcstg Ass'n	Classical	
WDNA	Miami	FL	\$44,000	Bascomb Memorial Bcstg Found.	Jazz	
WSSB	Orangeburg	SC	\$46,250	South Carolina State University	R&B	
KBSW	Twin Falls	ID	\$47,083	+Boise State University	News/Classical	
KASU	Jonesboro	AR	\$55,830	Arkansas State University	News/Classical	
WLCH	Lancaster	PA	\$56,135	Spanish American Civic Ass'n	Spanish/Talk	
WRVS-FM	Elizabeth City	NC	\$57,915	Elizabeth City State University	R&B/Variety	
KXCI	Tucson	AZ	\$58,974	Foundation for Creative Broadcasting	Variety	
WDCU	Washington	DC	\$61,177	Univ. of the Dist. of Columbia	Jazz	
WBJB-FM	Lincroft	NJ	\$61,895	Brookdale Community College	News/Jazz	
WMMT	Whitesburg	KY	\$62,541	Appalshop, Inc.	Variety	
WGVU	Kentwood	MI	\$64,464	Grand Valley State University	News-Talk	
WORT	Madison	WI	\$65,000	Back Porch Radio Bcstg, Inc.	Variety	
WGBW	Green Bay	WI	\$65,566	+University of Wisconsin	News-Talk	N
KAZU	Pacific Grove	CA	\$65,669	Monterey Bay Public Bcstg Fd.	Jazz/Variety	
KOPN	Columbia	MO	\$65,697	New Wave Corp.	News-Talk/Variety	

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KUAT	Tucson	AZ	\$2	University of Arizona	News/Jazz	S
KLRE	Little Rock	AR	\$2	University of Arkansas	Classical	
KROU	Spencer	OK	\$2	University of Oklahoma	News/Classical/Jazz	R
WIUW	Warsaw	IL	\$2	Western Illinois University	News/Classical	R
WHUS	Storrs	CT	\$5,998	University of Connecticut	Variety	
KKFI	Kansas City	MO	\$10,661	Mid-Coast Radio Project, Inc.	Variety	
KBCS	Bellevue	WA	\$11,000	Bellevue Community College	Jazz/Blues/Folk	
WZRU	Roanoke Rapids	NC	\$11,000	Better Life, Inc.	News/Classical/Jazz	
WBRH	Baton Rouge	LA	\$11,000	East Baton Rouge Parish School	Jazz	
WJFF	Jeffersonville	NY	\$11,000	Ed. Radio of the Catskills	News/Variety	
KRZA	Alamosa	CO	\$11,000	Equal Representn Media Advocacy	News/Variety	
KAOS	Olympia	WA	\$11,000	Evergreen State College	Variety	
WLJS	Jacksonville	AL	\$11,000	Jacksonville State University	Alternative	
KKSU	Manhattan	KS	\$11,000	Kansas State University	News-Talk	
KSER	Everett	WA	\$11,000	KSER Foundation	Variety	
WNSB	Norfolk	VA	\$11,000	Norfolk State University	Jazz	
KOCV	Odessa	TX	\$11,000	Odessa College	News/Classical/Variety	
WEFT	Champaign	IL	\$11,000	Prairie Air, Inc.	Variety	
KRCB-FM	Santa Rosa	CA	\$11,000	Rural Central Bcstg. Corp.	Variety	
KRCU	Cape Girardeau	MO	\$11,000	Southeast Missouri State Univ.	News/Classical	
KTXK	Texarkana	TX	\$11,000	Texarkana Community College	News/Easy Listening/Jazz	
WEOS	Geneva	NY	\$11,000	The Colleges of the Seneca	News/Alternative	
WMPG	Gorham	ME	\$11,000	University of South Maine	Variety	
WTJU	Charlottesville	VA	\$11,000	University of Virginia	Variety	
WVLS	Monterey	VA	\$16,170	Pocahontas Communications Co-op	Country/Variety	
KBSX	Boise	ID	\$18,646	+Boise State University	News-Talk	
WDIY	Allentown	PA	\$22,200	Lehigh Valley Community Broadcasting	News/Classical/Variety	
KWAX	Eugene	OR	\$23,576	University of Oregon	Classical	
KNSA	Unalakleet	AK	\$24,077	Unalakleet Broadcasting, Inc.	Variety	R
KMHA	Four Bears	ND	\$24,790	Ft. Berthold Comm. Enterprise	Ethnic/Variety	
KTSU	Houston	TX	\$25,428	Texas Southern University	Jazz-R&B	
KLNR	Panaca	NV	\$26,000	+Nevada Public Radio Corp.	News/Classical/Jazz	R
KNNB	Whiteriver	AZ	\$26,000	Apache Radio Bcstg Corp.	Variety	
KZPA	Fort Yukon	AK	\$26,000	Gwandak Public Broadcasting, Inc.	Variety	
KCUK	Chevak	AK	\$26,000	Kashunamit School District	Variety	
KZMU	Moab	UT	\$26,000	Moab Public Radio	Variety	
KZUM	Lincoln	NE	\$26,000	Sunrise Communications, Inc.	Variety	
KIAL	Unalaska	AK	\$26,000	Unalaska Community Television	Variety	R
KSHI	Zuni	NM	\$26,000	Zuni Communications Authority	Variety	
KRVM-FM	Eugene	OR	\$29,600	+Lane County School Dist. #4-J	Alternative	
WPBX	Southampton	NY	\$29,600	+Long Island University	News/Jazz/Classical	
WPSU	State College	PA	\$29,600	+Pennsylvania State University	News/Variety	

ALL CPB/NPR Stations

29-Sep-97

408 CPB stations with 275 sisters and 24 NPR/non-CPB stations

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Source codes "N" Network, "S" Simulcast, "R" Re-broadcasts

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KNWY	Yakima	WA	\$2	+Washington State University	News/Classical	R
KNWR	Ellensburg	WA	\$2	+Washington State University	News/Classical	R
KLWS	Moses Lake	WA	\$2	+Washington State University	News/Talk	R
WKUE	Elizabethtown	KY	\$2	+Western Kentucky University	News/Classical	R
WKPB	Henderson	KY	\$2	+Western Kentucky University	News/Classical	R
WDCL-FM	Somerset	KY	\$2	+Western Kentucky University	News/Classical	R
WFQS	Franklin	NC	\$2	+Western NC Public Radio	Classical/Jazz	R
WNJA	Jamestown	NY	\$2	+Western NY Public Bcstg Ass'n	Classical	R
KPRX	Bakersfield	CA	\$2	+White Ash Broadcasting, Inc.	Classical	R
WXPW	Wausau	WI	\$2	+White Pine Community Bcstg Inc.	News/Variety	R
WRHV	Poughkeepsie	NY	\$2	+WMHT Educ. Telecommunications	Classical	R
WVPG	Parkersburg	WV	\$2	+WV Educ. Bcstg Authority	News/Classical/Jazz	R
WVWV	Huntington	WV	\$2	+WV Educ. Bcstg Authority	News/Classical/Jazz	R
WVEP	Martinsburg	WV	\$2	+WV Educ. Bcstg Authority	News/Classical/Jazz	R
WVPM	Morgantown	WV	\$2	+WV Educ. Bcstg Authority	News/Classical/Jazz	R
WVPB	Beckley	WV	\$2	+WV Educ. Bcstg Authority	News/Classical/Jazz	R
WVNP	Wheeling	WV	\$2	+WV Educ. Bcstg Authority	News/Classical/Jazz	R
WVPW	Buckhannon	WV	\$2	+WV Educ. Bcstg Authority	News/Classical/Jazz	R
WVXI	Crawfordsville	IN	\$2	+Xavier University	Variety	R
WVXC	Chillicothe	OH	\$2	+Xavier University	Variety	R
WVXG	Mount Gilead	OH	\$2	+Xavier University	Variety	R
WVXM	Manistee	MI	\$2	+Xavier University	Variety	R
WVXR	Richmond	IN	\$2	+Xavier University	Variety	R
WVXW	West Union	OH	\$2	+Xavier University	Variety	R
WKKL	West Barnstable	MA	\$2	Cape Cod Community College	News-Talk/Alternative	R
WCCT-FM	Harwich	MA	\$2	Cape Cod Regional Tec. HS	News-Talk	R
KUTX	San Angelo	TX	\$2	Center for Telecomms. Service	News/Classical/Variety	R
WKNS	Kinston	NC	\$2	Craven Community College	News/Classical	S
WFSQ	Tallahassee	FL	\$2	Florida State University	Classical	
KGPR	Great Falls	MT	\$2	Great Falls Public Radio Ass'n	Classical/Jazz	R
WHRO	Norfolk	VA	\$2	Hampton Roads Ed. Telecomctns	Classical	
WLFM	Appleton	WI	\$2	Lawrence University	News-Talk	N
KZYZ	Willits	CA	\$2	Mendocino County Public Bcstg	News/Variety	S
KDLL	Kenai	AK	\$2	Pickle Hill Public Broadcasting	News-Talk	R
WCHG	Hot Springs	VA	\$2	Pocahontas Communications Co-op	Country/Variety	S
WBAA-FM	West Lafayette	IN	\$2	Purdue University	Classical	
KHID	McAllen	TX	\$2	RGV Educational Broadcasting, Inc.	News/Classical	S
WSDH	Sandwich	MA	\$2	Sandwich Public Schools	News-Talk/Variety	R
KBPS	Portland	OR	\$2	School District #1	Variety	
KBRW-FM	Barrow	AK	\$2	Silakkuagvik Communications	Variety	
KCSD	Sioux Falls	SD	\$2	Sioux Falls College	News/Classical/Jazz	R
KSFC	Spokane	WA	\$2	Spokane Public Radio, Inc.	News/Variety	R

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WRTQ	Ocean City	NJ	\$2	+Temple University	Classical/Jazz	R
WRTY	Jackson Township	PA	\$2	+Temple University	Classical/Jazz	R
KXKM	McCarthy	AK	\$2	+Terminal Radio, Inc.	Variety	R
KXGA	Glennallen	AK	\$2	+Terminal Radio, Inc.	News/Variety	R
WTJB	Columbus	GA	\$2	+Troy State University	News/Classical	R
WRWA	Dothan	AL	\$2	+Troy State University	News/Classical	R
WIPA	Pittsfield	IL	\$2	+Univ. of Illinois at Springfield	News/Classical/Variety	R
KPSC	Palm Springs	CA	\$2	+Univ. of Southern California	Classical	R
KFAC	Santa Barbara	CA	\$2	+Univ. of Southern California	Classical	R
KCPB	Thousand Oaks	CA	\$2	+Univ. of Southern California	Classical	R
WAPR	Selma	AL	\$2	+University of Alabama	News/Classical/Jazz	R
WQPR	Muscle Shoals	AL	\$2	+University of Alabama	News/Classical/Jazz	R
WJUF	Inverness	FL	\$2	+University of Florida	News/Classical/Jazz	R
WFSW	Panama City	FL	\$2	+University of Florida	News/Classical	
WBPR	Worcester	MA	\$2	+University of Massachusetts	Folk/Jazz	R
WFPB	Falmouth	MA	\$2	+University of Massachusetts	Folk/Jazz	R
WFUM-FM	Flint	MI	\$2	+University of Michigan	News/Classical	R
WVGR	Grand Rapids	MI	\$2	+University of Michigan	News/Classical	R
KNCC	Elko	NV	\$2	+University of Nevada	News/Classical/Jazz	R
KRNI	Mason City	IA	\$2	+University of Northern Iowa	Jazz/Classical	R
KUNY	Mason City	IA	\$2	+University of Northern Iowa	Classical	
WXPH	Harrisburg	PA	\$2	+University of Pennsylvania	Alternative/Variety	
KUWS	Superior	WI	\$2	+University of Wisconsin	News/Variety	
WRST-FM	Oshkosh	WI	\$2	+University of Wisconsin	News/Variety	
WVSS	Menomonie	WI	\$2	+University of Wisconsin	News/Classical	N
WUEC	Eau Claire	WI	\$2	+University of Wisconsin	News/Classical	N
KUWJ	Jackson	WY	\$2	+University of Wyoming	News/Altern./Classical	R
KUWZ	Rock Springs	WY	\$2	+University of Wyoming	News/Altern./Classical	R
WFHE	Hickory	NC	\$2	+University Radio Foundation, Inc.	News/Jazz	R
WRVT	Rutland	VT	\$2	+Vermont Public Radio	Classical	R
WVPS	Burlington	VT	\$2	+Vermont Public Radio	Classical	
WVTR	Marion	VA	\$2	+Virginia Tech Foundation Inc.	News/Classical/Jazz	R
WVTU	Charlottesville	VA	\$2	+Virginia Tech Foundation Inc.	News/Classical/Jazz	R
WCAN	Canajoharie	NY	\$2	+WAMC	News/Classical	R
WANC	Ticonderoga	NY	\$2	+WAMC	News/Classical	R
WAMQ	Great Barrington	MA	\$2	+WAMC	News/Classical	R
WAMK	Kingston	NY	\$2	+WAMC	News/Classical	R
WOSR	Middletown	NY	\$2	+WAMC	News/Classical	R
KNWV	Clarkston	WA	\$2	+Washington State University	News/Classical	S
KFAE	Richland	WA	\$2	+Washington State University	News/Classical	R
KWWS	Walla Walla	WA	\$2	+Washington State University	News/Talk	R
KNWO	Cottonwood	ID	\$2	+Washington State University	News/Classical	R

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WSQE	Corning	NY	\$2	+Southern Tier Educ. TV Ass'n	News/Classical/Jazz	R
WSQC-FM	Oneonta	NY	\$2	+Southern Tier Educ. TV Ass'n	News/Classical/Jazz	R
KSMS-FM	Point Lookout	MO	\$2	+Southwest Missouri State Univ.	Classical	R
WSLO	Malone	NY	\$2	+St. Lawrence University	Variety	R
WSLL	Saranac Lake	NY	\$2	+St. Lawrence University	Variety	R
WXLU	Peru	NY	\$2	+St. Lawrence University	Variety	R
WXLH	Blue Mountain Lake	NY	\$2	+St. Lawrence University	Variety	R
WXLG	North Creek	NY	\$2	+St. Lawrence University	Variety	R
WSLJ	Watertown	NY	\$2	+St. Lawrence University	Variety	R
KESD	Brookings	SD	\$2	+State Board for Educ. TV	News/Classical/Jazz	
KDSD-FM	Pierpont	SD	\$2	+State Board for Educ. TV	News/Classical/Jazz	
KBHE-FM	Rapid City	SD	\$2	+State Board for Educ. TV	News/Classical/Jazz	
KQSD-FM	Lowry	SD	\$2	+State Board for Educ. TV	News/Classical/Jazz	
KZSD-FM	Martin	SD	\$2	+State Board for Educ. TV	News/Classical/Jazz	
KPSD-FM	Faith	SD	\$2	+State Board for Educ. TV	News/Classical/Jazz	
KTSD-FM	Reliance	SD	\$2	+State Board for Educ. TV	News/Classical/Jazz	
KAGI	Grants Pass	OR	\$2	+State of Oregon	News/Talk	R
KSMF	Ashland	OR	\$2	+State of Oregon	News/Variety	
KRBM	Pendleton	OR	\$2	+State of Oregon	News/Classical	R
KNCA	Burney	CA	\$2	+State of Oregon	News/Variety	R
KSRs	Roseburg	OR	\$2	+State of Oregon	News/Classical	R
KSRG	Ashland	OR	\$2	+State of Oregon	News/Classical	S
KSBA	Coos Bay	OR	\$2	+State of Oregon	News/Variety	R
KNYR	Yreka	CA	\$2	+State of Oregon	News/Classical	R
KOAB-FM	Bend	OR	\$2	+State of Oregon	News/Classical	R
KSKF	Klamath Falls	OR	\$2	+State of Oregon	News/Variety	R
KNSQ	Mount Shasta	CA	\$2	+State of Oregon	News/Alternative	R
WHLA	La Crosse	WI	\$2	+State of Wisconsin	News-Talk	N
WHSa	Brule	WI	\$2	+State of Wisconsin	News/Classical	N
WLBL-FM	Wausau	WI	\$2	+State of Wisconsin	News/Classical/Variety	
WHRM	Wausau	WI	\$2	+State of Wisconsin	News/Classical	N
WHHI	Highland	WI	\$2	+State of Wisconsin	News-Talk	N
WHBM-FM	Park Falls	WI	\$2	+State of Wisconsin	News-Talk	N
WLBL	Auburndale	WI	\$2	+State of Wisconsin	News-Talk	N
WHWC	Menomonie	WI	\$2	+State of Wisconsin	News-Talk	N
WPNE	Green Bay	WI	\$2	+State of Wisconsin	News/Classical	N
WOLN	Olean	NY	\$2	+State University of New York	Jazz/Variety	R
WRVN	Utica	NY	\$2	+State University of New York	News-Talk/Variety	R
WUBJ	Jamestown	NY	\$2	+State University of New York	Jazz/Variety	R
WRVJ	Watertown	NY	\$2	+State University of New York	News-Talk/Variety	R
WJAZ	Summerdale	PA	\$2	+Temple University	Classical/Jazz	R
WRTX	Dover	DE	\$2	+Temple University	Classical/Jazz	R

