COPYRIGHT ROYALTY TRIBUNAL

----------X

In the matter of: :

COMPULSORY LICENSE FOR SECONDARY :

TRANSMISSIONS BY CABLE SYSTEMS; : CRT Docket No. 80-3

ROYALTY ADJUSTMENT PROCEEDING :

----------X

2100 K Street, N.W.
Room 610
Washington, D.C.

Thursday, October 2, 1980

The hearing in the above-entitled matter commenced at 10:00 a.m., pursuant to notice.

BEFORE:

MARY LOU BURG, Chairman

THOMAS C. BRENNAN, Commissioner

CLARENCE L. JAMES, JR., Commissioner

FRANCES GARCIA, Commissioner

ORIGINAL

APPEARANCES:

FRITZ ATTAWAY, Attorney-at-Law
Counsel for Copyright Owners

STUART F. FELDSTEIN, Attorney-at-Law
Counsel for NCTA

C O N T E N T S

WITNESS:	Direct	Cross	Redirect	Recross
CHARLOTTE BEALES				
by Mr. Feldstein	4		103	
by Mr. Attaway		30		

EXHIBITS:	IDENTIFIED	RECEIVED
NCTA's No. 14	17	17
NCTA's No. 15	60	60
CO's No. 18	125	125

1 CHAIRMAN BURG: After our expected, and yet,
2 unexpected vacation yesterday, it is nice to be back in harness.
3 Ms. Beales, you were on the witness stand. So, Mr. Feldstein,
4 you may continue with you witness.
5 MR. FELDSTEIN: Thank you.
6 Whereupon,
7 CHARLOTTE BEALES
8 was called as a witness and, still under oath, was examined and
9 testified further, as follows:
10 DIRECT EXAMINATION
BY MR. FELDSTEIN:
11 Q It will be recalled that the witness had concluded her
12 demonstration of the increase in the royalty fee per subscriber
13 between October of 1976 and the latest date for which data was
14 available, which would be January 1, 1980. She had then commenced
15 to explain what factors might be contributing to this increase in
16 the royalty fee per subscriber.
17 And I think, at this point, I would ask Mr. Beales to
18 take it from there and set the stage as to where she feels she is
19 in describing this component?
20 A This, as a point of review, you will recall that we had
21 already discussed Chart Seven, which was our tabulation of the
22 reponses to the Copyright Tribunal Survey. We had come up with a
23 change in basic subscriber rates of 15 percent for all systems,
24 and 14 percent for the DSE systems based on the tabulation at the
25 time we conducted our analysis.
We are about ready to move on to Chart Eight.
COMMISSIONER GARCIA: Ms. Beales, before you do, that

exhibit is equivalent to the Copyright Owners Exhibit No. 2, is that right?

THE WITNESS: I'm not positive if it is Exhibit 2. Let me check that. It is somewhat different as I pointed out on Exhibit 2. Mine are not numbered. It is comparable to basic rates of all long-form cable systems.

COMMISSIONER GARCIA: They are all numbered, prenumbered, aren't they?

THE WITNESS: The one I was using was not. It is similar, but it is somewhat different. The reason that it is somewhat different is that in that particular Exhibit No. 2 of the copyright owners, it's my understanding that they compared the same systems in 1976 and and 1980. With our data, we compared all systems who responded because we were doing an industry wide average.

For all systems, we had a different number you will recall. We had $1,673 that were operational in '76 that responded, but that number had increased to 1900. So, there is a difference in the methodology.

If you will turn to Chart No. 8, you will recall that we were attempting to give you some idea of other components that may have increased which will contribute to an increase in the royalty fee per subscriber. Obviously, a change in the rate is the most significant component. As I had stated on Tuesday, we are not attempting to precisely quantify the change in these other factors because we do not have data from 1976.

All we have are other end times, but we also have other start times. We have some data which give us an indication that there has been some increase in the other factors that would affect the royalty fee per subscriber.