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KNAQ	Flagstaff	AZ	\$2	+Northern Arizona University	News/Classical	S
KRCW	Royal City	WA	\$2	+Northwest Communities Educ. Cente	Spanish Variety	R
KRNW	Chillicothe	MO	\$2	+Northwest Missouri State Univ.	News/Classical/Jazz	R
WOSE	Coshocton	OH	\$2	+Ohio State University	Classical	R
WOSV	Mansfield	OH	\$2	+Ohio State University	Classical	R
WOSP	Portsmouth	OH	\$2	+Ohio State University	Classical	R
WOUC	Cambridge	OH	\$2	+Ohio University	News/Classical/Jazz	R
WOUZ	Zanesville	OH	\$2	+Ohio University	News/Classical/Jazz	R
WOUL-FM	Ironton	OH	\$2	+Ohio University	News/Classical/Jazz	R
WOUH-FM	Chillicothe	OH	\$2	+Ohio University	News/Classical/Jazz	R
KPFB	Berkeley	CA	\$2	+Pacifica Foundation	Variety	S
WPSB	Kane	PA	\$2	+Pennsylvania State University	News/Variety	R
KPRJ	Jamestown	ND	\$2	+Prairie Public Bcstg, Inc.	News/Classical/Jazz	R
KPPR	Williston	ND	\$2	+Prairie Public Bcstg, Inc.	Classical/Jazz	R
KDPR	Dickinson	ND	\$2	+Prairie Public Bcstg, Inc.	News/Classical/Jazz	R
KMPR	Minot	ND	\$2	+Prairie Public Bcstg, Inc.	News/Classical/Jazz	R
WJNY	Watertown	NY	\$2	+Pub. Bcstg Council of Cen. NY	Classical	R
WUNY	Utica	NY	\$2	+Pub. Bcstg Council of Cen. NY	Classical	R
WGLE	Lima	OH	\$2	+Public Bcstg Found. of NW OH	News/Classical	R
WGBE	Bryan	OH	\$2	+Public Bcstg Found. of NW OH	News/Classical	R
KCFP	Pueblo	CO	\$2	+Public Bcstg of Colorado, Inc.	News/Classical	R
KPRE	Vail	CO	\$2	+Public Bcstg of Colorado, Inc.	News/Classical	R
KPRN	Grand Junction	CO	\$2	+Public Bcstg of Colorado, Inc.	News/Classical	R
KTQX	Bakersfield	CA	\$2	+Radio Bilingue, Inc.	Spanish Variety	R
KUBO	Calexico	CA	\$2	+Radio Bilingue, Inc.	Spanish Variety	R
KHDC	Chualar	CA	\$2	+Radio Bilingue, Inc.	Spanish Variety	
KMPO	Modesto	CA	\$2	+Radio Bilingue, Inc.	Spanish Variety	R
KMUE	Eureka	CA	\$2	+Redwood Community Radio, Inc.	Variety	R
WLJK	Aiken	SC	\$2	+S. Carolina Ed. TV Commission	News/Classical	N
WEPR	Greenville	SC	\$2	+S. Carolina Ed. TV Commission	News/Classical	N
WJWJ-FM	Beaufort	SC	\$2	+S. Carolina Ed. TV Commission	News/Classical	N
WHMC-FM	Conway	SC	\$2	+S. Carolina Ed. TV Commission	News/Classical	N
WNSC-FM	Rock Hill	SC	\$2	+S. Carolina Ed. TV Commission	News/Classical	N
WSCI	Charleston	SC	\$2	+S. Carolina Ed. TV Commission	News/Classical	N
WRJA-FM	Sumter	SC	\$2	+S. Carolina Ed. TV Commission	News/Classical	N
WSUF	Noyack	NY	\$2	+Sacred Heart University, Inc.	News-Talk/Classical	
KCRY	Indio	CA	\$2	+Santa Monica Community College	Variety	R
KCRU	Oxnard	CA	\$2	+Santa Monica Community College	Variety	R
KVRT	Victoria	TX	\$2	+South TX Pub. Bcstg System	News/Classical/Jazz	R
WUSI-FM	Olney	IL	\$2	+Southern Illinois University	News/Classical	
WSQX-FM	Binghamton	NY	\$2	+Southern Tier Educ. TV Ass'n	News/Jazz	
WSQG-FM	Ithaca	NY	\$2	+Southern Tier Educ. TV Ass'n	News/Classical/Jazz	R

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KNTN	Thief River Falls	MN	\$2	+Minnesota Public Radio	News-Talk	N
KNSW	Worthington	MN	\$2	+Minnesota Public Radio	News-Talk	
WIRN	Buhl	MN	\$2	+Minnesota Public Radio	News-Talk	
WIRR	Virginia	MN	\$2	+Minnesota Public Radio	Classical	
KLCD	Decorah	IA	\$2	+Minnesota Public Radio	Classical	N
KNSR	Collegeville	MN	\$2	+Minnesota Public Radio	News-Talk	
KZSE	Rochester	MN	\$2	+Minnesota Public Radio	News-Talk	
KRSU	Appleton	MN	\$2	+Minnesota Public Radio	Classical	R
WGGL-FM	Houghton	MI	\$2	+Minnesota Public Radio	News/Classical	
KCCD	Moorhead	MN	\$2	+Minnesota Public Radio	News-Talk	
KNBJ	Bemidji	MN	\$2	+Minnesota Public Radio	News-Talk	
KLNI	Decorah	IA	\$2	+Minnesota Public Radio	News-Talk	N
KXLC	La Crescent	MN	\$2	+Minnesota Public Radio	News-Talk	
KWRV	Sun Valley	ID	\$2	+Minnesota Public Radio	Classical	N
KRSW	Worthington	MN	\$2	+Minnesota Public Radio	Classical	
KNCM	Appleton	MN	\$2	+Minnesota Public Radio	News-Talk	
WSCN	Cloquet	MN	\$2	+Minnesota Public Radio	News-Talk	
WGRS	Guilford	CT	\$2	+Monroe Board of Education	Classical	R
WGSK	South Kent	CT	\$2	+Monroe Board of Education	Classical	R
WRXC	Shelton	CT	\$2	+Monroe Board of Education	Classical	R
KNMC	Havre	MT	\$2	+Montana State University	Classical/Jazz	R
KECC	Miles City	MT	\$2	+Montana State University	Classical/Jazz	R
KBMC	Bozeman	MT	\$2	+Montana State University	Classical/Jazz	R
WMAE-FM	Booneville	MS	\$2	+MS Authority for Educ. TV	News/Classical	N
WMAW-FM	Meridian	MS	\$2	+MS Authority for Educ. TV	News/Classical	N
WMAV-FM	Oxford	MS	\$2	+MS Authority for Educ. TV	News/Classical	N
WMAH	Biloxi	MS	\$2	+MS Authority for Educ. TV	News/Classical	N
WMAB-FM	Mississippi State	MS	\$2	+MS Authority for Educ. TV	News/Classical	N
WMAO-FM	Greenwood	MS	\$2	+MS Authority for Educ. TV	News/Classical	N
WMAU-FM	Bude	MS	\$2	+MS Authority for Educ. TV	News/Classical	N
WHRN	Cookeville	TN	\$2	+Nashville Public Radio	News/Classical	R
KPNE-FM	North Platte	NE	\$2	+Nebraska Ed. Tel. Commission	Classical	N
KMNE-FM	Bassett	NE	\$2	+Nebraska Ed. Tel. Commission	Classical	N
KXNE-FM	Norfolk	NE	\$2	+Nebraska Ed. Tel. Commission	Classical	N
KLNE-FM	Lexington	NE	\$2	+Nebraska Ed. Tel. Commission	Classical	N
KRNE-FM	Merriman	NE	\$2	+Nebraska Ed. Tel. Commission	Classical	N
KCNE-FM	Chadron	NE	\$2	+Nebraska Ed. Tel. Commission	Classical	N
KHNE-FM	Hastings	NE	\$2	+Nebraska Ed. Tel. Commission	Classical	N
KTNE-FM	Alliance	NE	\$2	+Nebraska Ed. Tel. Commission	Classical	N
KTPH	Tonopah	NV	\$2	+Nevada Public Radio Corp.	News/Classical/Jazz	R
WEVH	Hanover	NH	\$2	+New Hampshire Public Radio	News/Classical	R
WEVN	Keene	NH	\$2	+New Hampshire Public Radio	News/Classical	R

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KMTH	Maljamar	NM	\$2	+Eastern New Mexico University	News/Easy Listening/Clas.	R
WACG-FM	Augusta	GA	\$2	+GA Public Telecommunications Com	News/Classical	N
WABR	Tifton	GA	\$2	+GA Public Telecommunications Com	News/Classical	N
WDCO-FM	Cochran	GA	\$2	+GA Public Telecommunications Com	News/Classical	N
WJWV	Fort Gaines	GA	\$2	+GA Public Telecommunications Com	News/Classical	N
WWET	Valdosta	GA	\$2	+GA Public Telecommunications Com	News/Classical	N
WUNV	Albany	GA	\$2	+GA Public Telecommunications Com	News/Classical	N
WXVS	Waycross	GA	\$2	+GA Public Telecommunications Com	News/Classical	N
WPPR	Demorest	GA	\$2	+GA Public Telecommunications Com	News/Classical	N
WWIO	Brunswick	GA	\$2	+GA Public Telecommunications Com	News/Classical	R
WETH	Hagerstown	MD	\$2	+Greater Wash. Ed. Telecom Assn	Classical/News	R
KIFO	Pearl City	HI	\$2	+Hawaii Public Radio	News-Talk	
KKUA	Wailuku	HI	\$2	+Hawaii Public Radio	News/Classical	R
KIPO-FM	Honolulu	HI	\$2	+Hawaii Public Radio	News/Variety	
KHCD	Salina	KS	\$2	+Hutchinson Community College	News/Classical/Altern.	R
KHCT	Great Bend	KS	\$2	+Hutchinson Community College	News/Classical/Altern.	R
WIZY	East Jordan	MI	\$2	+Interlochen Ctr for the Arts	News/Classical/Jazz	R
WMRL	Lexington	VA	\$2	+James Madison University	News/Classical	R
WMRY	Crozet	VA	\$2	+James Madison University	News/Classical	R
KZNA	Hill City	KS	\$2	+Kanza Society, Inc.	Variety	R
WKRJ	New Philadelphia	OH	\$2	+Kent State University	News/Classical	R
WKSV	Thompson	OH	\$2	+Kent State University	News/Classical	R
WKRW	Wooster	OH	\$2	+Kent State University	News/Classical	R
KLCO	Newport	OR	\$2	+Lane Community College	News/Jazz	R
KSJD	Reedsport	OR	\$2	+Lane County School Dist. #4-J	Alternative	R
KRVM	Eugene	OR	\$2	+Lane County School Dist. #4-J	Adult Alternative	S
KAVE	Oakridge	OR	\$2	+Lane County School Dist. #4-J	Alternative	R
KBSA	El Dorado	AR	\$2	+Louisiana State University	News/Classical	R
KLSA	Alexandria	LA	\$2	+Louisiana State University	News/Classical	R
KTLN	Thibodaux	LA	\$2	+Louisiana State University	News/Classical/Jazz	R
KLDN	Lufkin	TX	\$2	+Louisiana State University	News/Classical	R
WMEW	Waterville	ME	\$2	+Maine Public Broadcasting	News/Classical/Jazz	R
WMED	Calais	ME	\$2	+Maine Public Broadcasting	News/Classical/Jazz	R
WMEM	Presque Isle	ME	\$2	+Maine Public Broadcasting	News/Classical/Jazz	R
WMEF	Fort Kent	ME	\$2	+Maine Public Broadcasting	News/Classical/Jazz	R
WWNJ	Dover Township	NJ	\$2	+Mercer County Community College	Classical	R
WKNA	Senatobia	MS	\$2	+MidSouth Public Communications	News/Classical	
WKNQ	Dyersburg	TN	\$2	+MidSouth Public Communications	Classical	R
WKNP	Jackson	TN	\$2	+MidSouth Public Communications	Classical	R
KNGA	St. Peter	MN	\$2	+Minnesota Public Radio	News-Talk	
KBPR	Brainerd	MN	\$2	+Minnesota Public Radio	News/Classical	
KCRB-FM	Bemidji	MN	\$2	+Minnesota Public Radio	Classical	

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KMSU	Mankato	MN	\$0	+Mankato State University	Variety	
KMSK	Austin	MN	\$0	+Mankato State University	Variety	R
WNJT-FM	Trenton	NJ	\$0	+New Jersey Public Bcst Authority	News-Talk/Jazz	
WNJS-FM	Berlin	NJ	\$0	+New Jersey Public Bcst Authority	News-Talk/Jazz	R
WNJN-FM	Atlantic City	NJ	\$0	+New Jersey Public Bcst Authority	News-Talk/Jazz	R
WNJB-FM	Bridgeton	NJ	\$0	+New Jersey Public Bcst Authority	News-Talk/Jazz	R
WALF	Alfred	NY	\$0	Alfred University	Variety	
KAWC-FM	Yuma	AZ	\$0	Arizona Western College	News/Classical	
KCLU	Thousand Oaks	CA	\$0	California Lutheran University	News/Jazz	
KCSU-FM	Fort Collins	CO	\$0	Colorado State University	Alternative	
WECS	Willimantic	CT	\$0	Eastern Connecticut State Univ.	Variety	
KGVA	Fort Belknap Agency	MT	\$0	Fort Belknap College	News/Variety	
WRQM	Rocky Mount	NC	\$0	Friends of Down East Public Radio	News/Classical	
WSGN	Gadsden	AL	\$0	Gadsden State Jr. College	News/Cls. Rock/Classical	
KGLP	Gallup	NM	\$0	Gallup Public Radio	Variety	
WGTD	Kenosha	WI	\$0	Gateway Vocational Educ. Dist.	News/Classical	
WKGK	Panama City Beach	FL	\$0	Gulf Coast Community College	Alternative	
KACU	Abilene	TX	\$0	KACU, Inc.	News/Soft AC/Classical	
KNBA	Anchorage	AK	\$0	Koahnic Broadcast Corporation	Alternative-Ethnic	
WBKE-FM	North Manchester	IN	\$0	Manchester College	Variety	
WRBH	New Orleans	LA	\$0	Radio for Blind & Print Handicapped	Reading Service	
KRIC	Rexburg	ID	\$0	Ricks College	News/Classical	
KGHR	Tuba City	AZ	\$0	Tuba City High School Board	Variety	
WWGC	Carrollton	GA	\$0	West Georgia College	Alternative	
WBSB	Anderson	IN	\$2	+Ball State University	News/Classical	R
WBSW	Marion	IN	\$2	+Ball State University	News/Classical	R
WBLU-FM	Grand Rapids	MI	\$2	+Blue Lake Fine Arts Camp	News/Classical/Jazz	R
KBSU	Boise	ID	\$2	+Boise State University	Jazz/Spanish	N
KBSM	McCall	ID	\$2	+Boise State University	News/Classical	
WBUR	West Yarmouth	MA	\$2	+Boston University	News-Talk	R
KFPR	Redding	CA	\$2	+Cal. State Univ.-Chico	Classical/Jazz	R
KXSR	Groveland	CA	\$2	+Cal. State Univ.-Sacramento	Classical	R
WCMZ-FM	Sault Sainte Marie	MI	\$2	+Central Michigan University	News/Classical/Jazz	R
WCMW-FM	Harbor Springs	MI	\$2	+Central Michigan University	News/Classical/Jazz	R
WCML-FM	Alpena	MI	\$2	+Central Michigan University	News/Classical/Jazz	R
WUCX-FM	Bay City	MI	\$2	+Central Michigan University	News/Classical/Jazz	R
KCUA	Coalville	UT	\$2	+Community Wireless - Park City	News/Altern./Classical	
KCPW	Salt Lake City	UT	\$2	+Community Wireless - Park City	News/Classical	
WEDW-FM	Stamford	CT	\$2	+CT Educ. Telecomctns Corp.	News/Classical	R
WNPR	Norwich	CT	\$2	+CT Educ. Telecomctns Corp.	News/Classical	R
WDPG	Greenville	OH	\$2	+Dayton Public Radio, Inc.	Classical	
WEKH	Hazard	KY	\$2	+Eastern Kentucky University	News/Classical/Jazz	R

Before The
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

ADJUSTMENT OF THE RATES FOR
NONCOMMERCIAL EDUCATIONAL
BROADCASTING COMPULSORY
LICENSE

)
) Docket No. 96-6 CARP NCBRA

WRITTEN TESTIMONY OF
CAROL GRAJEDA IN
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I, Carol Grajeda, am a Senior Legal Assistant at White & Case, where I have been employed since February 1995. I was asked by attorneys at White & Case to obtain the following documents which are assigned ASCAP Exhibit Nos. as set forth in ASCAP's List of Exhibits in support of ASCAP's direct case herein.

2. The documents for which I am listed as the Sponsoring Witness were obtained from the following sources:

<u>Exs. Nos.</u>	<u>Description</u>
9.	Public Broadcasting Amendments Act of 1981, Pub. L. No. 97-35, 95 Stat. 730 (1981) (codified as amended at 47 U.S.C. §§ 399A-399B (1981))
10.	47 U.S.C. §§ 399A-399B (1981)
11.	H.R. REP. No. 82, 97th Cong. 1st Sess. (1981)
12.	H.R. CONF. REP. No. 208, 97th Cong. 1st Sess. (1981), <i>reprinted in</i> 1981 U.S.C.C.A.N. 396, 1257
13.	<u>In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations</u> , 86 F.C.C.2d 141 (1981)

<u>Exs. Nos.</u>	<u>Description</u>
14.	<u>In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations</u> , 90 F.C.C.2d 895 (1982)
15.	<u>In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations</u> , 97 F.C.C.2d 255, 47 CFR part 73 (1984)
16.	47 C.F.R. §§ 73.503, 73.621 (1997)

These were from library sources and are public documents.

300.	Corporation for Public Broadcasting, 1996 Public Broadcasting Directory
301.	Preliminary Report, "Public Broadcasting Revenue Fiscal Year 1995" (published Aug. 1996)
302.	Annual Report for the Corporation for Public Broadcasting for the fiscal year 1996

<u>Exs. Nos.</u>	<u>Description</u>
303.	Corporation for Public Broadcasting, Information sheets, "info. packets," Nos. 7, 11, 16, 19, 22, and 26 (respectively published Nov. 1994, Mar. 1995, May 1995, Aug. 1995, Oct. 1995, and Jan. 1996)
304.	Final Report, "Perceptions of Commercial Activities in Public Broadcasting," Jan. 1996 (prepared for CPB by Susan H. Russell and Mamie H. Collier of SRI International)
305.	Report of David LeRoy and Judith LeRoy, "Public Television: Techniques for Audience Analysis and Program Scheduling" (published Jan. 1995)
306.	Pamphlet, "So You Think a Buck Doesn't Buy You Much?" (published by CPB)
307.	Information sheet, "Traveler's Guide to Public Radio"
308.	Information sheets, "Frequently Asked Questions About Public Broadcasting 1997"

Exs. Nos.

Description

- | | |
|------|--|
| 309. | 1996 Corporation for Public Broadcasting Salary Report
for Jointly Operated Public Broadcasting Licensees |
| 310. | 1996 Corporation for Public Broadcasting Salary Report
for Public Radio Licensees |
| 311. | 1996 Corporation for Public Broadcasting Salary Report
for Public Television Licensees |
| 312. | Directory, the Public Radio Guide to Business &
Corporate Support Success |

**These were materials obtained from the Corporation for
Public Broadcasting ("CPB") and are available to the general
public.**

- | | |
|------|---|
| 313. | Excerpts from the Corporation for Public
Broadcasting's Web Page |
|------|---|

**These were obtained from the Web Page maintained by the
CPB.**

Exs. Nos.

Description

314. Pamphlet, The Association of America's Public
Television Stations "The Washington Voice For Your
Local Vision"
315. Pamphlet, The Association of America's Public
Television Stations "Our Vision Our Future"

**These were obtained from the Association of America's
Public Television Stations ("AAPTS") and are available to the
general public.**

316. Pamphlet, National Public Radio: "What's Unique
about NPR?"
317. National Public Radio Annual Report as of September
30, 1996, Deloitte & Touche LLP
318. Pamphlet, "A Brief History of National Public Radio"

**These were obtained from National Public Radio ("NPR")
and are available to the general public.**

Exs. Nos.