In Chart No. 8, we have a table that describes the increase in additional set revenues between 1978 and 1980. The source of this chart is a tabulation of 100 random selected 1978-1 and 1979-2 statement of account forms. Hence, this table is only measuring an 18-month change rather than 1976 to 1980.

There are two parts of this chart that are important to look at. The first part is the additional set subcribers as the percentage of first set subscribers. We figured in 1978 there was 30 percent; since 1979-2, it was 31 percent. It wasn't much of a change here, but we can see that it affected less than one-third of the total sets per subscribers.

The second part of the chart compares to basic rates. In '78-1, of these 100 selected statement accounts, the average rate was $1.35; by 1972, it was $1.51. We have an increase of $12.10. So, we have some indication that there was a change in the additional set revenues that had increased during, at least, part of the period.

CHAIRMAN BURG: Ms. Beales, did you say 1972, when you meant 1979-2?

THE WITNESS: Dash two, yes. I'm sorry. As we move on to Chart Nine, we will look at two additional factors. The first factor listed is the average number of DSE's recorded

per system. The source of this information is, again, the 100 randomly selected statement of account forms. In 1978-1 we have 2.65 recorded in our DSE samples. By 1979-2, it increased to 2.9, which is a nine percent increase. Keep in mind, of course, that this does not translate into a nine percent increase in the royalty fee per subscriber because you pay on a decreasing amount for each additional DSE that you would add.

The other factor that is shown on Chart Nine is system growth in the DSE payment category. We have included this because we are talking about, in many of our charts, all systems. And we know that many systems have internal growth where they increased their number of subscribers or they increased their basic rate which causes them to move from paying in category two into to category three. Again, we do not have precise quantification of this change. We know that the total reporting in 1978-1 that was paid in the DSE class was 868. By '79-2, the total reporting had grown to 1,050. That is a 21 percent increase. Now, there could be some other factors to fall into this, but given that's a relatively short 18-month period, it would seem that a large portion of this 21 percent could be attributed to internal growth which causes the system to pay at a higher DSE level.

These are, in essence, four factors, which we have found contribute to an increase to the royalty fee per subscriber. It was described on Tuesday as a 33 percent increase

1 over the period from '76 to 1980.

2 BY MR. FELDSTEIN:

3 Q Now, Ms. Beales, before we move to the topic of

4 Regulatory Restraint, let me direct your attention to the

5 exhibits introduced by the copyright owners, Exhibits No. 10 and

6 10A, which, if you will recall, they refer to Exhibit 10 which

7 referred to a series of franchise application cables in which

8 the applicants of these various communities were listed along

9 with some pricing for basic service tiers as well as paid

10 TV tiers. The allusion that was made by the copyright owners

11 from this exhibit was that the free or reduced price basic

12 service, if not a thing being done commonly now, was certainly

13 a coming trend.

14 Are you familiar with this exhibit?

15 A Yes, I am.

16 Q Have you examined the pages and the communities

17 involved?

18 A Yes, I have.

19 Q Can you tell us how many of these cities are involved?

20 How many are we talking about?

21 A In the packet that I received, there were 21 cities

22 included.

23 Q One of the cities, as I recollect from looking through

24 this, was named twice. It was a different table. Is that

25 correct, and what was that?

A I believe Omaha was listed twice in the exhibit. In

1 looking at the footnotes and the actual applicants, one of them
2 should be St. Louis.
3 Q So, we do have these 21 separate cities?
4 A Yes. I am assuming one was St. Louis based on the
5 footnotes and the applicants. I'm not, of course, positive of
6 that.
7 Q Do you know how many of these 21 cities have had a
8 franchise awarded?
9 A Twelve.
10 Q You said 12 have had a franchise awarded?
11 A Yes, and nine have not.
12 Q Of these 12 that have been awarded, are any still in
13 a contested state?
14 A Yes, four of them are in a contested state right now.
15 So, there is no progress being made in terms of actually wiring
16 the city.
17 Q Thus, eight of them are ready to go in some fashion;
18 is that correct?
19 A Yes.
20 Q How many of these eight are actually in operation
21 today?
22 A Three.
23 Q Can you identify the communities and the award winner
24 of these three which are in operation?
25 A Yes, the first one that I found was Fargo.
CHAIRMAN BURG: At this point, I'm going to ask you to

slow down?