Description

319. Excerpts from National Public Radio's Web Page
320. "Music from All Things Considered," Selection of
Programming from September 1997, National Public
Radio's Web Page
321. "Music from All Things Considered," Selection of
Programming from December 20, 1996 - January 1,
1997, Excerpted from National Public Radio's Web
Page

This was obtained from the Web Page maintained by NPR.

322. Excerpts from Public Radio International's Web Page
323. List of Affiliates of Public Radio International (Stations
Carrying PRI Programs), From Public Radio
International's Web Page

**These were obtained from the Web Page maintained by
Public Radio International ("PRI").**

Exs. Nos.

Description

324. 1996 Annual Report of Public Radio International

This was obtained from PRI and is generally available to the public.

325. Excerpts from the Public Broadcasting Services's Web Page

326. Excerpts from Public Broadcasting Service's Web Page Site "Shop PBS"

327. Excerpts from Public Broadcasting Service's Page Site "PBS Home Video Collection"

These were obtained from the Web Page maintained by Public Broadcasting Service ("PBS")

Exs. Nos.

Description

328. "The Charlie Horse Music Pizza:" promotional materials including audience research, station relations, publicity & promotions, addendum: "American Psychological Association Summation - Research Findings Show Music Can Enhance Key Component of Human Intelligence"

This was from a 1997 solicitation addressed to ASCAP.

329. Article, "Looking Back at the Audiences of Public Broadcasting," Current Online, published at <http://www.current.org/pb/pbaid1.html> (Web Page created April 5, 1997)

This was obtained from the Web Site maintained by

Current, a periodical.

330. Pamphlet, PBS Learning Services: Overview of Services, June 1996

331. PBS Home Video, Mail Order Catalog, 1997

Exs. Nos.

Description

These were obtained from PBS and are available to the general public.

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|------|--|
| 332. | The Program Resources Group (PRG), The Multi-Market Network: A Unique Opportunity for Underwriters to Buy Multiple Public Television Stations as a Network |
| 333. | The Program Resources Group (PRG), The Multi-Market Network: Informational Guide |
| 334. | State of Minnesota Charitable Organization Annual Report of Public Radio International for the Fiscal Year ending June 30, 1996 |
| 335. | American Program Service, Summer 1997 Program Catalog |
| 336. | American Program Services "Programming for America's Public Television Community" |

Exs. Nos.

Description

These were obtained from the sources indicated and are available to the general public.

337. Excerpts of Public Broadcasting Service Web Page Site
"Store of Knowledge"

This was obtained from the Web Site maintained by PBS.

338. Hearings Before a Subcommittee of the Committee on
Appropriations, House of Representatives; testimony of
Richard W. Carlson, President and Chief Executive
Officer of the Corporation for Public Broadcasting

This was from a library source and is a public document.

339. Revenue of Public Broadcasting by Source: 1976-1995
340. Revenue of Public Television by Source: 1976-1995
341. Revenue of Public Radio by Source: 1976-1995

Exs. Nos.

Description

342. Brochure, The Program Resources Group: Public
Television's Prime Alternative

**These were obtained directly from CPB and are available
to the general public.**

400. Chart of Top Ten Producing Public Television Stations
This is a chart prepared by White & Case's staff.
401. Financial Statements, KCET - Community Television of
Southern California for the fiscal year ending June 30,
1996
402. Annual Report and Financial Statements, KTCA/KTCI -
Twin Cities Public Television for the fiscal year ending
August 31, 1996
403. Annual Report, WETA - Washington DC, for the fiscal
year of 1996
404. Annual Report, WNET - New York, for the fiscal year
of 1995-96

Exs. Nos.

Description

- | | |
|------|---|
| 405. | Annual Report, KQED - Los Angeles, CA, for the
fiscal years of 1995 and 1996 |
| 406. | Financial Statements, WTTW - Chicago, IL for the
fiscal year ending June 30, 1996 |
| 407. | Annual Report, WHYY - Philadelphia, PA, for the
fiscal year of 1996 |
| 408. | Annual Report, WGBH - Boston, MA for the fiscal
year of 1996 |
| 409. | Financial Statements, WQED - Pittsburgh, PA, for the
fiscal years ending April 30, 1997 and April 30, 1996 |
| 410. | 1996 Financial Statement and 1994-95 Annual Report,
WMPT - Maryland Public Television |

**These were obtained directly from the public broadcasting
stations mentioned and are available to the general public.**

Exs. Nos.

Description

411. Annual Report of WGBH to the Massachusetts Office of the Attorney General, Division of Public Charities, for the fiscal year ending August 31, 1996.
412. Annual Financial Report of WNET to the New York State Department of State, for the fiscal year ending June 30, 1996.
413. Periodic Report of KCET to the Attorney General of California, for the fiscal year ending June 30, 1996

These were obtained from the governmental agencies mentioned and are available to the general public.

414. Signals, Mail Order Catalog, 1997, WGBH Educational Foundation

This was obtained from the mail order number for this catalog and is available to the general public.

<u>Exs. Nos.</u>	<u>Description</u>
500.	Excerpts from the Web Pages of Public Television Stations Regarding Underwriting
501.	Excerpts from the Web Pages of Public Television Stations Regarding Fundraising
502.	Excerpts from the Web Pages of Public Television Stations Regarding Merchandising/Revenue Sources
503.	Excerpts from the Web Pages of Public Television Stations Regarding National Programming
504.	Excerpts from the Web Pages of Public Television Stations Regarding Local Programming.

These were obtained from the Web Sites maintained by the
public television stations mentioned.

505.	<u>Current</u> excerpts regarding TV Music Use (Including Music Program Ads)
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<u>Exs. Nos.</u>	<u>Description</u>
506.	<u>Current</u> excerpts regarding Public Radio International Music Programming
507.	<u>Current</u> excerpts regarding National Public Radio Music Programming
508.	<u>Current</u> excerpts regarding Program Resources Group Ads for Programming
509.	<u>Current</u> excerpts regarding American Program Services' Ads for Programming
510.	<u>Current</u> excerpts regarding Other Music Programming
511.	<u>Current</u> Excerpts regarding All Compensation/Salaries
512.	<u>Current</u> excerpts regarding TV Production - Costs
513.	<u>Current</u> excerpts regarding TV CPB Appropriations, PBS/NPR Funding & Station Budgets
514.	<u>Current</u> excerpts regarding All "Corporate Support Announcements" (including Underwriting Advertising)

<u>Exs. Nos.</u>	<u>Description</u>
515.	<u>Current</u> excerpts regarding All Ancillary Income & Entrepreneurial Activities
516.	<u>Current</u> excerpts regarding Program Ownership & Spending (PBS & Public Stations, Including Split Owners)
517.	<u>Current</u> excerpts regarding TV Independent Productions/Co-Productions Including APS/American Program Services & ITVS/Independent Television Services or Independent Producers
518.	<u>Current</u> excerpts regarding TV Commercialism (Generally)
519.	<u>Current</u> excerpts regarding All Capital/Fund Raising (Endowments, Foundations, Grants)
520.	<u>Current</u> excerpts regarding Radio - Music Programming
521.	<u>Current</u> excerpts regarding Radio - Miscellaneous
522.	<u>Current</u> excerpts regarding Radio Commercialism

<u>Exs. Nos.</u>	<u>Description</u>
523.	<u>Current</u> excerpts regarding Radio Fees (e.g., NPR Dues, Affiliation & Access Fees)
524.	<u>Current</u> excerpts regarding Children's Programming
525.	<u>Current</u> excerpts regarding TV Surveys and Studies

These were obtained from Current, a periodical.

600.	Top Producing Public Radio Stations Chart prepared by White & Case's staff.
601.	Annual Report, Colorado Public Radio, "Report to Funders 1996-1997," for the fiscal year ending June 30, 1996.
602.	Financial Statements, "WVTF-FM Radio, A Public Telecommunications Entity, Financial Statements as of June 30, 1996" (Blacksburg, WVA)

Exs. Nos.

Description

603. Annual Report, WBHM 90.3 FM (Birmingham, AL), dated June 30, 1997/Annual Financial Report Submitted to the Corporation for Public Broadcasting dated September 30, 1996
604. Annual Reports, "KUHF's FY96 Annual Report" and "KUHF's FY95 Annual Report," for the fiscal years ending August 31, 1996 and August 31, 1995, respectively (Houston, TX)
605. Annual Report, Wisconsin Public Radio, "1996 Annual Report: Building a Community of Listeners"
606. Annual Report, KRCC 91.5 FM (Colorado Springs, CO), for the fiscal year ending June 30, 1996
607. Annual Report, "Vermont Public Radio: Financial Statements and Schedule (With Independent Auditors' Report), September 30, 1996," for the fiscal year ending September 30, 1996
608. 1996 Annual Report, KPLU 88.5 FM (Tacoma, WA), for the fiscal year ending May 1996

Exs. Nos.

Description

609. Planning Document, "WLRH 1996-1997 Planning Document," dated 1996 (Huntsville, AL)

These were obtained from the public broadcasting stations mentioned and are available to the public.

610. Annual Financial Report of Western New York Public Broadcasting Association to the New York State Department of State, for the fiscal year ending June 30, 1996
611. Annual Financial Report of WMHT Educational Telecommunications to the Office of the Attorney General (New York) for the fiscal year ending June 30, 1996
612. Annual Financial Report of WSKG Public Communications Council to the New York State Department of Law, for the fiscal year ending June 30, 1996

<u>Exs. Nos.</u>	<u>Description</u>
613.	Annual Financial Report of WXXI Public Broadcasting Council to the New York State Department of Law for the fiscal year ending June 30, 1996
614.	1996 Report to Funders, Minnesota Public Radio for the fiscal year ending June 30, 1996
615.	Excerpts from the Web Pages of Public Radio Stations Regarding Underwriting

**These were obtained from the public agencies mentioned
and are available to the public.**

616.	Excerpts of Web Sites of Public Radio Regarding Programming
617.	Excerpts of Web Sites of Public Radio Regarding Pledging
618.	Wireless, Fall/Winter 1997, Mail Order Catalog, Minnesota Public Radio.

Exs. Nos.

Description

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|------|--|
| 619. | Excerpt from Minnesota Public Radio Web Page,
information on "A Prairie Home Companion" |
| 620. | Other Sources of Radio Programming - Hearts of
Space, excerpts from Web Pages |
| 621. | Other Sources of Radio Programming - Echoes, ,
excerpts from Web Pages |
| 622. | Other Sources of Radio Programming - Soundprint,
excerpts from Web Pages |

**These were obtained from the Web Sites mentioned and
from the mail order number for the aforementioned catalog and is
available to the general public.**

- | | |
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| 623. | Annual Financial Report for Pacifica Foundation for the
Fiscal Year ending September 30, 1996 |
|------|--|

**This was obtained from the Pacifica Foundation and is
available to the public.**

<u>Exs. Nos.</u>	<u>Description</u>
700.	1995 National Association of Broadcasters Television Employee Compensation and Fringe Benefits Report
701.	1996 National Association of Broadcasters Radio Station Salary Report
702.	1997 Market Report: Investing in Television, - May 1997 Ratings, BIA Publications - Second Edition
703.	1997 Market Report: Investing in Radio, - Winter 1997 Ratings, BIA Publications - Second Edition

**These are materials obtained from the sources mentioned
and are available to the general public.**

- | | |
|------|--|
| 704. | Newspaper article, Constance L. Hays, "A Star Is
Licensed; With 'Arthur,' Public TV Stretches
Commercial Limits," <u>New York Times</u> , Sept. 24, 1997,
at D1 |
| 705. | Magazine article, Mark Jolly, "Jam Sessions," <u>New
York</u> , Sept. 29, 1997, at 38 |

<u>Exs. Nos.</u>	<u>Description</u>
706.	Article, Melinda Newman, "PBS' 'Sessions' To Offer Intimate Look At Artists," <u>Billboard</u> , July 5, 1997, at 1
707.	Article, Lawrie Mifflin, "Commercials on Public TV? Some Stations Are Tempted," <u>New York Times</u> , June 5, 1997, at C13
708.	Article, Robert G. Ottenhoff, "PBS: A Noncommercial Oasis," <u>Washington Post</u> , August 16, 1997
709.	Miscellaneous News Articles regarding Public Broadcasting Music Usage
710.	Miscellaneous News Articles regarding Public Broadcasting Merchandise Sales
711.	Miscellaneous News Articles regarding Public Radio Arbitron Ratings
712.	Miscellaneous News Articles regarding Public Broadcasting Fundraising and Pledge Drives
713.	Miscellaneous News Articles regarding Public Television Underwriting

<u>Exs. Nos.</u>	<u>Description</u>
714.	Miscellaneous News Articles regarding Public Radio Underwriting
715.	Article, "WVXU-FM chosen to lead Mighty Ducks radio group", <u>The Cincinnati Enquirer</u> , August 21, 1997
716.	Article, "XU tunes into commercial broadcasting the university's growing Xstar radio network could divide into two groups", <u>Cincinnati Business Courier</u> , August 15, 1997
717.	Article, "C-SPAN Purchases UDC Jazz Property from New Public Affairs Station", <u>Radio Business</u> , August 22, 1997
718.	Article, "Public radio stations to go commercial", United Press International, August 18, 1997
719.	"New NPR Dues Formula Change to be Postponed", <u>Public Broadcasting News</u> , June 13, 1997

Exs. Nos.

Description

720. The Boston Globe, four part series:
- June 22, 1997 - "Winds of change buffet WGBH" and related article, "'Health Quarterly' a symptom of budget ills"
 - June 23, 1997 - "Local programming doesn't rate" and related articles, "Critics say Channel 2 plays it too safe", "From pledges to bequests, WGBH pushes the envelope" and "WGBH's next legacy: 'Africans in America'"
 - June 24, 1997 - "Spinoffs, corporate tie-ins a precarious path for WGBH" and related article, "Public Television's 'Frontline' man in Hollywood"
 - June 25, 1997 - "Public television searches for a niche" and related article, "Public stations debate cost of commercialism"

These articles were excerpted from newspapers and periodicals in general circulation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 30, 1997

Carol Grajeda
Carol Grajeda

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of

) Docket No. 96-6 CARP
ADJUSTMENT OF THE RATES FOR) NCBRA
NONCOMMERCIAL EDUCATIONAL)
BROADCASTING COMPULSORY)
LICENSE)

WRITTEN TESTIMONY
OF RAY SCHWIND
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I, Ray Schwind, am the Director of Television Licensing for the American Society of Composers, Authors and Publishers ("ASCAP") and provide this testimony in support of ASCAP's direct case.

2. I have been employed by ASCAP since 1986 in various positions in its Television Licensing Department. In my current position as Director of Television Licensing for ASCAP, I am responsible for ensuring that all domestic U.S. commercial and non-commercial television stations are licensed to perform music in ASCAP's repertory.

3. Local commercial television stations are generally licensed on an individual basis to broadcast performances of ASCAP music on programs not originated by the networks (i.e, ABC, CBS and NBC). Each such commercial television station executes a license with ASCAP directly, pays fees and submits reports as needed directly to ASCAP.

4. Unlike commercial television stations, non-commercial or "public" television stations are licensed as a group. These stations broadcast ASCAP's music under a license between ASCAP, National Public Radio and Public Broadcasting Service ("PBS").

5. The most recent such license (the "ASCAP Public Broadcasting License") has a term from 1993 to 1997. The Agreement calls for a lump sum license fee to be paid for the five year term covered in annual installments. Other than that fee, ASCAP receives no other payment for such television broadcasting under the ASCAP Public Broadcasting License.


6. The television stations which, I am informed by PBS, are licensed under the ASCAP Public Broadcasting License are set forth in ASCAP Exhibit 28, which is a letter dated January 13, 1997 from PBS to ASCAP.

7. Using ASCAP's records as a source of information, I have prepared two charts comparing the number and relative growth of public television stations and their predecessors since 1976. Copies of those charts are submitted as ASCAP Exhibit 29.

8. ASCAP receives no information under the ASCAP Public Broadcasting License or otherwise as to the revenue earned by particular stations which perform ASCAP music under that license.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 9/29/97


Ray Schwind

GROWTH OF PUBLIC TELEVISION STATIONS

1976-1996^{1/}

TOTAL STATIONS		TOTAL INCREASE 1976-1996	
1976	1996	NUMBER	PERCENTAGE
259	359	+100	+38.6%

^{1/} All data is as of January 1st of each year.

YEARLY GROWTH OF PUBLIC TELEVISION STATIONS ON AIR

As of January 1 of Each Year

YEAR	TOTAL	NUMBER CHANGE	PERCENT CHANGE
1976	259	-	-
1977	261	2	0.8
1978	266	5	1.9
1979	274	8	3.0
1980	277	3	1.1
1981	282	5	1.8
1982	288	6	2.1
1983	293	5	1.7
1984	297	4	1.4
1985	314	17	5.7
1986	316	2	0.6
1987	322	6	1.9
1988	334	12	3.7
1989	342	8	2.4
1990	350	8	2.3
1991	361	11	3.1
1992	363	2	0.6
1993	368	5	1.4
1994	367	-1	-0.3
1995	371	4	1.1
1996	359	-12	-3.2

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of

ADJUSTMENT OF THE RATES FOR
NONCOMMERCIAL EDUCATIONAL
BROADCASTING COMPULSORY
LICENSE

)
) Docket No. 96-6 CARP NCBRA

WRITTEN TESTIMONY
OF DAVID BANDER
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I, David Bander, am the Director of Radio Licenses for the American Society of Composers, Authors and Publishers ("ASCAP") and provide this testimony in support of ASCAP's direct case.

2. I have been employed by ASCAP since 1986 in various positions in the Radio Licensing Department.

3. As Director of Radio Licensing for ASCAP I am responsible for ensuring that the more than 12,000 domestic commercial and non-commercial radio stations which broadcast in the United States are properly licensed to broadcast performances of music in ASCAP's repertory. Commercial radio stations are licensed on an individual basis. Each commercial radio station executes a license directly with ASCAP. Such stations pay fees and submit reports directly to ASCAP in accordance with the provisions of those licenses.

4. Non-commercial radio stations represented by National Public Radio ("NPR") and the Public Broadcasting Service are licensed groups. These groups consist of non-commercial educational radio stations that receive or are qualified to receive grants from the Corporation for Public Broadcasting or are otherwise affiliated with NPR. Most, but not all of these radio stations are members of NPR. A number of stations, although not members of NPR, are, I am informed, represented by it insofar as ASCAP's license is concerned.

5. The most recent such license (the "ASCAP Public Broadcasting License") has a term from 1993 to 1997. Pursuant to its provisions, a lump sum is paid annually to ASCAP as a license fee. Other than that fee, ASCAP receives no

other payment for such radio broadcast under the ASCAP-Public Broadcasting License.

6. The radio station licensees which receive the benefits of the ASCAP-Public Broadcasting License are set forth in ASCAP Ex. 30, which is a letter dated February 3, 1997 from NPR to ASCAP.

7. I have prepared a chart comparing the annual growth in the number of commercial radio stations licensed by ASCAP as well as the non-commercial radio stations and their predecessors so licensed for the years 1976 through 1996. I have also set forth in a chart the number of such stations (both members of NPR and non-members) which are licensed under the ASCAP Public Broadcasting License and those non-commercial stations licensed under other licenses. Copies of those charts are submitted as ASCAP Ex. 31. (Information as to the non-commercial radio stations has been supplied by the stations themselves or their representatives to ASCAP.)

8. ASCAP receives no information under the ASCAP-Public Broadcasting License or otherwise as to the revenue earned by particular non-commercial radio stations which perform ASCAP music under that license.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 9/29/97

David Bander
David Bander

GROWTH OF RADIO STATIONS

1976-1996^{1/}

STATION	TOTAL STATIONS		TOTAL INCREASE 1976-1996	
	1976	1996	#	%
ASCAP PUBLIC BROADCASTING LICENSEES	177	668	+499	+277.0%
NON-COMMERCIAL LICENSEES UNDER LICENSES OTHER THAN ASCAP'S PUBLIC BROADCASTING LICENSES	804	1,968 ^{2/}	+1,164	+144.8%
COMMERCIAL RADIO STATIONS LICENSEES	7,230	10,595 ^{3/}	+3,365	+46.5%

^{1/} All data is "as of" end year unless otherwise noted.

^{2/} As of end of 1995.

^{3/} As of end of 1995.

GROWTH OF RADIO STATIONS ON AIR
As of January 1 of Each Year
(Unless otherwise noted)

COMMERCIAL STATIONS LICENSED BY ASCAP				NON-COMMERCIAL STATIONS LICENSED UNDER NON- COMMERCIAL LICENSES OTHER THAN ASCAP-PUBLIC BROADCASTING LICENSE				ASCAP-PUBLIC BROADCASTING LICENSEES			
YEAR	TOTAL	NUMBER CHANGE	PERCENT CHANGE		TOTAL	NUMBER CHANGE	PERCENT CHANGE		TOTAL	NUMBER CHANGE	PERCENT CHANGE
1976	7,230	-	-		804*	-	-		177*	-	-
1986	8,692	1,462	20.2		1,289	485	60.3		445	268	151.1
1987	8,827	135	1.6		1,348	59	4.6		464	19	4.3
1988	8,913	86	1.0		1,416	68	5.0		486	22	4.7
1989	9,295	382	4.3		1,475	59	4.2		506	20	4.1
1990	9,445	150	1.6		1,601	126	8.5		529	23	4.5
1991	9,572	127	1.3		1,696	95	5.9		560	31	5.9
1992	9,741	169	1.8		1,777	81	4.8		592	32	5.7
1993	9,932	191	2.0		1,838	61	3.4		619	27	4.6
1994	10,389	457	4.6		1,912	74	4.0		633	14	2.3
1995	10,595	207	2.0		1,968	56	2.9		641	8	1.3
1996	N/A	N/A	N/A		N/A	N/A	N/A		668	27	4.2

*At close of year.

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of

ADJUSTMENT OF THE RATES FOR
NONCOMMERCIAL EDUCATIONAL
BROADCASTING COMPULSORY
LICENSE

)
) Docket No. 96-6 CARP
) NCBRA
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WRITTEN TESTIMONY
OF ED BERGSTEIN
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I am a Senior Vice President at Audits & Surveys Worldwide ("ASW") involved in media market research.

2. ASW was commissioned by White & Case, as counsel for the American Society of Composers, Authors and Publishers ("ASCAP"), to perform a survey of the levels of music programming viewership on television stations affiliated with the Public Broadcasting Service. I personally supervised the development and execution of the survey and the reporting of the results of that survey. A true and correct copy of the final survey report, including a discussion of the methodology used, is attached.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: New York, New York
September 29, 1997



Ed Bergstein

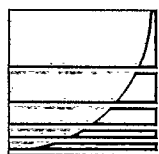
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Viewer Survey Report

Prepared for: White & Case

September 1997



AUDITS &
SURVEYS
WORLDWIDE

Science for the Art of Marketing

The Audits & Surveys Building • 650 Avenue of the Americas
New York, NY 10011 • 212-627-9700 • Fax: 212-627-2034

ABOUT AUDITS & SURVEYS WORLDWIDE

Audits & Surveys Worldwide (ASW), founded in 1953, is generally acknowledged as one of the leading market research firms in the world, conducting research in nearly 80 countries. ASW's clients include many of the world's foremost companies and organizations, including Coca-Cola, AT&T, IBM, Ford, Kodak, Reader's Digest, the USGA, UPS, Major League Baseball, Shell Oil, The Partnership for a Drug-Free America, Home Depot, Reynolds Metals, Caesars, Paine Webber, the Tennis Industry Association, Dow, Texaco, VISA, Burger King, and Volvo.

ASW has long been recognized as one of the world's most prominent media research companies. Ed Bergstein, the Senior Vice President who oversaw the current study, has been responsible for a major proportion of ASW's media research over the past nearly 15 years. Included among the large array of ASW media clients are Cineplex Odeon, the Advertising Research Foundation, CBS-TV, Classic Sports Network, Time-Warner, the Audit Bureau of Circulations, Conde Nast Publications, Parade Magazine, the UC Television Network, Readers Digest Publications, Channel One, The New York Times, and Golf Digest.

ASW is headquartered in New York City, where it has approximately 300 employees, and has regional offices in San Francisco and Minneapolis. In addition, ASW has 3 major central telephone interviewing facilities housing state of the art CATI[®] systems (Computer-Assisted Telephone Interviewing), with some 180 data stations in 3 markets -- Philadelphia, Chicago, and Portland (Oregon).

ASW's professional staff includes statisticians, psychologists, mathematicians and marketers. The company maintains complete in-house facilities. The Survey Division, which is responsible for the current research, conducts all types of projects including:

- Consumer Tracking
- Customer Satisfaction
- Media Studies: Broadcast and Magazine Research
- Measurement of Advertising Effectiveness
- Business-to-Business
- Industrial Panels
- Inter-Media Research
- Crisis Research
- Magazine Readership
- Mystery Shopping
- Litigation Research

A WORD ABOUT THE SURVEY

WHITE & CASE commissioned ASW to conduct a survey to measure the levels of music programming viewership on Public Broadcasting Service (PBS) television stations. The purpose of the survey was to determine levels of music programming viewership on PBS stations and the extent to which those stations' viewers enjoy the music programming that is broadcast. The survey was conducted by live interviews which took place in September 1997. A total of 750 interviews were completed throughout seven different markets across the United States, with an approximately equal number of interviews obtained in each market.

Methodology

ASW conducted these interviews in 7 of the 10 largest PBS revenue-generating markets. Interviews were tailored to the largest PBS station in these markets as follows (the number in parentheses indicates the completed interviews for that market):

- Minneapolis -- KTCA (107)
- Philadelphia -- WHYY (107)
- Boston -- WGBH (107)
- Baltimore -- WMPT (107)
- Washington D.C. -- WETA (107)
- San Francisco -- KQED (107)
- New York -- WNET (108)

A sample for each market was drawn by ASW, using the principles of random digit dialing enhanced to increase the incidence of working residential telephone households. By using such a methodology (our standard interviewing procedure), the sample is representative of the entire market. The market was defined as all households falling within the MSA (Metropolitan Statistical Area) of the cities listed above (using current U.S. Census definitions). In cases where the city was part of a larger CMSA (Consolidated Metropolitan Statistical Area), the PMSA (Primary Metropolitan Statistical Area) was generally used to define the area.

The survey was limited to adults 18 years of age or older who watched at least one hour of programming on the largest PBS station in their area during the previous month. In households that contained more than one such adult, the respondent was randomly selected. Up to two callbacks were scheduled to reach households or individuals not available at the time of the initial call.

Interviewing was conducted by ASW employees over the telephone using the Audits & Surveys CATI® system. The system frees the interviewers from paper and pencil tasks and allows them to concentrate on developing and maintaining rapport with respondents and recording responses correctly and completely. Questions appear automatically on the screen, one at a time, in their proper order. This system guarantees that all "branching" questions are correctly followed and rejects the entry of data into sections of the questionnaire that are inappropriate to the interview. The CATI® system also provides for the randomized sequencing of questions, wherever appropriate.

All interviewing was conducted from our ASW interviewing facilities, by interviewers who were fully briefed on the questionnaire and interviewing procedures by the ASW project staff.

The questionnaire which forms the basis of the survey was designed by ASW, and approved by the client. Because the main objective of the survey was to identify viewership of music programming on PBS stations, questions regarding non-music programming were included to mask the intent and create a balanced questionnaire. Randomization of lists within several questions was also implemented to prevent any possible sequential biasing of questions. The questionnaire was identical for each market except for one question that asked about specific programs broadcast in the previous month. For this question, ASW selected 20 programs that ran during prime-time hours (or on prime-time and during the day on Sundays) in August on the stations -- 10 music programs, 10 non-music programs. Whenever possible, the programs were kept consistent across the different markets. The respondent was asked to indicate which of these programs, if any, he or she had watched in the previous month. The items were presented in a random order.

The questionnaire also contained two open-ended questions in which interviewers were directed to record answers to these verbatim. Interviewers were directed to probe respondents only as specifically indicated on the questionnaire. Prior to data processing, codes for the open-ended questions were developed by one of the senior coding supervisors, and reviewed and ultimately approved by the project director. All coding was conducted in-house. Validation procedures were implemented for 50% of the interviews to verify participation in the survey. The average length of

the interview was 6-7 minutes. In households with adults 18 years of age or older, the incidence of qualified respondents (i.e., those adults who watched the largest PBS station in their area for at least one hour during the previous month) was 55.2%.

The following table displays 95% confidence intervals for various sample sizes, which is the standard confidence level used in the survey industry. To find the confidence interval for a given proportion, find the column corresponding to the size of the sample base for the proportion.

- For proportions based on the entire sample, use the first row (labeled "Base = Total").
- For base sizes not shown, use the next smallest base that appears in the table.
- Use the row corresponding to the sample proportion for which a sampling error is desired.
- If the sample proportion is not shown, round toward 50% (e.g., 27% becomes 30%)

For example, out of 750 respondents, 14.3% donated money to PBS during its pledge drive in August. Using the following table where the sample size 750 column intersects the 15% row, we can say with 95% confidence that the true figure falls between 11.3% and 17.3% ($14.3\% \pm 3$).

The table provides the percentage limit that the reported answer might deviate from the "true score" (in 95 out of 100 samples) because the measurement was taken of a sample of 750 and not of the total universe. Thus, in 95 out of 100 samples drawn from the universe, the reported percentage will reflect the universe score within the percentage range listed on the table.

The following table shows 95% confidence intervals for percentages based on "Total" (n = 750), and percentages based on "Donaters" (n = 107).

The 95% confidence interval is \pm . . .

Base:	<u>"Total"</u>	<u>600</u>	<u>500</u>	<u>400</u>	<u>300</u>	<u>200</u>	<u>100</u>
For Percentages Near:							
5%	$\pm 2\%$	$\pm 2\%$	$\pm 2\%$	$\pm 2\%$	$\pm 2\%$	$\pm 3\%$	$\pm 4\%$
10%	$\pm 2\%$	$\pm 2\%$	$\pm 3\%$	$\pm 3\%$	$\pm 3\%$	$\pm 4\%$	$\pm 6\%$
15%	$\pm 3\%$	$\pm 3\%$	$\pm 3\%$	$\pm 3\%$	$\pm 4\%$	$\pm 5\%$	$\pm 7\%$
20%	$\pm 3\%$	$\pm 3\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 8\%$
25%	$\pm 3\%$	$\pm 3\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 8\%$
30%	$\pm 3\%$	$\pm 4\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 9\%$
35%	$\pm 3\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 5\%$	$\pm 7\%$	$\pm 9\%$
40%	$\pm 4\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 7\%$	$\pm 10\%$
45%	$\pm 4\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 7\%$	$\pm 10\%$
50%	$\pm 4\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 7\%$	$\pm 10\%$
55%	$\pm 4\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 7\%$	$\pm 10\%$
60%	$\pm 4\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 7\%$	$\pm 10\%$
65%	$\pm 3\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 5\%$	$\pm 7\%$	$\pm 9\%$
70%	$\pm 3\%$	$\pm 4\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 9\%$
75%	$\pm 3\%$	$\pm 3\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 8\%$
80%	$\pm 3\%$	$\pm 3\%$	$\pm 4\%$	$\pm 4\%$	$\pm 5\%$	$\pm 6\%$	$\pm 8\%$
85%	$\pm 3\%$	$\pm 3\%$	$\pm 3\%$	$\pm 3\%$	$\pm 4\%$	$\pm 5\%$	$\pm 7\%$
90%	$\pm 2\%$	$\pm 2\%$	$\pm 3\%$	$\pm 3\%$	$\pm 3\%$	$\pm 4\%$	$\pm 6\%$
95%	$\pm 2\%$	$\pm 2\%$	$\pm 2\%$	$\pm 2\%$	$\pm 2\%$	$\pm 3\%$	$\pm 4\%$
n =	750	600	500	400	300	200	100

FINDINGS

In order for an individual to qualify for participation in the survey, he or she had to have watched a minimum of one hour of programming on the largest PBS station in his or her area during the month of August. When asked to specify the number of hours of programming watched on this station during the month of August, 58.8% said 5 hours or less and 41.2% said 6 hours or more (with the majority of the heavier viewers saying 10+ hours).

There seems to be a consensus among viewers that PBS satisfies their programming needs. Nearly all viewers (95.1%), said they found the programs overall to be "very satisfying/somewhat satisfying." A majority of these were "very" satisfied -- 59.2% "very" to 35.9% "somewhat."

When asked about 10 music programs broadcast during the month of August on PBS, 70.1% of the viewers said they had seen at least one of them, with the average at about 2 (1.96). It is important to note that many of these music programs may have run several times throughout August (either as repeats or as different programs in a series); thus, the above percentage reflects only that the programs were seen, not the number of times they were watched. Viewers were also asked to list any other music programs they may have watched during the month of August. When these responses are combined with the specific programming responses, 74.1% PBS viewers said they had watched at least one music program, with an average of 2.66. When asked for their "favorite" programs on PBS, close to 22.7% of those viewers who indicated a favorite program mentioned

some type of music programming.

In addition to viewers being satisfied with the overall programming broadcast by PBS, their attitudes with respect to the importance and appeal of PBS's music programming were quite favorable. Viewers were read, in a randomized sequence, 6 statements concerning PBS's music programming and were asked if they (1) agreed strongly (2) agreed somewhat (3) disagreed strongly or (4) disagreed somewhat, with each. Agreement ranged from 62.7% - 77.7%. Among those who expressed any agreement, a higher proportion said they "agree strongly" than "agree somewhat," in every instance but one ("appeals to me" was a virtual tie -- 38.3% agree strongly, 38.4% agree somewhat). The results are as follows:

	Agree Strongly/ Agree Somewhat	Agree Strongly
	%	%
I consider music an important part of PBS's programming.	77.7	49.9
PBS has music programming that appeals to me.	76.7	38.3
I would be disappointed if PBS cut back on its music programming.	67.7	43.3
I would like to see more music programming on PBS in the future.	67.5	36.0
I look forward to PBS's music programming.	65.7	34.5
I generally watch at least 1 hour of music programming every month on PBS.	62.7	40.3

Out of the entire sample, 14.3% reported donating money to PBS during its last pledge drive. Those who had watched one or more music programs were twice as likely as those who had watched none to have donated: 16.4% vs. 7.9%, respectively.

Viewers who agreed with the 6 music statements were generally about 1½ to 2 times more likely to donate than those who disagreed: among those who agreed with the statements, the range of people donating was 15.5% to 17.7% (depending upon the statement), whereas among those who disagreed the range was 8.0% to 11.3%

Moreover, those who "agreed strongly" with the statement were generally about 2 to 2½ times more likely to donate than those who "disagreed strongly": among those who agreed strongly, the range of people donating was 18.5% to 21.6% for the 6 statements, whereas among those who disagreed strongly the range was 6.1% to 10.8%.

Other demographic information gathered on the viewers surveyed includes:

- 37.3% Male and 62.7% Female
- Median age: 45.33
- Median household income: \$49.19K
- 67.1% attended at least some college or more; 43.9% graduated college

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of)

) Docket No. 96-6 CARP NCBRA

ADJUSTMENT OF THE RATES FOR)

NONCOMMERCIAL EDUCATIONAL)

BROADCASTING COMPULSORY LICENSE)

WRITTEN TESTIMONY
OF SETH SALTZMAN IN
SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I, Seth Saltzman, make this statement on behalf of the direct case of the American Society of Composers, Authors and Publishers ("ASCAP").

Background & Qualifications

2. I am ASCAP'S Director of Performances. My responsibilities at ASCAP include supervising the staff of the Performance Analysis Department in analyzing and crediting music used in public performances. The types of public performances that my staff reviews include music performed on all domestic television broadcasts, including broadcasts by network carriers, local television, public television broadcasts and cable program services (and retransmissions of those broadcasts by cable and satellite carriers), and all domestic radio broadcasts by commercial and noncommercial radio stations. My staff also reviews music performed by airlines, wired music services, at circuses and ice shows, and at popular and classical concerts.

3. Prior to becoming Director of Performances, I held various other positions in ASCAP's Performance Analysis Department. My background and training is in music. I graduated from the Berklee College of Music in 1981, with a major in film scoring. In addition to my work at ASCAP, over the years I have acted as a music consultant for films and as a musical director and pianist for dozens of productions by local colleges, high schools and community theater groups.

Scope of Testimony

4. The purpose of my testimony is to illustrate for the Panel the range of ways in which ASCAP members' compositions are performed by public broadcasting television stations across the United States. My testimony also seeks to illustrate anecdotally for the Panel the enormous variety of musical performances that public television stations broadcast. These broadcasts include all genres of music -- classical, jazz, Broadway show tunes, rock n' roll, reggae, rap, pop and country and so forth. The variety of performances mirrors the variety and scope of ASCAP's repertory.

5. The Performances Department of ASCAP identifies musical performances that are captured by the ASCAP Distribution Survey and determines whether the compositions are in ASCAP's repertory. Compositions in ASCAP's repertory receive a unique title code, or T code; T codes are created when ASCAP learns of the existence of works created or owned by its writer or publisher members. ASCAP's Distribution Survey is supervised by ASCAP's Chief Economist, Peter M. Boyle. Dr. Boyle will describe for the Panel how the ASCAP survey is conducted and what it shows with respect to the quantity of and frequency with which our members' compositions are performed on public broadcasting.