THE WITNESS: Certainly. They are not numbered, so I cannot help you find the page number.

CHAIRMAN BURG: Go ahead. Give me the three.

THE WITNESS: Fargo, and the next one would be Sioux City and Chapel Hill are the three.

BY MR. FELDSTEIN:

Q Can you give us the states on those?

A Fargo, North Dakota; Sioux City, South Dakota; and Chapel Hill, North Carolina.

Q Sioux City, Iowa, I believe?

A Yes, Iowa.

Q Can you identy for us in Fargo, the winner?

A Cablecom-General was awarded the franchise, and they are charging $6.25 for their lowest tier of service.

Q Thus in Fargo, we have no free or very low priced service. We have a basic service. Of this, 25 in operation?

A This is correct. Of course, all of the applicants in Fargo were planning to charge for their basic tier. None of them were offering a service.

Q All right. Now, in Sioux City, who was the winner in Sioux City?

A Again, it was Cablecom-General. They charged $5.50 for their basic tier. Again, none of the applicants have proposed to provide any free service.

Q The third one you mentioned was Chapel Hill, is that

correct?

A Yes.

Q Who was the winner in Chapel Hill?

A Village.

Q Does Village propose a free service?

A Yes, they do.

Q Of these three who are in operation, have any of them been in operation long enough to provide some information as to how their operation works?

A The only one that I could find any the hard data on was Chapel Hill, which has been marketing their service since June of 1980.

Q Review for me, please, according to the exhibit, what Chapel Hill was providing on its so-called basic tiers?

A What programming they were providing?

Q No, first, what number of channels and what prices they were.

A According to the exhibits in the first tier, they were offering 12 channels for free. The second tier, 21 channels charged at $4.95. And on the third tier, 35 channels for $7.95.

Q Now in terms of what you were able to learn about Chapel Hill, do you know what services are provided on these in terms of broadcast and nonbroadcast services?

A Yes. I was able to find out on the free tier, the Village Cable Company offered seven local broadcast signals, four access channels; one is leased, one is public, one is

government, and one is to the system, and one channel is devoted to a program guide.

Q How about on the next tier or tiers?

A I do not have a complete rundown of the entire programming, but they do carry one distant signal.

Q They do carry one distant signal on the next tier?

A Right.

Q Therefore, whatever other distant signals that they carry would be on the third?

A Right.

CHAIRMAN BURG: Excuse me for a moment. On the Fargo, North Dakota sheet, which company won the franchise?

THE WITNESS: Cablecome-General.

CHAIRMAN BURG: Thank you.

BY MR. FELDSTEIN:

Q Do we have any information as to, thus far, how many people are taking each tier in Chapel Hill?

A Yes, we do. The source of the information is September 9, 1980, issue of Cable TV Regulations, which is the same newsletter that the exhibits were taken from. Since June of 1980, we have had 660 subscribers who signed up for cable service in Chapel Hill. To date, 42 or six percent have taken only the free tier. 46 or seven percent are paying $4.95, and 572 or 87 percent are taking the $7.95 package. This is somewhat different from what the cable company, Village, had planned in their marketing plan. They had thought that as many as ten