Illustrative Examples of Public
Broadcasting's Use of ASCAP Compositions

6. Range of Use -- Some examples are apparent, e.g., when one of our members' works is featured on a music program, such as Evening at the Pops, Live at Lincoln Center, Marsalis on Music or Great Performances.

Similarly, works of ASCAP members are performed on special fundraising or pledge drive programs. ASCAP members' music is also performed on children's programs, such as Puzzle Place, Reading Rainbow, Sesame Street and Mister Roger's Neighborhood. Other significant examples are less obvious such as where an ASCAP member's work is the theme or signature composition for a regularly broadcast non-music program. Public television shows playing ASCAP members' music as opening or closing themes include This Old House, Nova, Julia Childs' numerous cooking programs, The Newshour with Jim Lehrer, Washington Week in Review and Bill Nye the Science Guy.

7. Pledge Programs -- As stated above, one of the most prominent ways in which ASCAP members' music is used by public television is during pledge or fundraising drives. During those drives, programs devoted to music are broadcast and requests for contributions are made during breaks in the programming. In August 1997, the public television stations, WNET, which broadcasts to the greater New York City metropolitan area, and WLIW, which broadcasts primarily to the Long Island and also to the New York City metropolitan

area, were each conducting pledge drives. My department reviewed the program schedules of these stations. In addition to these weeks being advertised as "pledge" weeks, both stations had heavily scheduled music programs during the evening "prime time" hours from 7 p.m. until midnight or thereafter. We taped portions of these music programs in order to confirm that these stations were then soliciting contributions. Submitted with my testimony as ASCAP Ex. 201 is a video that we prepared of some of the clips from these programs entitled, "Music to Pledge By." In the video, we have identified for the Panel, the name of the show, its broadcast date and time and the ASCAP composition being performed. There is certain further information at the end of the video concerning the amount of funds raised during the pledge drive that, it is my understanding, was derived from other exhibits being submitted to the Panel as part of ASCAP's direct case.

8. Theme Songs -- To illustrate another aspect of music use by public television, we compiled examples of the theme songs played on different types of regularly broadcast public television programs. These were: (a) children's programs which form the bulk of most public televisions stations' broadcasts during the hours from 7 a.m until 5 p.m. and frequently, one or both weekend mornings; (b) "how to" programs ranging from cooking to carpentry and gardening; (c) news and current affairs and (d) prime time family and cultural programs. For each of these shows, we have stated the program's name, the theme's title, whether the theme is the opening theme or the closing theme, the performing rights organization to which

the writer's and publisher's rights have been assigned, and the percentage of those rights so held. The results are submitted as ASCAP Ex. 200.

9. Although we have only set forth some of the children's shows which play ASCAP themes, children's shows often play ASCAP songs throughout their programs. For example, all of the "most popular songs" listed for Mr. Roger's Neighborhood on Public Broadcasting Service's web site (www.pbs.org/rogers/songindex.html) are ASCAP songs. A copy of this list is submitted as ASCAP Ex. 202. I should underscore here that the above examples are anecdotal, illustrative of the use of ASCAP music. The degree and amount of ASCAP music played throughout all programs, including children's programs varies somewhat from show to show. Some children's shows often play ASCAP music intensively throughout their episodes, like Mr. Roger's Neighborhood, Puzzle Place, Shining Time Station. However, I have not conducted a scientific sample of all the episodes or shows in a certain program series.

10. Other Music Programs -- Still other examples of use of ASCAP members' music on public television stations are presented when members' works are featured as part of regularly scheduled programs or series devoted to music. For example, a new music program series that is being broadcast on a number of public broadcasting stations this year, Sessions at West 54th Street, features a number of well-known ASCAP members, including Wynton Marsalis, Papas Fritas, Rickie Lee Jones, the Philip Glass Ensemble, Patti Smith, World Party

(members of PRS, England's performing rights organization ("PRO"), which licenses in U.S. through ASCAP), Suzanne Vega, Gipsy Kings (SACEM, the French PRO, which licenses in U.S. through ASCAP), and Squirrel Nut Zippers. Another recent public television program series devoted to music, entitled Austin City Limits, has also featured prominent ASCAP members, including Lyle Lovett, Mary Chapin Carpenter, Alan Jackson, Trisha Yearwood, and Alan Jackson.

11. Other Background Uses -- In addition to the above examples, the works of ASCAP members are often threaded throughout other programs broadcast by public television and radio, e.g., when played as part of a programs' background music, transitional or bridge music between scenes in a program, or even between programs and during so-called "pledge breaks," where one can hear the featured music in the background.

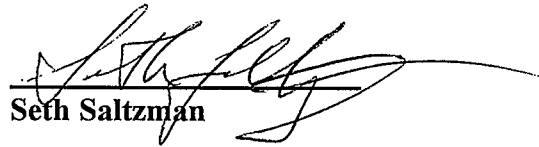
12. Similarity of Use -- Yet another way to illustrate to the Panel the way such music is used is to note that the same raw material, that is -- an ASCAP member's composition, is broadcast by public television as well as by commercial broadcast television and commercial cable program services. A search for matching title codes in our 1996 Distribution Survey showed: (a) 3,465 matches, that is, the same songs, bearing the same title codes, broadcast by both public television with survey sample broadcasts by the networks (i.e., ABC, NBC and CBS) and local television stations ("broadcast television"); and, (b) 2039 matches, that is, the same songs, bearing the same title codes, broadcast by both public

television and commercial cable program services. The results of these song title matches are reflected in ASCAP Exs. 203 and 204.

13. I can only attest to the identification of the song title matches which were captured in the Distribution Survey prepared by ASCAP about which Dr. Boyle will testify. The Distribution Survey is but a sample of the total number of performances. As Dr. Boyle will explain, the number of the same song titles actually played on both public and commercial broadcast and cable television is far greater because the survey is only a sample. Thus, the number of same songs being broadcast by public television, on the one hand, and commercial broadcast television and cable service providers, on the other, is far greater than the exhibits' lists of songs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 9/29/97


Seth Saltzman

Before The
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

ADJUSTMENT OF THE RATES FOR
NONCOMMERCIAL EDUCATIONAL
BROADCASTING COMPULSORY
LICENSE

)
) Docket No. 96-6 CARP NCBRA
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WRITTEN TESTIMONY OF
HORACE ANDERSON IN
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I, Horace Anderson, am an Associate with White & Case and provide this testimony in support of American Society of Composers, Authors and Publishers' ("ASCAP") direct case.

Background and Qualifications

2. I have been an associate with White & Case from 1996 to the present. I received my Bachelor of Science in Economics from University of Pennsylvania in 1979 and earned my J.D. in 1996. I am admitted to practice law in the State of New York.


3. I was asked by the partner in charge of this matter, Philip H. Schaeffer, Esq. to prepare a comparison and analysis of the 1995-1996 salary structures for various job categories of commercial and public radio and television stations which is being submitted as ASCAP Ex. 721.

4. For these comparisons, I utilized: (1) the 1996 Corporation for Public Broadcasting ("CPB") Salary Report for Public Television Licensees, submitted as ASCAP Ex. 311; (2) the 1996 CPB Salary Report for Public Radio Licensees, submitted as ASCAP Ex. 310; (3) the 1995 National Association of Broadcasters Television Employees Compensation and Fringe Benefits Report, submitted as ASCAP Ex. 700; and (4) the 1996 National Association of Broadcasters Radio Station Salaries Report, submitted as ASCAP Ex. 701.

5. In making the comparison and analysis I have assumed that the job category pairings encompass similar duties and responsibilities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 9/29/97


Horace Anderson

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

IN THE MATTER OF)

ADJUSTMENT OF THE RATES FOR)
NONCOMMERCIAL EDUCATIONAL)
BROADCASTING COMPULSORY LICENSE)

) Docket No. 96-6 CARP NCBRA

WRITTEN TESTIMONY OF
DR. PETER M. BOYLE
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

1. I am Vice President and Chief Economist of the American Society of Composers, Authors and Publishers ("ASCAP"). I joined ASCAP as Chief Economist in 1985 and became Vice President in 1995. I received my master's degree from Georgetown University in 1978 and a Ph.D. in economics from Georgetown in 1982. A copy of my educational and work experience is attached as Appendix A.

2. As ASCAP's Chief Economist, my duties generally fall into four categories: (i) determining the appropriate fees for the licensing of ASCAP's repertory; (ii) overseeing the operation of music use surveys which identify performances of music and form the basis upon which ASCAP distributes license fees to its membership; (iii) overseeing the various weights that are part of the distribution system and that assign "values" to performances of music identified in the surveys; and (iv) interacting with ASCAP's membership and others regarding the foregoing. In terms of licensing, for the past twelve years I have been actively involved in preparing license fee proposals that ASCAP makes to various users of music, including public broadcasting. I have prepared economic and statistical analyses to support these proposals and have taken part in the actual negotiations with ASCAP's customers. I have also prepared economic evaluations of counter-proposals made by those customers and, when necessary, I have testified in rate court proceedings to support the fees ultimately quoted by ASCAP.

3. In terms of the distribution of fees, I have overall responsibility for the music use survey system at ASCAP upon which membership distributions are based. A detailed description of ASCAP's performance surveys is set forth in Appendix B hereto, which for confidentiality purposes is being submitted under seal. I also work closely with our membership department, particularly in terms of explaining the survey and distribution systems when questions arise. I interact with various foreign licensing societies regarding foreign distributions to ensure our members' fair treatment under the foreign societies' own distribution systems.

THE FEE PROPOSAL

4. In connection with my duties discussed above, I am one of the officers of ASCAP responsible for determining what ASCAP believes to be the appropriate fee to be paid by the 352 public television stations and 707 public radio stations which I understand are the subject of this proceeding. As set forth herein, based on an extrapolation of license fees paid to ASCAP by commercial broadcasters in the television and radio industries in the United States, the annual fee of \$5,201,000 to be paid on behalf of all public television stations in each of the years 1998 through 2002 and the annual fee of \$3,580,000 to be paid on behalf of all public radio stations over that same term constitutes the minimum "fair value" compensation to ASCAP's members for these broadcasters' use of music from the ASCAP repertory.

THE FEE GENERATING METHODOLOGY

5. Upon my review of certain financial and operational information addressed in ASCAP's current submission to this Panel, from an economist's perspective the current annual fee paid by public broadcasters is not in any way indicative of the value that such entities are receiving from their public performances of music from the ASCAP repertory. With one exception discussed below, public broadcasters currently operate in a fashion substantially comparable with commercial broadcasters in the United States -- PBS-affiliated television stations operate similarly to commercial television stations just as NPR-affiliated public radio stations operate similarly to commercial radio stations. If one starts then with the reasonable assumption that public and commercial television music license rates should be calculated similarly and that public and commercial radio music license rates should be calculated similarly, the methodology for calculating a current, meaningful public broadcasting rate is quite simple.

6. As reported in Mr. Reimer's testimony, in both commercial television and commercial radio licensing, the license fees paid to ASCAP by individual broadcasters are in large part based upon the broadcasters' music use and their revenues. However, because the application of that function is different in each industry, for the purposes of developing a public broadcasting license fee it is helpful to split public broadcasting into television broadcasting and radio broadcasting in order to make an accurate comparison to their commercial counterparts.

7. Once public broadcasting is split into the two media, one can determine the percentage of overall commercial broadcasting television revenues paid to ASCAP in the form of licensing fees and then multiply that percentage by public television revenues to determine a parallel license fee for public television. Of course, that fee then must be adjusted to reflect the difference in usage of music between the two groups (what I call the "music use ratio," discussed below). The same calculations can be done for radio to reach a "commercial" fee for public radio. In short, the algebraic conversion formula is as follows:

$$\left(\frac{\text{COMMERCIAL TELEVISION LICENSE FEE}}{\text{COMMERCIAL TELEVISION REVENUES}} \times \frac{\text{PUBLIC TELEVISION REVENUES}}{\text{TELEVISION MUSIC USE RATIO}} \right) + \left(\frac{\text{COMMERCIAL RADIO LICENSE FEE}}{\text{COMMERCIAL RADIO REVENUES}} \times \frac{\text{PUBLIC RADIO REVENUES}}{\text{RADIO MUSIC USE RATIO}} \right) = \text{TOTAL PUBLIC BROADCASTING FEE}$$

THE PUBLIC BROADCASTING FEES

8. Several complications arise in actually applying data to this formula. The first is the difficulty in obtaining relevant revenue data. While revenue data as to the commercial side of the equation are fairly easy to locate, being published in reliable government sources, contemporary financial data on public television and radio stations are nearly non-existent. Any current information that ASCAP was

able to gather as to individual public station revenues, such as published financial statements, was purely anecdotal.

9. The best surrogate for the necessary data was the latest annual financial report of the Corporation for Public Broadcasting for the 1995 fiscal year (the "1995 CPB Report"), which may be found at ASCAP Ex. 301. There are limitations to the data CPB provides beyond the fact that it is somewhat dated. First, one is not able to determine whether the financial data CPB reports is an accurate compilation of individual station revenues, i.e., whether it is a simple addition of all public television and radio station revenues and those of their supporting systems. Second, the CPB report itself notes off-balance sheet revenues of over \$105 million relating to "excludable income," some of which (including "public performances") would likely be subject to a commercial music licensing fee. Third, it is unclear whether CPB's report of its total revenues includes the 207 radio stations that do not receive funding directly from CPB, but rather do so through affiliates, or the 24 radio stations that do not receive any CPB funding at all, but are nevertheless part of this proceeding. Finally, I note that the 1995 CPB Report covers the fiscal year ending September 30, 1995, while other revenue data are based on the year ending December 31, 1995.

10. If one accepts CPB's 1995 revenue figures as accurate, one must still determine what portion of CPB's overall television and radio revenues should be subject to an ASCAP licensing fee. As mentioned above, from a licensing perspective there is a major difference between commercial and public broadcasting's revenue base -- the difference being public broadcasting's receipt of funds from tax-based sources such as federal, state and local governments and funding from public and publicly-funded colleges and universities. While ASCAP could make a strong case for including all funding of public broadcasting from all sources, we have chosen to be conservative. For the purposes of calculating the quoted fee, ASCAP has excluded tax-based revenues, and instead relied upon the "private" revenues referred to in the 1995 CPB Report.^{1/} That figure, comprised largely of underwriting and viewer and listener support, more closely approximates the types of revenues subject to ASCAP's commercial license fee provisions.

11. Again, because ASCAP only had access to 1995 CPB data, the comparison with commercial rates was based on 1995 ASCAP and industry data, yielding the following results. In 1995, commercial broadcast television (a combination of local television stations and the ABC, NBC and CBS networks) paid

^{1/} A commercially derived rate applied to public broadcastings' total 1995 revenues (including its tax-based income) would yield an annual fee of approximately \$16,020,000 per year (combined radio and television).

aggregate ASCAP license fees of \$110.9 million. According to the United States Department of Commerce's 1995 Annual Survey of Communication Services (the "Commerce Department Survey"), selected portions of which may be found at Appendix C, the total revenues generated by commercial broadcast television in 1995 were \$25.155 billion. Thus, ASCAP license fees represented 0.44% of total commercial broadcast television revenues in 1995. With respect to commercial radio, the ratio was 1.25%, calculated by dividing total 1995 ASCAP commercial radio license revenues of \$110.0 million by 1995 total radio commercial revenues of \$8.765 billion (as per the Commerce Department Survey). In both instances, the fee-to-revenue ratio acts as an "effective license rate" which blends all revenues and deductions which are available to individual commercial broadcasters under their ASCAP licenses.

12. As reported in the 1995 CPB Report, total public television "private" revenues were \$741.9 million in 1995. Multiplying by the 1995 commercial broadcast television effective license rate (0.44%) yields an annual public television license fee of \$3,264,000 prior to any adjustment for differences in music use. Again, as reported in the 1995 CPB Report, public radio "private" revenues were \$276.5 million. Multiplying by the 1995 commercial broadcast radio effective license rate of 1.25% yields an annual public radio license fee of \$3,456,000, again prior to any adjustments for differences in music use.

13. Adjustments to the two revenue-based fees were then made, as has been the case throughout the history of commercial television and radio licensing, by an evaluation of public broadcasting stations' overall performances of ASCAP music per broadcast hour. Again, ASCAP does not have access to historical music use information for each of the 352 public television and 707 public radio stations in this proceeding -- indeed, even if such information were available, the process of evaluating it would be overwhelming. I have therefore utilized music use data from the survey of performances which forms the basis of ASCAP's distribution of license fees to its members. As set forth in Appendix B, the distribution survey is designed by independent survey experts, is supervised by the Department of Justice and the rate court and indeed has been an important source of music use data in several rate court and Copyright Royalty Tribunal proceedings.

14. In evaluating music use data, I compared the 1995 average music usage on public television and radio stations to that of commercial broadcast television and radio stations, respectively. (The data relate to ASCAP's 1995 survey year, which included performances from October 1, 1994 to September 30, 1995). The actual calculations of the ratios of (i) public television stations' music use to that of commercial television stations and (ii) public radio stations' music use to that of commercial radio stations contain highly confidential and proprietary information. Accordingly, the calculations are confined to Appendix B submitted under seal.

13. Adjustments to the two revenue-based fees were then made, as has been the case throughout the history of commercial television and radio licensing, by an evaluation of public broadcasting stations' overall performances of ASCAP music per broadcast hour. Again, ASCAP does not have access to historical music use information for each of the 352 public television and 707 public radio stations in this proceeding -- indeed, even if such information were available, the process of evaluating it would be overwhelming. I have therefore utilized music use data from the survey of performances which forms the basis of ASCAP's distribution of license fees to its members. As set forth in Appendix B, the distribution survey is designed by independent survey experts, is supervised by the Department of Justice and the rate court and indeed has been an important source of music use data in several rate court and Copyright Royalty Tribunal proceedings.

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15. Subject to certain caveats explained in Appendix B, in 1995, on average public television stations used 59 percent more music from the ASCAP repertory than commercial television stations did over the same period (a ratio of 1.59). The 1995 ratio was higher than the previous five year (1990-94) average of 1.30, but slightly lower than that for 1994, which was 1.62. In 1995, on average public radio stations used 2.0% more ASCAP music than did commercial radio stations over the same period. The 1995 ratio (1.02) was slightly lower than the previous five year (1990-1994) average ratio of 1.07 (i.e., public radio stations played 7% more ASCAP music than commercial radio stations during the period).

16. Thus, as a result of the foregoing revisions to the methodology used, the public broadcasting conversion formula looks like this:

Public Television:

$$\begin{array}{rcl}
 \left(\begin{array}{l} \$110,900,000 \\ (1995 \text{ television} \\ \text{license fees}) \end{array} \right. & / & \left. \begin{array}{l} \$25,155,000,000 \\ (\text{total 1995} \\ \text{television revenues}) \end{array} \right) & \times & \$741,900,000 & \times \\
 & & & & (1995 \text{ CPB reported} \\
 & & & & \text{public television} \\
 & & & & \text{"private" revenues}) \\
 \\
 1.59 & & & = & \$5,201,000 \\
 (1995 \text{ public/commercial} & & & & 1995 \text{ Public Television Fee} \\
 \text{television music use ratio}) & & & &
 \end{array}$$

Public Radio:

$$\left(\begin{array}{l} \$110,000,000 \\ (1995 \text{ radio} \\ \text{license fee}) \end{array} \right) / \left(\begin{array}{l} \$8,665,000,000 \\ (\text{total 1995} \\ \text{radio revenues}) \end{array} \right) \times \$276,500,000 \times \begin{array}{l} (1995 \text{ CPB reported} \\ \text{public radio} \\ \text{"private" revenues}) \end{array}$$
$$1.02 \begin{array}{l} (\text{public/commercial} \\ \text{radio music use ratio}) \end{array} = \$3,580,000 \begin{array}{l} 1995 \text{ Public Radio Fee} \end{array}$$

17. In sum, the conversion formula yield an annual fee of \$5,201,000 for public television and \$3,580,000 for public radio. These are the fees quoted in paragraph 4, above. I note that the quoted fees make no adjustment for any change in public broadcasting's private revenues or music use between 1995 and 1998 (the first year of the new license) or for any change during the term of the license. A straight application of the Consumer Price Index to the quoted fees, which would be a conservative adjustment for inflation, would yield a 1998 annual fee of \$5,587,000 for public television and \$3,846,000 for public radio.^{2/}

18. Again, the quoted fees are based only on revenue figures provided by CPB in its 1995 report. A more accurate fee would be reached if ASCAP was given access to the individual annual revenue figures of each of the 352 public television stations, 707 public radio stations and other entities under the CPB umbrella for the 1996 or 1997 fiscal years and those revenue figures (and the commercial revenue and music use figures for the same years) were applied to the conversion formula.

^{2/} The relevant CPI adjustment table may be found at Appendix C.

THE TRENDING FORMULA

19. I performed an alternate fee generation analysis to "check my work." Based upon previous published decisions of the rate court referred to in Mr. Reimer's testimony, I went back to the last annual rate set by this Tribunal for 1978 (\$1,250,000). I then attempted to trend that fee forward to adjust for changed circumstances over the past twenty years, notably the change in public broadcasting's private revenues from 1978 to 1995 and the change in public broadcasting's music use over that same time.

20. This analysis, however, presented two significant complications from a fee generation perspective. Because reliable music use data were not available for 1978, it was necessary for me to rely on music use data starting from 1990, the first ASCAP distribution survey year for which detailed information was readily retrievable. Thus, the trended fee calculated below assumes that music use on public broadcasting stations did not change substantially from 1978 to 1990. Second, it was again necessary for me to split the analysis into television and radio media in order to make use of the music use data that I had. Because, however, the Tribunal's 1978 fee was not allocated separately to television and radio, I arbitrarily allocated 88% of the fee to public television and 12% to public radio based on their proportion of total CPB "private" revenues of \$173.4 million in 1978. (A breakdown of CPB's 1978 revenue figures may be found at Appendix C.)

21. Upon these assumptions, I developed the following trending formulae:

Public Television:

$$\begin{aligned}
 & (.88 \times 1978 \text{ Fee}) \quad \times \quad \left(\frac{1995 \text{ PRIVATE REVENUES FOR PUBLIC TELEVISION}}{1978 \text{ PRIVATE REVENUES FOR PUBLIC TELEVISION}} \right) \\
 & \times \quad \left(\frac{1995 \text{ MUSIC USE ON PUBLIC TELEVISION}}{1990 \text{ MUSIC USE ON PUBLIC TELEVISION}} \right) = 1995 \text{ TRENDED PUBLIC TELEVISION FEE}
 \end{aligned}$$

Public Radio:

$$\begin{aligned}
 & (.12 \times 1978 \text{ Fee}) \quad \times \quad \left(\frac{1995 \text{ PRIVATE REVENUES FOR PUBLIC RADIO}}{1978 \text{ PRIVATE REVENUES FOR PUBLIC RADIO}} \right) \\
 & \times \quad \left(\frac{1995 \text{ MUSIC USE ON PUBLIC RADIO}}{1990 \text{ MUSIC USE ON PUBLIC RADIO}} \right) = 1995 \text{ TRENDED PUBLIC RADIO FEE}
 \end{aligned}$$

22. In 1978, public television's private revenues were \$152.8 million, compared to \$741.9 million in 1995. In 1978, public radio's private revenues were \$20.6 million, compared to \$276.5 million in 1995. As for music use, as explained in Appendix B, public television in 1995 used music 32% more frequently than it did in 1990. Public radio used music 30% less frequently than it did in 1990.

23. Applying these figures to the formulae above result in a \$7,057,000 trended 1995 annual fee for public television and a \$1,409,000 trended 1995 annual fee for public radio. Adding the two figures leads to a total 1995 public broadcasting fee of \$8,466,000, compared with the \$8,781,000 total annual fee derived by the extrapolation from commercial broadcasting.

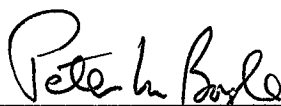
24. While it is my opinion that, as a statistical matter, the trended fee is based on incomplete data (largely that relating to public broadcastings' music use from 1978 to 1990), it does reflect a fee substantially similar to that quoted in paragraph 4 above, and so provides reassurance as to the appropriateness of that fee.

25. Finally, attached to ASCAP's Request for Rates and Terms are ASCAP's proposed regulations containing rates and terms for the nondramatic public performance of compositions in the ASCAP repertory. In many respects, the terms of the proposed regulations are similar to the terms of the most recent license agreement between ASCAP and PBS and NPR as well as the regulations adopted by the Copyright Royalty Tribunal in its 1978 decision.

26. We have included in the proposed regulations the fee quoted by ASCAP in this proceeding. We have specified semi-annual payments of the fee consistent with the CRT's 1978 decision. Finally, we have proposed music use reporting terms that are consistent with the reporting requirements for commercial television and radio broadcasters, to allow us to make more precise distributions of royalties to our members.

I hereby declare under penalties of perjury that the foregoing testimony, as well as the testimony in the attached Appendix, is true and correct to the best of my knowledge and belief.

Dated: New York, New York
September 30, 1997



Dr. Peter M. Boyle

APPENDIX A

SUMMARY OF QUALIFICATIONS

I received my B.A. magna cum laude with a major in economics, in 1976, from Georgetown University, where I was Phi Beta Kappa; my M.A. in economics from Georgetown in 1978; and my Ph.D. in economics, also from Georgetown, in 1982. At the Ph.D level I concentrated in the following fields: Economic Theory, Quantitative Methods, Mathematical Economics, Urban Economics, and Economic History. My dissertation involved the estimation of short and long run cost functions for the steam generated electric utility industry.

In June, 1979, I joined Robert R. Nathan Associates, Inc., an economic consulting firm located in Washington, D.C. As an associate with the Nathan Firm, I did general economic consulting work. The Firm is ASCAP's outside economic consultant and independent survey expert. During my employment there I worked extensively on ASCAP matters, including projects involving the design and implementation of ASCAP's distribution survey, and on the 1980 Jukebox Rate Adjustment Proceeding before the Copyright Royalty Tribunal. (I have since appeared on ASCAP's behalf in numerous CRT proceedings.)

I left the Nathan firm in August, 1982, and became an Industry Economist and Program Analyst for the Federal Aviation Administration at its Technical Center in Atlantic City, New Jersey. As a member of the Director's staff, I worked on planning and budgeting matters, and various economic, statistical and cost-benefit analyses. I left the FAA in 1985 when I joined ASCAP, where I have worked since that time.

I served as an adjunct professor at Stockton State College in New Jersey where I taught a course in Microeconomic Theory. I have participated in several panels and conferences relating to the licensing and distribution of royalties for intellectual property.

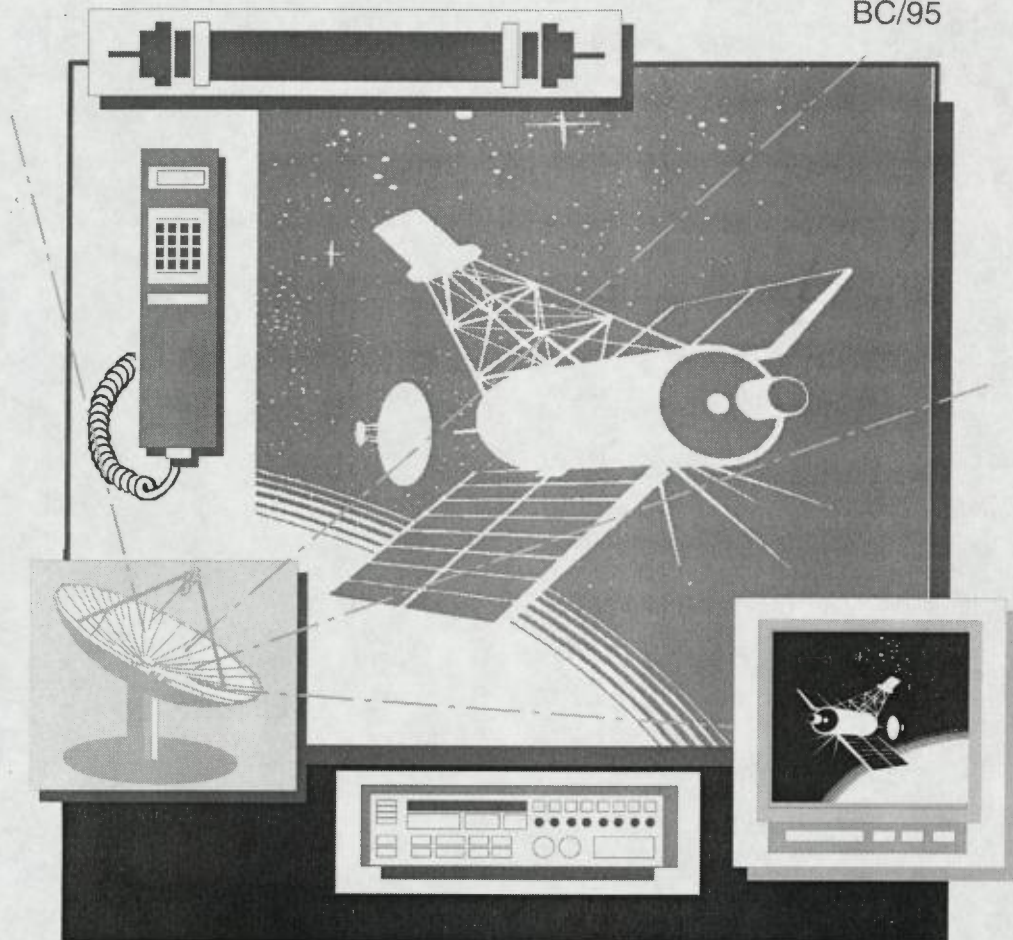
APPENDIX B CONTAINS CONFIDENTIAL PROTECTED
MATERIALS SUBJECT TO THE PROTECTIVE ORDER IN
DOCKET NO. 96-6-CARP-NCBRA AND IS SUBMITTED
SEPARATELY UNDER SEAL.

APPENDIX C

CURRENT BUSINESS REPORTS

Annual Survey of Communication Services: 1995

BC/95



U.S. Department of Commerce
Economics and Statistics Administration
BUREAU OF THE CENSUS

Table 11. Radio Broadcasting Services (SIC 4832) — Estimated Operating Revenue and Expenses for Taxable Firms: 1991 Through 1995

Item	Millions of dollars					Percent change			
	1995	1994	1993	1992	1991	1995/1994	1994/1993	1993/1992	1992/1991
Operating Revenue									
Total	8,765	7,980	7,231	6,795	6,671	9.8	10.4	6.4	1.9
Station time sales	8,105	7,397	6,693	6,275	6,104	9.6	10.5	6.7	2.8
Network compensation	100	95	87	95	98	5.3	9.2	-8.4	-3.1
National/regional advertising	1,926	1,646	1,433	1,313	1,433	17.0	14.9	9.1	-8.4
Local advertising	6,079	5,656	5,173	4,867	4,573	7.5	9.3	6.3	6.4
Network time sales	356	338	285	276	312	5.3	18.6	3.3	-11.5
Other operating revenue	304	245	253	244	255	24.1	-3.2	3.7	-4.3
Operating Expenses									
Total	7,253	6,769	6,257	6,137	6,157	7.2	8.2	2.0	-0.3
Annual payroll	2,940	2,709	2,535	2,469	2,413	8.5	6.9	2.7	2.3
Employer contributions to Social Security and other supplemental benefits	412	362	356	343	326	13.8	1.7	3.8	5.2
Broadcast rights	292	236	235	209	274	23.7	0.4	12.4	-23.7
Music license fees	201	181	161	149	151	11.0	12.4	8.1	-1.3
Depreciation	486	441	431	449	463	10.2	2.3	-4.0	-3.0
Lease and rental	239	228	207	191	189	4.8	10.1	8.4	1.1
Purchased repairs	86	83	79	77	79	3.6	5.1	2.6	-2.5
Insurance	75	73	67	66	64	2.7	9.0	1.5	3.1
Telephone and other purchased communication services	132	122	115	116	112	8.2	6.1	-0.9	3.6
Purchased utilities	112	106	98	102	100	5.7	8.2	-3.9	2.0
Purchased advertising	409	367	310	314	330	11.4	18.4	-1.3	-4.8
Taxes	90	72	69	65	58	25.0	4.3	6.2	12.1
Other operating expenses ¹	1,779	1,789	1,594	1,587	1,598	-0.6	12.2	0.4	-0.7

¹Includes network compensation fees.

Note: Estimates are obtained from a sample of taxable employer firms only. Estimates for tax-exempt firms and organizations are shown in table 16. Estimates are not adjusted for price changes. Detail may not add to total due to rounding. Appendix A, table A-8 provides estimated measures of sampling variability (coefficients of variation).

Table 12. Television Broadcasting Services (SIC 4833) — Estimated Operating Revenue and Expenses for Taxable Firms: 1991 Through 1995

Item	Millions of dollars					Percent change			
	1995	1994	1993	1992	1991	1995/1994	1994/1993	1993/1992	1992/1991
Operating Revenue									
Total	25,155	23,084	21,050	21,064	20,174	9.0	9.7	-0.1	4.4
Station time sales	15,485	13,955	12,534	12,305	11,918	11.0	11.3	1.9	3.2
Network compensation	466	360	357	364	412	29.4	0.8	-1.9	-11.7
National/regional advertising	6,787	6,148	5,489	5,420	5,233	10.4	12.0	1.3	3.6
Local advertising	8,232	7,447	6,688	6,521	6,273	10.5	11.3	2.6	4.0
Network time sales	8,762	8,364	7,768	7,945	7,333	4.8	7.7	-2.2	8.3
Other operating revenue	908	765	748	814	923	18.7	2.3	-8.1	-11.8
Operating Expenses									
Total	19,445	18,269	17,191	17,998	17,787	6.4	6.3	-4.5	1.2
Annual payroll	4,921	4,469	4,106	4,126	3,875	10.1	8.8	-0.5	6.5
Employer contributions to Social Security and other supplemental benefits	876	835	762	747	675	4.9	9.6	2.0	10.7
Broadcast rights	7,478	7,160	6,937	7,528	7,648	4.4	3.2	-7.9	-1.6
Music license fees	208	166	178	221	210	25.3	-6.7	-19.5	5.2
Depreciation	830	751	756	815	823	10.5	-0.7	-7.2	-1.0
Lease and rental	275	259	262	261	273	6.2	-1.1	0.4	-4.4
Purchased repairs	193	174	154	149	149	10.9	13.0	3.4	-
Insurance	97	95	89	92	83	2.1	6.7	-3.3	10.8
Telephone and other purchased communication services	140	129	119	120	119	8.5	8.4	-0.8	0.8
Purchased utilities	170	163	155	154	152	4.3	5.2	0.6	1.3
Purchased advertising	662	575	498	483	512	15.1	15.5	3.1	-5.7
Taxes	141	128	115	122	114	10.2	11.3	-5.7	7.0
Other operating expenses ¹	3,454	3,365	3,060	3,180	3,154	2.6	10.0	-3.8	0.8

- Represents zero.

¹Includes network compensation fees.

Note: Estimates are obtained from a sample of taxable employer firms only. Estimates for tax-exempt firms and organizations are shown in table 17. Estimates are not adjusted for price changes. Detail may not add to total due to rounding. Appendix A, table A-8 provides estimated measures of sampling variability (coefficients of variation).