1 percent of their subscribers would take the free tier. And
2 of course, they are finding that only six percent, to date, are
3 taking the free tier.
4 Q Thus, have you figured in using those statistics,
5 although there is a so-called free or universal service, what
6 is the effective basic rate per subscriber in that system?
7 A If you calculate 42, count 42 who are taking the free
8 tier, 46 at $4.95, 572 at $7.95, you come out with an effective
9 rate of $7.24 on a per subscriber basis in this system.
10 MR. ATTAWAY: Excuse me, Ms. Beales, would you repeat
11 the 740--
12 THE WITNESS: $7.24.
13 MR. ATTAWAY: Thank you.
14 BY MR. FELDSTEIN:
15 Q Now, Ms. Beales, we note that on the same chart that
16 there are several paid services or paid cable tiers.
17 A This is Chapel Hill we are looking at?
18 Q Yes.
19 A Yes.
20 Q What services must a subscriber, basic service, take
21 before he has an opportunity or an option to take one of these
22 paid tiers?
23 A It is my understanding that you must take all services.
24 Q Thus, in other words, no subscriber who is getting a
25 free or universal service can take pay unless he takes a $7.95
package of basic service?

1 A That is correct. The reason behind this, which I
2 think logically explains this process, is that the technology
3 is not advanced enough so that if you take only the free tiers,
4 the cable company has the opportunity to keep you from getting
5 the other tiers if you take pay, tier one, being on this end
6 and pay being on this end. There are two tiers in the middle ,
7 and unless you take all three tiers and pay for those tiers, that
8 is the only way the cable company can provide that.
9 Q These are technical reasons?
10 A Yes, they are technical reasons.
11 Q In other words, you have to have the hardware in for
12 the 35 channels before they can add the pay service?
13 A That is correct.
14 Q Ms. Beales, you have been able to identify, according
15 to your testimony, no other on this chart operating system
16 offering a free or universal service or even a very low-priced
17 basic service in that regard?
18 A That is correct.
19 Q Are you familiar, at this point, with any other free
20 services in the industry?
21 A No, I'm not.
22 Q In other words, if all of the systems that we are
23 familiar with, including these franchise applications on this
24 exhibit, the Copyright Owners Exhibit No. 10, we have only been
25 able to identify 42 subscribers out of the approximately 17
million cable television subscribers who are even obstensibly

obtaining free basic servce?

A That is correct.

CHAIRMAN BURG: Mr. Feldstein, have you done this excercise for us in terms of the other stations in this exhibit, or are you just using Chapel Hill?

MR. FELDSTEIN: No. She has testified that there are only three that are in operation. The only one on which we have been able to obtain any data has been Chapel Hill. We believe that there is no data, and the other two systems, which are Cablecom systems,have just turned on.

CHAIRMAN BURG: And they offer no free.

MR. FELDSTEIN: Well, they offer low-price serviceand expanded service,but there is not enough data to be available to us. As we pointed out,many of these systems have been granted and contested, and so they have not begun building. Many of the others are still in a franchising mode.

BY MR. FELDSTEIN:

Q Now, Ms. Beales, turning to Exhibit No. 10A, the copyright owners presented, if you recall, two pages from the Television Fact Book from last year and a page from this year. Both of which showed a TV Systems, Inc. in Hawaii,in the Honolulu area, with a $6 monthly charge last year and no monthly charge this year. Are you familiar with that exhibit?

A Yes, I am.

Q Have you attempted to verify the facts in Honolulu?

A Yes.

Q How have you done this?

A I spoke with the system manager, a gentleman named Lloyd F. Char. He is the president of TV Systems, Inc.

Q And what did Mr. Char tell you?

A Mr. Char was very surprised to hear that the 1980 fact book has listed his basic monthly fee as zero because he is actually charging for the service. It is an error on the part of the fact book.

Q When you spoke with him and incidentally you and I spoke with him. When we had this telephone conversation, Mr. Char did state, did he not, that he was charging $6 for the basic service last year?

A That is correct.

Q Did he tell us what he is charging this year?

A Yes. He was able to secure a rather substantial rate increase during the interim period, and is now charging the urban Honolulu subscribers $7.25 per month and the suburban Honolulu $7.80 per month.

Q Mr. Char, thus, is giving away no free service.

A That is correct.

Q Mr. Char does not have the kind of tiering that we have seen in Exhibit No. 10?

A That is correct.

Q Mr. Char has a classic cable television system?

A That is correct.

Q This was simply an error in the Television Fact Book ?

1 A That is correct.

2 MR. FELDSTEIN: May I substantiate that for the
3 record with an exhibit. And I beg everyone's indulgence. When
4 I handed out exhibit's the other day, I alluded to an Exhibit
5 No. 13, which Mr. Attaway knows is an attempt to put the small
6 system dollar limitation up. I have that printed as 13. And
7 so I have listed this one 14. Would you like me to introduce
8 13, or simply hand this in as 14?

9 CHAIRMAN BURG: Hand this in as 14.

10 (CO's Exhibit No. 14 was marked and received
in evidence.)

11 BY MR. FELDSTEIN :

12 Q For the record, Ms. Beales, would you read this
13 document?

14 A "Dated September 29, 1980, To Whom it May Concern:
15 According to a conversation held with the counsel for NCTA, Mr.
16 Stewart Feldstein, testimony was given before the Copyright
17 Tribunal relative to the rates we charged to our subscribers
18 for the basic cable service. The testimony given stated that
19 the Television Fact Book previously showed our firm as charging
20 $6 for our basic service. And subsequently in 1979, no charge
21 was being made to our subscribers. This information is not
22 correct. In fact, our company charges our urban Honolulu
23 subscribers $7.25 per month and our suburban Honolulu subscribers
24 $7.80 per month." And it is signed by Lloyd F. Char of TV
25 Systems, Inc.

Q Thank you. Now, Ms. Beales, we have stated that in the event a gap is found to exist between the rate of inflation and the amount by which the royalty fee per subscriber is risen in the period in question, that the provision of the Copyright Act providing for adjustments for DSE paying systems speaks in terms of the Tribunal being able to take into consideration extenuation factors. One of these extenuating factors, which is specifically mentioned, is a question of regulatory restraints?

A Yes.

Q Are you familiar with the Copyright Owner's Exhibit No. 9?

A Yes, I am.

Q Can you review for us what it was that the copyright owners attempted to establish by the use of that exhibit?

A The exhibit is titled, "Action on Rate Increase Request by Regulating Agencies," and its source cable television regulation newsletters from Paul Kagan, Associates. It only gives us percentages, no raw numbers. But for the six-month period, in groupings, averaged together between 1976 and January to June of 1980, it tells us the percent of requests for increase granted and percent granted of the amount requested.

Q Have you made any efforts to examine the basis of exhibit?

A Well, of course, we do not have the raw numbers here. So, we do not know--

1 Q Examined the derivation of how the exhibit came to
2 be in terms of the data?
3 A Well, I have talked with John Mansell, the gentleman
4 who puts together the information for the cable television
5 regulation newsletters. He is the editor.
6 Q Can you tell the Tribunal about your conversation with
7 Mr. Mansell and the limitations on this data which were discussed.
8 A Mr. Mansell gathers his information from newspaper
9 clippings which he has sent to him or he finds or he learns
10 about. So that his information, while often extensive, is
11 variable. It's not a random sample, nor is it a review of the
12 entire universe. It is whatever information he finds on cable
13 systems.
14 The other important piece of information is that he
15 bases most of his information on individual franchises and not
16 on cable systems. So, a cable system may have one system in
17 a town but be operating under many different jurisdictions. And
18 in most cases he would report those separately. So, he reports,
19 of course, a much higher number than there are systems. But
20 sometimes, and I don't know exactly the reason for this, he
21 lumps them together. So, in some cases they are franchises, and
22 in some cases they are systems. It is hard to know, exactly,
23 which one he is using in each case. Of course, we had looked
24 at using his information early on, but because the Tribunal was
25 sending their questionnaire to systems, we thought that that was
perhaps a better measure of what is happening in the industry

1 rather than by franchise basis.