Table 3
Income of Public Broadcasting
By Source And By TV And Radio System
FY 1977 - FY 1978
(in thousand of dollars)

Source of Income	System	FY 1977		FY 1978*		\$ Change 77-78	% Change 77-78
		\$	%	\$	%		
Total Income	PB	482,094	100.0	552,325	100.0	+70,231	+14.6
	PTV	416,548	100.0	469,836	100.0	+53,288	+12.8
	PRD	65,546	100.0	82,489	100.0	+16,943	+25.8
Federal	PB	135,269	28.1	160,762	29.1	+25,493	+18.8
	PTV	113,729	27.3	133,546	28.4	+19,817	+17.4
	PRD	21,540	32.9	27,216	33.0	+ 5,676	+26.4
Local Government	PB	36,750	7.6	44,237	8.0	+ 7,487	+20.3
	PTV	30,345	7.3	36,844	7.9	+ 6,499	+21.4
	PRD	6,405	9.8	7,393	9.0	+ 988	+15.4
State Government	PB	100,263	20.8	115,988	21.0	+15,725	+15.7
	PTV	95,294	22.8	110,766	23.6	+15,472	+16.2
	PRD	4,969	7.6	5,222	6.3	+ 253	+ 5.1
State Univ.	PB	54,256	11.3	57,958	10.5	+ 3,702	+ 6.8
	PTV	35,696	8.6	35,851	7.6	+ 155	+ 4.3
	PRD	18,560	28.3	22,107	26.8	+ 3,547	+19.1
Foundations	PB	22,627	4.7	17,213	3.1	- 5,414	-23.9
	PTV	21,840	5.2	15,942	3.4	- 5,898	-27.0
	PRD	787	1.2	1,271	1.5	+ 484	+61.5
Business	PB	39,958	8.3	48,970	8.9	+ 9,012	+22.6
	PTV	37,904	9.1	44,825	9.5	+ 6,921	+18.3
	PRD	2,054	3.1	4,145	5.0	+ 2,091	+101.8
Subscribers	PB	50,244	10.4	60,249	10.9	+10,005	+19.9
	PTV	45,298	10.9	53,830	11.5	+ 8,532	+18.8
	PRD	4,946	7.5	6,419	7.8	+ 1,473	+29.8
Auction/Marathon	PB	13,460	2.8	14,967	2.7	+ 1,507	+11.2
	PTV	12,610	3.0	13,817	2.9	+ 1,207	+ 9.6
	PRD	850	1.3	1,150	1.4	+ 300	+35.3
All Others	PB	29,267	6.0	31,981	5.8	+ 2,714	+ 9.2
	PTV	23,832	5.8	24,415	5.2	+ 583	+ 2.4
	PRD	5,435	8.3	7,566	9.2	+ 2,131	+39.2
Non-Federal	PB	346,825	71.9	391,563	70.9	+44,738	+12.9
	PTV	302,819	72.7	336,290	71.6	+33,471	+11.1
	PRD	44,006	67.1	55,273	67.0	+11,267	+25.6

12/31/79
Planning & Analysis
CPB

02-19-1997

U.S. Department Of Labor
Bureau of Labor Statistics
Washington, D.C. 20212

Page 1

Consumer Price Index

All Urban Consumers - (CPT-U)

U.S. city average

All items

1982-84=100

YEAR	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEP.	OCT.	NOV.	DEC.	SEMIANNUAL		PERCENT CHANGE		
													1ST HALF	2ND HALF	AVG.	DEC-DEC	AVG-AVG
1972	41.1	41.3	41.4	41.5	41.6	41.7	41.9	42.0	42.1	42.3	42.9	42.5			41.8	3.4	3.2
1973	42.6	42.9	43.3	43.6	43.9	44.2	44.3	45.1	45.2	45.6	45.9	46.2			44.4	8.7	5.2
1974	46.6	47.2	47.0	48.0	48.6	49.0	49.4	50.0	50.6	51.1	51.5	51.9			49.3	12.3	11.0
1975	52.1	52.5	52.7	52.9	53.2	53.6	54.2	54.3	54.6	54.9	55.3	55.5			53.8	5.9	9.1
1976	55.6	55.8	55.9	56.1	56.5	56.8	57.1	57.4	57.6	57.9	58.0	58.2			56.9	4.9	5.8
1977	58.5	59.1	59.5	60.0	60.3	60.7	61.0	61.2	61.4	61.6	61.9	62.1			60.6	5.7	6.5
1978	62.5	62.9	63.4	63.9	64.5	65.2	65.7	66.0	66.5	67.1	67.4	67.7			65.2	9.0	7.6
1979	68.3	69.1	69.8	70.6	71.5	72.3	73.1	73.8	74.6	75.2	75.9	76.7			72.6	13.3	11.3
1980	77.8	78.9	80.1	81.0	81.8	82.7	82.7	83.3	84.0	84.8	85.5	86.3			82.4	12.5	13.5
1981	87.0	87.9	88.5	89.1	89.8	90.6	91.6	92.3	93.2	93.4	93.7	94.0			90.9	8.9	10.3
1982	94.3	94.6	94.5	94.9	95.0	97.0	97.5	97.7	97.9	98.2	98.0	97.6			96.5	3.8	6.2
1983	97.0	97.9	97.9	98.5	99.2	99.5	99.9	100.2	100.7	101.0	101.2	101.3			99.6	3.8	3.2
1984	101.9	102.4	102.6	103.1	103.4	103.7	104.1	104.5	105.0	105.3	105.3	105.7	102.9	104.9	103.9	3.9	4.3
1985	105.5	106.0	106.4	106.9	107.3	107.6	107.8	108.0	108.3	108.7	109.0	109.3	106.6	108.5	107.6	3.8	3.6
1986	109.6	109.3	108.8	108.6	108.9	109.5	109.5	109.7	110.2	110.3	110.4	110.5	109.1	110.1	109.6	1.1	1.9
1987	111.2	111.6	112.1	112.7	113.1	113.5	113.8	114.4	115.0	115.3	115.4	115.4	112.4	114.9	113.6	4.4	3.6
1988	115.7	116.0	116.5	117.1	117.5	118.0	118.5	119.0	119.8	120.2	120.3	120.5	116.8	119.7	118.3	4.4	4.1
1989	121.1	121.6	122.3	123.1	123.8	124.1	124.4	124.6	125.0	125.6	125.9	126.1	122.7	123.3	124.0	4.6	4.8
1990	127.4	128.0	128.7	128.9	129.2	129.9	130.4	131.6	132.7	133.5	133.8	133.8	128.7	132.6	130.7	6.1	5.4
1991	134.6	134.8	135.0	135.2	135.6	136.0	136.2	136.6	137.2	137.4	137.8	137.9	135.2	137.2	136.2	3.1	4.2
1992	138.1	138.6	139.3	139.5	139.7	140.2	140.5	140.9	141.3	141.8	142.0	141.9	139.2	141.4	140.3	2.9	3.0
1993	142.6	143.1	143.6	144.0	144.2	144.4	144.4	144.8	145.1	145.7	145.8	145.8	143.7	145.3	144.5	2.7	3.0
1994	146.2	146.7	147.2	147.4	147.5	148.0	148.4	149.0	149.4	149.5	149.7	149.7	147.2	149.3	148.2	2.7	2.6
1995	150.3	150.9	151.4	151.9	152.2	152.5	152.5	152.9	153.2	153.7	153.6	153.5	151.5	153.2	152.4	2.5	2.8
1996	154.4	154.9	155.7	156.3	156.6	156.7	157.0	157.3	157.8	158.3	158.6	158.6	155.8	157.9	156.9	3.3	3.0
1997	159.2	159.0	159.9	160	160.1	160.3	160.6	160.3									

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of)

ADJUSTMENT OF THE RATES FOR)
NONCOMMERCIAL EDUCATIONAL)
BROADCASTING COMPULSORY LICENSE)

) Docket No. 96-6 CARP NCBRA

DESIGNATED PORTIONS OF PAST RECORDS
TO BE INCORPORATED BY REFERENCE
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS



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Attorneys for ASCAP

Dated: September 30, 1997

The following is a list of portions of past records which will be incorporated by reference in support of the direct case of the American Society of Composers, Authors and Publishers ("ASCAP").

I. 1978 PUBLIC BROADCASTING RATE ADJUSTMENT PROCEEDING

1. Oral Testimony of Morton Gould, Composer - Taken March 8, 1978
Examination by ASCAP - pages II-33 through II-48
Examination by Commissioners - pages II-48 through II-62
Examination by PBS - pages II-62 through II-73
2. Oral Testimony of Joseph Raposo, Composer - Taken March 8, 1978
Examination by ASCAP - pages II-73 through II-98
Examination by Commissioners - pages II-98 through II-101
Examination by PBS - pages II-101 through II-121
3. Oral Testimony of Sam Pottle, Composer - Taken March 9, 1978
Examination by ASCAP - pages III-3 through III-13
Examination by PBS - pages III-13 through III-18
Examination by Commissioners - pages III-18 through III-24
Reexamination by ASCAP - pages III-24 through III-25

II. 1983 CABLE ROYALTY DISTRIBUTION PROCEEDINGS
Docket No. CRT. 84-1-83CD

1. Direct Testimony of Hal David, Lyricist, on behalf of Music Claimants
2. Direct Testimony of Earle Hagen, Composer, on behalf of Music Claimants
3. Direct Testimony of Frank Lewin, Composer, on behalf of Music Claimants

III. 1989 CABLE ROYALTY DISTRIBUTION PROCEEDINGS
Docket No. 91-2-89CD

1. Written Testimony of Ron Hull, Manager of KUON-TV, Lincoln, Nebraska, on behalf of PBS (w/exhibits)

IV. 1990-1992 CABLE ROYALTY DISTRIBUTION PROCEEDING
Docket No. 94-3 CARP CD 90-92

1. Written Testimony of Jennifer Lawson, Media Consultant, on behalf of PBS
2. Written Testimony of John Fuller, Director of Research for PBS, on behalf of PBS
3. Proposed Findings of Fact of the Public Television Claimants, paragraph numbers 248-321

V. 1996 SATELLITE CARRIER ROYALTY RATE ADJUSTMENT PROCEEDING
Docket No. 96-3 CARP SRA

1. Written Testimony of John Wilson, Senior Director of Program Scheduling and Editorial Management of PBS, on behalf of PBS (w/exhibits)
2. Proposed Findings of Fact of the Public Television Claimants, paragraph numbers 139-178 [other sections Contain Confidential Materials Subject to the Protective Order in Docket No. 96-3 CARP-SRA]

Dated: September 30, 1997

Respectfully submitted,

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Before The
LIBRARY OF CONGRESS
United States Copyright Office
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Washington, D.C. 20024

In the Matter of)	
)	Docket No. 96-6 CARP NCBRA
ADJUSTMENT OF THE RATES FOR)	
NONCOMMERCIAL EDUCATIONAL)	
BROADCASTING COMPULSORY LICENSE)	
)	

LIST OF EXHIBITS
IN SUPPORT OF THE DIRECT CASE
OF THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

ASCAP EXHIBIT LIST

CROSS-REFERENCE INDEX BY VOLUME AND EXHIBIT

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10	400-414
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15	600-614
16	615-623
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* Video Tape Separate Submission

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ASCAP EXHIBITS LIST

SUMMARY OF TOPICS BY EXHIBIT NOS. GROUPINGS

<u>Exs. Nos.</u>	<u>Description</u>	<u>Volume</u>
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34 - 35	ASCAP Board Member Exhibits	Vol. 2
35 - 61	ASCAP Membership Materials	Separate Envelope
200 - 204	ASCAP Director of Performances' Exhibits (Ex. 201 -- Video submitted Separate Cover)	Vol. 2
300 - 342	Various Documents Published by "Public Broadcasting," including the Corporation for Public Broadcasting (CPB), the Public Broadcasting Service (PBS), The Association of America's Public Television Stations (APTS), American Program Services (APS), Program Resources Group (PRG), National Public Radio (NPR), and Public Radio International (PRI)	Vols. 3-9
400 - 414	Select Public Television Stations' Annual Reports, Revenues & Other Financial Information	Vol. 10
500 - 525	Miscellaneous public information on public television stations and public broadcasting, generally	Vols. 11-14
600 - 623	Select Public Radio Stations' Annual Reports, Revenues & Other Financial Information and miscellaneous public information on public radio	Vols. 15-16
700 - 721	News articles and miscellaneous publicly available documents concerning public broadcasting	Vol. 17

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Description

Volume

EXS. 203 - 299 RESERVED & UNASSIGNED

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SEE ALSO ASCAP'S DESIGNATIONS OF PRIOR
FILINGS TO BE INCORPORATED BY
REFERENCE IN ASCAP'S DIRECT CASE

**ASCAP EXHIBITS DESCRIPTION
AND SPONSORING WITNESSES**

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
1.	Excerpts from the U.S. Copyright Law, Sections 101, 106 & 118, 17 U.S.C. (1997)	J. Baumgarten
2.	Excerpts from H. R. Rep. No. 90-83 90th Cong., 1st Sess. (1967)	"
3.	Excerpts from S. Rep. No. 93-983 93th Cong., 2d Sess. (1974)	"
4.	Excerpts from S. Rep. No. 94-473 94th Cong., 1st Sess. (1975)	"
5.	Excerpts from H.R. Rep. No. 94-1476, 94th Cong. 2d Sess. (1976) (S.22)	"
6.	Excerpts from H.R. Rep. No. 94-1733, 94th Cong. 2d Sess. (1976)	"
7.	122 Cong. Rec. 11709-11730 (1976)	"
8.	Federal Register, Vol 43, No. 111, June 8, 1978 <u>Decision of Copyright Royalty Tribunal Re: Use of Certain Copyrighted works in Connection with Noncommercial Broadcasting</u> ("The 1978 Tribunal Decision")	" (also B. Lincoff)
8A.	Report of the Copyright Royalty Tribunal on "Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting", dated January 23, 1980, as required by 37 C.F.R. §304.14 of June 30, 1978	J. Baumgarten
9.	Public Broadcasting Amendments Act of 1981, Pub. L. No. 97-35, 95 Stat. 730 (1981) (codified as amended at 47 U.S.C. §§ 399A-399B (1981))	C. Grajeda
10.	47 U.S.C. §§ 399A-399B (1981)	"
11.	H.R. REP. No. 82, 97th Cong. 1st Sess. (1981)	"
12.	H.R. CONF. REP. No. 208, 97th Cong. 1st Sess. (1981), <i>reprinted in</i> 1981 U.S.C.C.A.N. 396, 1257	"
13.	<u>In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations</u> , 86 F.C.C.2d 141 (1981)	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
14.	<u>In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations</u> , 90 F.C.C.2d 895 (1982)	"
15.	<u>In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations</u> , 97 F.C.C.2d 255, 47 CFR part 73 (1984)	"
16.	47 C.F.R. §§ 73.503, 73.621 (1997)	"
17.	Federal Register, Vol 47, No. 250, December 29, 1982, <u>Decision of the Copyright Royalty Tribunal Re: 1982 Adjustment of Royalty Schedule for Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting; Terms and rates of Royalty Payments</u> (The "1982 Tribunal Decision")	J. Baumgarten
18.	<u>Harper & Row, Publishers, Inc. v. Nation Enters.</u> , 471 U.S. 539 (1985)	"
19.	<u>Performing Rights in Music and Performing Rights Societies</u> , B. Korman & I. Fred Koenigsberg, 33 J. Copyright Soc'y USA 332 (July 1986)	"
20.	<u>In The Matter of the Applications of CAPITAL CITIES/ABC, Inc and CBS, Inc., Applicants</u> , 831 F.Supp. 137 (S.D.N.Y. 1993)	R. Reimer
21.	<u>United States v. American Society of Composers, Authors and Publishers</u> , 1950 Trade Cas. ¶ 62,595 (S.D.N.Y. 1950) ("ASCAP Consent Decree")	"
22.	<u>In The Matter of the Applications of Salem Media of California, Inc., et al. and New England Continental Media, Inc., et al.</u> , Civil Action No. 13-95 (WCC), (S.D.N.Y. September 12, 1997)	"
23.	<u>Broadcast Music Inc. v. Columbia Broadcasting System</u> , 441 U.S. 1 (1979), <u>on remand Columbia Broadcasting Service v. ASCAP</u> , 620 F.2d 930 (2d Cir. 1980)	"
24.	<u>Buffalo Broadcasting Co. v. ASCAP</u> , 744 F.2d 917 (2d Cir. 1984)	"
25.	<u>K-91, Inc. v. Gershwin Publishing Corp.</u> , 372 F.2d 1 (9th Cir. 1967)	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
26.	ASCAP Local Radio Stations' Blanket License for 1996-2000 ("ASCAP Commercial Radio Blanket License")	"
27.	ASCAP Local Station Blanket Television License ("ASCAP Commercial Television Blanket License")	"
28.	Public Television License Lists	R. Schwind
29.	1976 - 1996 Growth of Public Television Stations	"
30.	Public Radio and Non-NPR License Lists	D. Bander
31.	1976 - 1996 Growth of Public Radio Stations	"
32.	1993 - 1997 Noncommercial Broadcasting Rate Adjustment Proceeding License Agreement of ASCAP-PBS-NPR (the "ASCAP Public Broadcasting License")	B. Lincoff
33.	Selection of Scores and Other Works Written by Mary Rodgers	M. Rodgers
34.	ASCAP Board of Directors List as of April 1, 1997, including biographies from ASCAP's Web Page	"
35.	Directory, "ASCAP: List of Members" (published 1997). (Alphabetical list of ASCAP member)	L. Iossa
36.	Highlights of Recent Awards, Honors & Achievements to ASCAP Members	"
37.	Awards, Honors & Achievements to ASCAP Members	"
38.	Information sheet, "Hats Off to Our 1997 Grammy Nominees"	"
39.	ASCAP Prominent Members	"
40.	"ASCAP Hit Songs" (Lists many popular ASCAP songs, and their writers, from the years 1892-1996. Also lists U.S. songs often performed abroad, and ASCAP songs and scores that won Oscar, Tony, and Grammy awards)(Printer's Draft)	"
41.	ASCAP Foreign Affiliates	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
42.	Pamphlet and update, "Restoration of Copyright Protection under URAA: Its Impact on the ASCAP Repertory" (Lists works in the ASCAP repertory to which copyright protection has been restored for the balance of the current 75 year copyright term, pursuant to the Uruguay Round Agreements Act of 1992.)	"
43.	ASCAP Issued Awards	"
44.	Pamphlet, "1997 Biannual Highlights" (published before July 1997) (Discusses recent ASCAP developments.)	"
45.	Pamphlet, "1996 Highlights of Annual Events" (published 1997) (Discusses 1996 ASCAP developments.)	"
46.	Information Sheet, "The ASCAP Ear: A Semi-Regular Guide to All That Is ASCAP," September 3, 1997 (Discusses recent ASCAP developments and upcoming events.)	"
47.	Brochure, "The American Society of Composers, Authors & Publishers Jazz Wall of Fame, Dedication, September 16, 1997" (Accompanies induction into Jazz Wall of Fame of Benny Carter, in recognition of outstanding lifetime achievement.)	"
48.	Pamphlet, "1997 ASCAP Showcases, Workshops and Grants"	"
49.	Pamphlet, "The ASCAP Foundation: Programs"	"
50.	Brochure, ASCAP "Music for Money: Where The Bucks Come From For Writers and Publishers"	"
51.	Press Release, "ASCAP Adventurous Programming Awards Presented to Nine Groups at Chamber Music America Conference," dated February 4, 1997	"
52.	Press Release, "ASCAP and Chorus America Name Winners of the 1997 Awards for Adventurous Programming," dated July 7, 1997	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
53.	Press Release, "ASCAP and IAJE Name Winners of the 1997 Dizzy Gillespie Commissions," dated August 4, 1997	"
54.	ASCAP Awards for Programming of Contemporary Music "1997 Awards, Scholarships and Fellowships"	"
55.	Pamphlet, "ASCAP Rhythm & Soul Music Awards," June 3, 1997"	"
56.	Pamphlet, "1997 ASCAP Film and Television Music Awards"	"
57.	Pamphlet, "1997 ASCAP Pop Music Awards"	"
58.	Pamphlet, "The Fifth Annual El Premio," ASCAP Latin Awards, September 8, 1997	"
59.	Pamphlet, "ASCAP 35th Annual Country Music Awards Dinner," September 22, 1997	"

Exs. Nos.

Description

Sponsoring Witness

60.