2 Q In other words, the data is collected neither from

3 a random sample or from the entire universe?

4 A That's correct.

5 Q The data is verified only by what appears in the

6 newspaper?

7 A That is correct.

8 Q The data includes rate increases on franchises or

9 systems?

10 A Correct.

11 Q A system sometimes includes more than one franchise?

12 A Correct.

13 Q Thus, it is a mixture of data?

14 A That is correct.

15 Q Thus, the statistical reliability of this data by these

16 limitations, which Mr. Mansell has conversed with you about,

17 calls into question the total reliability of this data?

18 A Yes.

19 CHAIRMAN BURG: We will have a two-minute recess.

20 (A brief recess was taken.)

21 BY MR. FELDSTEIN:

22 Q Ms. Beales, have you been able to tabulate the CRT's

23 survey responses?

24 A Yes, I have.

25 Q Could you please tell us what you have found?

A You will refer to Chart No. 10. This is a tabulation

of the DSE system's responses to the CRT's survey. On question No. 8, it says, "Ask only of the systems that were regulated." We started with 350 systems in this category at the time we tabulated our responses. We found that the systems reported an average rate at the time they went in for a request. And incidentally, it should be noted that some systems included more than one rate increase on the form and others did not. This counts for the total number of rate increases that were recorded.

We started from $6.74. The average amount requested for this sample is 96 cents. The average amount granted was 88 cents, which is 92 percent of the amount that was requested. 19 percent were granted an amount which is less than requested. That is the basic information. I should also point out that this figure includes the systems that were pending. There were 65 systems that were pending at the time as of April 1, 1980. We chose to include these because we felt they should be counted. A number of them had been pending since 1978. It seemed logical to include them, that they were getting less than they were requesting because of the long time lag involved. If those pendings were not included, this number would be 14 percent.

BY MR. FELDSTEIN:

Q All right. Now, that is the data on the increases. At the bottom of that chart you have something called "time lag"?

A That is correct. We calculated the average time that

1 elapsed between the date of a request for a rate increase and
2 the dates that the regulatory body acted or made the rate
3 increase effective. If a cable system reported on their form
4 the City Council decided on July 1 that we could have a rate
5 increase, but we could not implement it until August 1. August
6 1 was the date that was counted.

7 This information is based on a total response of
8 308. Of this sample, 257 or 83 percent experienced some kind
9 of a lag. This is a conservative estimate. We counted all
10 months as a four-week period. And hence, for the entire year,
11 it would be counted as only 48 weeks. We came up with a result
12 of an average time lag of 13.9 weeks for all systems which
13 translates into 3.5 months.

14 MR. ATTAWAY: Excuse me. You gave a number 308.
15 What was the number after that?

16 THE WITNESS: 308 is the number of responses to this
17 particular question.

18 MR. ATTAWAY: What was the number after that?

19 THE WITNESS: I said that 257 or 83 percent experienced
20 a time lag.

21 MR. ATTAWAY: Thank you.

22 BY MR. FELDSTEIN:

23 Q Now, this is for systems, obviously, that have had
24 action?

25 A That is correct.

Q Thus, it does not include those who are still pending

because we have not been able to conclude a front and a back; is that correct?

A Yes.

Q Now, does this data on rate increases include any information on how much time the President's regulation caused a cable system to delay its request?

A No. The only question on the questionnaire sent out by the Tribunal that got at that was the importance of regulation in delaying rate increases was the time lag question which was measuring the time between the actual date of request and the time action was taken.

Q Have you attempted to further corroborate and expand on the data that CRT's survey produced?

A Yes. In our conversations with cable operators, we found that there is a much larger time lag involved in getting a rate increase. It is impossible to decide I need a rate increase and run across the street to your regulatory body and hope they are meeting that day and say "Yes, I need a rate increase," and they would grant it that day so that we found that there was much longer time lag needed to be identified.

Since we undertook a very similar survey as the Tribunal but added questions that attempted to document this longer time lag factor, we conducted our survey using a modified version of the Tribunal's questionnaire. We conducted it only of large systems, systems that had subscriber counts of

1 over 5,000 as listed in the 1979 TV Fact Book. There were
2 718 of those systems reported. We sent surveys to 241. They
3 were randomly selected from the total universe.
4 Q Which exhibit number are we now looking at?
5 A Exhibit No. 11.
6 Q Thank you.
7 A We had completed questionnaires from 191 of the
8 systems which is 27 percent of the universe. The results were
9 remarkably similar to the Tribunal in virtually every question
10 in terms of the percentages that responded, the rate increase
11 data. It was very similar.
12 We report in Chart No. 11 the responses to the same
13 questions that we had shown in No. 10. The average rate at the
14 time of request is based on, incidentally, 128 responses to
15 this question. These are all regulated systems. The average
16 amount requested was $1.90. The average amount granted was
17 94 cents. 21 percent were granted an amount less than
18 requested.
19 In terms of time lag, we found a slightly longer time
20 lag. 17 weeks was the average elapsed from the date of request
21 for increase to the date of action or effective date. This
22 translates into 4.3 months.
23 Q You stated a moment ago that in addition to this
24 formal lag, date of request to date of action or date of
25 effect, that the presence of regulation caused a further
time lag?

A That is correct.

Q Have you been able to quantify that?

A Yes. On Chart No. 12, we have responses to the question of the increase time lag. What we were trying to measure was the time that it would elapse between when a system decided internally they needed a rate increase, and they took the first internal step toward achieving that rate increase. That was the first period we measured.

The next period we measured was from the time when the system had taken the internal step to the time when they went to their regulatory body and made a formal request for a rate increase. Now, in this Chart No. 12, we have mixed our two sources. We started with the information that you saw from Chart No. 10. The time elapsed from the date of request for increase to date action effective.

We will utilize the responses to the CRT survey,which is a more conservative number,3.5 months on the average. The next line tells us the time elapsed when the systems forcast a need for a rate increase to the first formalized internal business step based on NCTA's survey whose average was 4.6 months.

CHAIRMAN BURG: Explain that, please.

THE WITNESS: The system manager looks at his books and says I need a rate increase, and he then begins to take internal steps to determine if this is a good time, if it's an election year, if he should go to his City Council now to

get a rate increase. It was asked by the actual questionnaire how much time elapsed between the time you forcasts a need for a rate increase and you take your first formalized internal business step.

BY MR. FELDSTEIN:

Q In other words, if there was no regulation or there were no inhibitions, are you saying that once they determined they would need a rate increase in the absence of regulation it would simply be implemented?

A That is correct.

Q Thus, the presence of regulation is what causes this 4.6 months to occur?

A That is correct.

CHAIRMAN BURG: You are talking about the first formalized internal business step. Now, if you were saying external business step, that is the confusion right now. It seems there is a great time lag internally before you even go to that regulating body.

THE WITNESS: That is correct.

CHAIRMAN BURG: What is responsible for that time lag internally?

THE WITNESS: Determining the political climate as to whether it is worth the effort to go and seek a rate increase. We have talked to many cable operators, and I believe there will be some witnesses to follow me who can document this better on a system-by-system basis. In every case it appears to be