Publisher Member Packet (Blue ASCAP Logo Envelope - provides overview of ASCAP and membership application and agreement for publishers):

"

- a. Form of ASCAP Publisher Membership Application Kit, and return envelope;
- b. Form of ASCAP Membership Agreement;
- c. Form of ASCAP Request for Publisher Name Clearance;
- d. Form of ASCAP Title Registration Information Form;
- e. ASCAP, Articles of Association, as amended through November 1994;
- f. Form W-9;
- g. Pamphlet, ASCAP, "We've Got Plans for You" (discussing various options for medical, dental, term life, and instrument insurance);
- h. Pamphlet, ASCAP, "A Closer Look" (discussing ASCAP, how to join, royalties, licensing workshops, services and benefits, affiliated foreign societies, and the ASCAP board of directors);
- i. Information sheet, ASCAP, "Essentials;"
- j. Form Letter from ASCAP's Manager, Advertising & Promo Music re: information ASCAP needs for performances of commercials, and promotional and public service announcements.

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
61.	<p>Writer Member Packet (Red ASCAP Logo Envelope - provides overview of ASCAP and membership application and agreement for writers):</p> <ul style="list-style-type: none"> a. Form of ASCAP Writer Membership Application Kit, and return envelope; b. Form of ASCAP Membership Agreement; c. Form of ASCAP Request for Publisher Name Clearance; d. Form of ASCAP Title Registration Information Form; e. ASCAP, Articles of Association, as amended through November 1994; f. Form W-9; g. Pamphlet, ASCAP, "We've Got Plans for You" (discussing various options for medical, dental, term life, and instrument insurance); h. Pamphlet, ASCAP, "A Closer Look" (discussing ASCAP, how to join, royalties, licensing, workshops, services and benefits, affiliated foreign societies, and the ASCAP board of directors); i. Information sheet, ASCAP, "Essentials;" j. Form Letter from ASCAP's Manager, Advertising & Promo Music re: information ASCAP needs for performances of commercials, and promotional and public service announcements; k. Information sheet, "ASCAP Digital Audio Royalty Form & Fact Sheet: Digital Audio Royalties and ASCAP -- A Fact Sheet." 	"
***	62. - 199 RESERVED/UNASSIGNED	***
200.	Public Television - Illustrative Examples of Use of ASCAP Repertory Programs' Themes	S. Saltzman

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201.	Program Video "Music to Pledge By" (a video of film clips from pledge programs shown on public television stations, Channel 13, WNET-NY (New York/New Jersey) and Channel 21, WLIW - (Long Island, New York) during August 1997)	"
202.	Mr. Roger's Neighborhood, List of Most Popular Songs, Public Broadcasting Service's Web Page Site (www.pbs.org/rogers/songindex/html.)	"
203.	ASCAP Song Titles Captured in ASCAP Survey of PBS Stations and Cable Program Services for Survey Year 1996	"
204.	ASCAP Song Titles Captured in ASCAP Survey of PBS and Broadcast TV stations for Survey Year 1996	"
***	205. - 299. RESERVED/UNASSIGNED	***
300.	Corporation for Public Broadcasting, 1996 Public Broadcasting Directory	C. Grajeda
301.	Preliminary Report, "Public Broadcasting Revenue Fiscal Year 1995" (published Aug. 1996)	"
302.	Annual Report for the Corporation for Public Broadcasting for the fiscal year 1996	"
303.	Corporation for Public Broadcasting, Information sheets, "info. packets," Nos. 7, 11, 16, 19, 22, and 26 (respectively published Nov. 1994, Mar. 1995, May 1995, Aug. 1995, Oct. 1995, and Jan. 1996)	"
304.	Final Report, "Perceptions of Commercial Activities in Public Broadcasting," Jan. 1996 (prepared for CPB by Susan H. Russell and Mamie H. Collier of SRI International)	"
305.	Report of David LeRoy and Judith LeRoy, "Public Television: Techniques for Audience Analysis and Program Scheduling" (published Jan. 1995)	"
306.	Pamphlet, "So You Think a Buck Doesn't Buy You Much?" (published by CPB)	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
307.	Information sheet, "Traveler's Guide to Public Radio"	"
308.	Information sheets, "Frequently Asked Questions About Public Broadcasting 1997"	"
309.	1996 Corporation for Public Broadcasting Salary Report for Jointly Operated Public Broadcasting Licensees	"
310.	1996 Corporation for Public Broadcasting Salary Report for Public Radio Licensees	"
311.	1996 Corporation for Public Broadcasting Salary Report for Public Television Licensees	"
312.	Directory, the Public Radio Guide to Business & Corporate Support Success	"
313.	Excerpts from the Corporation for Public Broadcasting's Web Page	"
314.	Pamphlet, The Association of America's Public Television Stations "The Washington Voice For Your Local Vision"	"
315.	Pamphlet, The Association of America's Public Television Stations "Our Vision Our Future"	"
316.	Pamphlet, National Public Radio: "What's Unique about NPR?"	"
317.	Pamphlet, "A Brief History of National Public Radio"	"
318.	National Public Radio Annual Report as of September 30, 1996, Deloitte & Touche LLP	"
319.	Excerpts from National Public Radio's Web Page	"
320.	"Music from All Things Considered," Selection of Programming from September 1997, National Public Radio's Web Page	"
321.	"Music from All Things Considered," Selection of Programming from December 20, 1996 - January 1, 1997, Excerpted from National Public Radio's Web Page	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
322.	Excerpts from Public Radio International's Web Page	"
323.	List of Affiliates of Public Radio International (Stations Carrying PRI Programs), From Public Radio International's Web Page	"
324.	1996 Annual Report of Public Radio International	"
325.	Excerpts from the Public Broadcasting Services's Web Page	"
326.	Excerpts from Public Broadcasting Service's Web Page Site "Shop PBS"	"
327.	Excerpts from Public Broadcasting Service's Page Site "PBS Home Video Collection"	"
328.	"The Charlie Horse Music Pizza:" promotional materials including audience research, station relations, publicity & promotions, addendum: "American Psychological Association Summation - Research Findings Show Music Can Enhance Key Component of Human Intelligence"	"
329.	Article, "Looking Back at the Audiences of Public Broadcasting," <u>Current Online</u> , published at http://www.current.org/pb/pbaud1.html (Web Page created April 5, 1997)	"
330.	Pamphlet, PBS Learning Services: Overview of Services, June 1996	"
331.	PBS Home Video, Mail Order Catalog 1997	"
332.	The Program Resources Group (PRG), The Multi-Market Network: A Unique Opportunity for Underwriters to Buy Multiple Public Television Stations as a Network	"
333.	The Program Resources Group (PRG), The Multi-Market Network: Informational Guide	"
334.	State of Minnesota Charitable Organization Annual Report of Public Radio International for the Fiscal Year ending June 30, 1996	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
335.	American Program Service, Summer 1997 Program Catalog	"
336.	American Program Services "Programming for America's Public Television Community"	"
337.	Excerpts of Public Broadcasting Service Web Page Site "Store of Knowledge"	"
338.	Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives; testimony of Richard W. Carlson, President and Chief Executive Officer of the Corporation for Public Broadcasting	"
339.	Revenue of Public Broadcasting by Source: 1976-1995	"
340.	Revenue of Public Television by Source: 1976-1995	"
341.	Revenue of Public Radio by Source: 1976-1995	"
342.	Brochure, The Program Resources Group: Public Television's Prime Alternative	"
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400.	Chart of Top Ten Producing Public Television Stations	C. Grajeda
401.	Financial Statements, KCET - Community Television of Southern California for the fiscal year ending June 30, 1996	"
402.	Annual Report and Financial Statements, KTCA/KTCI - Twin Cities Public Television for the fiscal year ending August 31, 1996	"
403.	Annual Report, WETA - Washington DC, for the fiscal year of 1996	"
404.	Annual Report, WNET - New York, for the fiscal year of 1995-96	"
405.	Annual Report, KQED - Los Angeles, CA, for the fiscal years of 1995 and 1996	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
406.	Financial Statements, WTTW - Chicago, IL for the fiscal year ending June 30, 1996	"
407.	Annual Report, WHYY - Philadelphia, PA, for the fiscal year of 1996	"
408.	Annual Report, WGBH - Boston, MA for the fiscal year of 1996	"
409.	Financial Statements, WQED - Pittsburgh, PA, for the fiscal years ending April 30, 1997 and April 30, 1996	"
410.	1996 Financial Statement and 1994-95 Annual Report, WMPT - Maryland Public Television	"
411.	Annual Report of WGBH to the Massachusetts Office of the Attorney General, Division of Public Charities, for the fiscal year ending August 31, 1996	"
412.	Annual Financial Report of WNET to the New York State Department of State, for the fiscal year ending June 30, 1996	"
413.	Periodic Report of KCET to the Attorney General of California, for the fiscal year ending June 30, 1996	"
414.	Signals, Mail Order Catalog, 1997, WGBH Educational Foundation	"
***	415. - 499. RESERVED/UNASSIGNED	***
500.	Excerpts from the Web Pages of Public Television Stations Regarding Underwriting	C. Grajeda
501.	Excerpts from the Web Pages of Public Television Stations Regarding Fundraising	"
502.	Excerpts from the Web Pages of Public Television Stations Regarding Merchandising/Revenue Sources	"
503.	Excerpts from the Web Pages of Public Television Stations Regarding National Programming	"
504.	Excerpts from the Web Pages of Public Television Stations Regarding Local Programming	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
505.	<u>Current</u> excerpts regarding TV Music Use (including Music Program Ads)	"
506.	<u>Current</u> excerpts regarding Public Radio International Music Programming	"
507.	<u>Current</u> excerpts regarding National Public Radio Music Programming	"
508.	<u>Current</u> excerpts regarding Program Resources Group Ads for Programming	"
509.	<u>Current</u> excerpts regarding American Program Services' Ads for Programming	"
510.	<u>Current</u> excerpts regarding Other Music Programming	"
511.	<u>Current</u> Excerpt regarding All Compensation/Salaries	"
512.	<u>Current</u> excerpts regarding TV Production - Costs	"
513.	<u>Current</u> excerpts regarding TV CPB Appropriations, PBS/NPR Funding & Station Budgets	"
514.	<u>Current</u> excerpts regarding All "Corporate Support Announcements" (including Underwriting Advertising)	"
515.	<u>Current</u> excerpts regarding All Ancillary Income & Entrepreneurial Activities	"
516.	<u>Current</u> excerpts regarding Program Ownership & Spending (PBS & Public Stations, Including Split Owners)	"
517.	<u>Current</u> excerpts regarding TV Independent Productions/Co-Productions Including APS/American Program Services & ITVS/Independent Television Services or Independent Producers	"
518.	<u>Current</u> excerpts regarding TV Commercialism (Generally)	"
519.	<u>Current</u> excerpts regarding All Capital/Fund Raising (Endowments, Foundations, Grants)	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
520.	<u>Current</u> excerpts regarding Radio - Music Programming	"
521.	<u>Current</u> excerpts regarding Radio - Miscellaneous	"
522.	<u>Current</u> excerpts regarding Radio Commercialism	"
523.	<u>Current</u> excerpts regarding Radio Fees (e.g., NPR Dues, Affiliation & Access Fees)	"
524.	<u>Current</u> excerpts regarding Children's Programming	"
525.	<u>Current</u> excerpts regarding TV Surveys and Studies	"
***	526. - 599. RESERVED/UNASSIGNED	***
600.	Top Producing Public Radio Stations	C. Grajeda
601.	Annual Report, Colorado Public Radio, "Report to Funders 1996-1997," for the fiscal year ending June 30, 1996	"
602.	Financial Statements, "WVTF-FM Radio, A Public Telecommunications Entity, Financial Statements as of June 30, 1996" (Blacksburg, WVA)	"
603.	Annual Report, WBHM 90.3 FM (Birmingham, AL), dated June 30, 1997/Annual Financial Report Submitted to the Corporation for Public Broadcasting dated September 30, 1996	"
604.	Annual Reports, "KUHF's FY96 Annual Report" and "KUHF's FY95 Annual Report," for the fiscal years ending August 31, 1996 and August 31, 1995, respectively (Houston, TX)	"
605.	Annual Report, Wisconsin Public Radio, "1996 Annual Report: Building a Community of Listeners"	"
606.	Annual Report, KRCC 91.5 FM (Colorado Springs, CO), for the fiscal year ending June 30, 1996	"
607.	Annual Report, "Vermont Public Radio: Financial Statements and Schedule (With Independent Auditors' Report), September 30, 1996," for the fiscal year ending September 30, 1996	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
608.	1996 Annual Report, KPLU 88.5 FM (Tacoma, WA), for the fiscal year ending May 1996	"
609.	Planning Document, "WLRH 1996-1997 Planning Document," dated 1996 (Huntsville, AL)	"
610.	Annual Financial Report of Western New York Public Broadcasting Association to the New York State Department of State, for the fiscal year ending June 30, 1996	"
611.	Annual Financial Report of WMHT Educational Telecommunications to the Office of the Attorney General (New York) for the fiscal year ending June 30, 1996	"
612.	Annual Financial Report of WSKG Public Communications Council to the New York State Department of Law, for the fiscal year ending June 30, 1996	"
613.	Annual Financial Report of WXXI Public Broadcasting Council to the New York State Department of Law for the fiscal year ending June 30, 1996	"
614.	1996 Report to Funders, Minnesota Public Radio for the fiscal year ending June 30, 1996	"
615.	Excerpts from the Web Pages of Public Radio Stations Regarding Underwriting	"
616.	Excerpts of Web Sites of Public Radio Regarding Programming	"
617.	Excerpts of Web Sites of Public Radio Regarding Pledging	"
618.	Wireless, Fall/Winter 1997, Mail Order Catalog, Minnesota Public Radio	"
619.	Excerpt from Minnesota Public Radio Web Page information on "A Prairie Home Companion"	"
620.	Other Sources of Radio Programming - Hearts of Space, excerpts from Web Pages	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
621.	Other Sources of Radio Programming - Echoes, excerpts from Web Pages	"
622.	Other Sources of Radio Programming - Soundprint, excerpts from Web Pages	"
623.	Annual Financial Report for Pacifica Foundation for the Fiscal Year ending September 30, 1996	"
***	624. - 699. RESERVED/UNASSIGNED	***
700.	1995 National Association of Broadcasters Television Employee Compensation and Fringe Benefits Report	C. Grajeda
701.	1996 National Association of Broadcasters Radio Station Salary Report	"
702.	1997 Market Report: Investing in Television, - May 1997 Ratings, BIA Publications - Second Edition	"
703.	1997 Market Report: Investing in Radio, - Winter 1997 Ratings, BIA Publications - Second Edition	"
704.	Newspaper article, Constance L. Hays, "A Star Is Licensed; With 'Arthur,' Public TV Stretches Commercial Limits," <u>New York Times</u> , Sept. 24, 1997, at D1	"
705.	Magazine article, Mark Jolly, "Jam Sessions," <u>New York</u> , Sept. 29, 1997, at 38	"
706.	Article, Melinda Newman, "PBS' 'Sessions' To Offer Intimate Look At Artists," <u>Billboard</u> , July 5, 1997, at 1	"
707.	Article, Lawrie Mifflin, "Commercials on Public TV? Some Stations Are Tempted," <u>New York Times</u> , June 5, 1997, at C13	"
708.	Article, Robert G. Ottenhoff, "PBS: A Noncommercial Oasis," <u>Washington Post</u> , August 16, 1997	"
709.	Miscellaneous News Articles regarding Public Broadcasting Music Usage	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
710.	Miscellaneous News Articles regarding Public Broadcasting Merchandise Sales	"
711.	Miscellaneous News Articles regarding Public Radio Arbitron Ratings	"
712.	Miscellaneous News Articles regarding Public Broadcasting Fundraising and Pledge Drives	"
713.	Miscellaneous News Articles regarding Public Television Underwriting	"
714.	Miscellaneous News Articles regarding Public Radio Underwriting	"
715.	Article, "WVXU-FM chosen to lead Mighty Ducks radio group", <u>The Cincinnati Enquirer</u> , August 21, 1997	"
716.	Article, "XU tunes into commercial broadcasting the university's growing Xstar radio network could divide into two groups", <u>Cincinnati Business Courier</u> , August 15, 1997	"
717.	Article, "C-SPAN Purchases UDC Jazz Property from New Public Affairs Station", <u>Radio Business</u> , August 22, 1997	"
718.	Article, "Public radio stations to go commercial", <u>United Press International</u> , August 18, 1997	"
719.	"New NPR Dues Formula Change to be Postponed", <u>Public Broadcasting News</u> , June 13, 1997	"

<u>Exs. Nos.</u>	<u>Description</u>	<u>Sponsoring Witness</u>
720.	<p><u>The Boston Globe</u>, four part series:</p> <ul style="list-style-type: none"> - June 22, 1997 - "Winds of change buffet WGBH" and related article, "'Health Quarterly' a symptom of budget ills" - June 23, 1997 - "Local programming doesn't rate" and related articles, "Critics say Channel 2 plays it too safe", "From pledges to bequests, WGBH pushes the envelope" and "WGBH's next legacy: 'Africans in America'" - June 24, 1997 - "Spinoffs, corporate tie-ins a precarious path for WGBH" and related article, "Public Television's 'Frontline' man in Hollywood" - June 25, 1997 - "Public television searches for a niche" and related article, "Public stations debate cost of commercialism" 	"
721.	1996 Compensation Comparison By Job Category - Radio & Television	H. Anderson

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REFERENCE IN ASCAP'S DIRECT CASE

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter of)
) Docket No. 96-6 CARP NCBRA
ADJUSTMENT OF THE RATES FOR)
NONCOMMERCIAL EDUCATIONAL)
BROADCASTING COMPULSORY)
LICENSE)

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I am an associate at White & Case. On October 1, 1997, I caused to be served by hand or courier express/same day delivery true copies of: (a) Volumes 1 and 2 of the Direct Case of the American Society of Composers, Authors and Publishers; (b) Volumes 1 through 17 of the Exhibits to the Direct Case of the American Society of Composers, Authors and Publishers, including designations of prior filings incorporated by reference and a video tape cassette, and (c) Appendix B to the Written Testimony of Dr. Peter M. Boyle in Support of the Direct Case of the American Society of Composers, Authors and Publishers, which contains confidential protected materials subject to the protective order in Docket No. 96-6 CARP NCBRA and is submitted separately under seal to the U.S. Copyright Office and served on only those parties or their counsel designated below with an asterisk (*):

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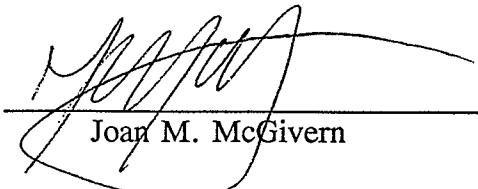
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