1 different. It ranges from going to talk to your City Council
2 and finding out if they are even willing to consider giving you
3 a rate increase. If they are not, it's not worth your time.
4 CHAIRMAN BURG: There are internal applications to that
5 also?
6 THE WITNESS: Yes. We did, however on the questionnaire
7 say internal business steps.
8 MR. FELDSTEIN: I would also point out that that is
9 an excellent question in that regard. The NCTA survey simply
10 asked the question. We have a quantified result. We will be
11 presenting industry witnesses who will be able to tell you how,
12 in a large company, they arrived at these decisions to go or not
13 go for a rate increase for how much.
14 CHAIRMAN BURG: You understand the way I was approaching
15 it it seems they were asleep at the switch, and we are doddling
16 today to be conservative.
17 THE WITNESSS: The next question we asked was the time
18 elapsed between the formalized internal business step to the
19 time you actually go for petition to get the rate increase.
20 This averaged out to be 2.9 months.
21 I must emphasize as a researcher, we are not attempting
22 to stand here and say that for all of our industry it takes 11
23 months on the average to get a rate increase. But for a signifi-
24 cant number of systems, there is a regulatory lag factor which
25 is definitely present and affects their ability to get rate
increases.

BY MR. FELDSTEIN:

Q You have previously attempted to establish the presence of a regulatory cap on the rates themselves; is that correct?

A Yes.

Q And in this aspect, are you attempting to establish an addition to the cap?

A Yes.

Q There is also a delay factor?

A That is correct.

Q Again, can you tell us the size of the universe which was involved in this data?

A Yes. On Exhibit No. 12, on the copies we have passed out--Of course, the CRT survey was based on a total of 308 responses. The NCTA survey, we had 88 responses to this first step; and we had 92 responses to the second step. Not every company, obviously, has both kinds of problems. It is very individualized. This is an attempt to get some kind of a reading of how many systems are affected.

Q These are systems, not companies?

A Systems. Yes, individual systems.

Q You have testified that the time lag conservatively may be 11 months. Could you put this into perspective in terms of the time period that this Tribunal is concerned with?

A We are measuring from October of 1976 to April 1 of 1980 is the time period for the data.

Q That would be 41½ months, is that correct? Thus, we are talking about a delay of 11 months.

A That is correct.

Q In a time period of 41½ months. Finally, we get to the missing Exhibit No. 13. Now, Ms. Beales, our Exhibit No. 13, we have been discussing, up until now, the adjustment to be made to the royalty rates for those systems who pay on a DSE equivalent?

A That is correct.

Q The second adjustment which this Tribunal must make is of the dollar limitation for those systems who enjoy the small system limitation exemption, I believe it is called. Assuming as I stated in my opening statement that the language of the act to maintain the constant dollar level of the dollar limitation is observed, how would this work in practicing?

A Well, we have an example in Chart No. 13, taking the exemption dollar limits, the 40,000. These are a semiannual category, 40 to 80 and 80 to 160. And adjusting them by the amount of inflation that has occurred in the period. This is just an example of what can be done. In this particular case, we used 30 percent. The PCE deflator is increased by 30.6 percent. We increased the dollar limit by 30 percent.

Q In other words, this would be, in across the board, raising of the dollar limits which would have the effect of placing those systems who have outgrown the dollar systems back into the limits?

1 A That is correct.

2 Q Now, you have used these categories. Is this because
3 of those dollar categories on the left-hand column subtract
4 the dollar categories in the Act?

5 A Yes.

6 Q Thank you.

7 MR. FELDSTEIN: Madam Chairman, that concludes our
8 direct case for Ms. Beales. We have other witnesses.

9 CHAIRMAN BURG: Yes, I understand that. Mr. Attaway?

10 CROSS EXAMINATION

11 BY MR. ATTAWAY:

12 Q Ms. Beales, I would like to compliment you on your
professional testimony. It was a very good presentation.

13 A Thank you.

14 Q Rather than going through your testimony sequentially
15 and starting with your testimony which you gave days ago,
16 what I would like to do is start back with this morning's
17 first. Then we will go back to the testimony you gave the
18 other day. Let's start with regulatory restraint? I believe
19 that was your Chart Ten.

20 Now Ms. Beales, you were critical of our exhibit
21 including the data from the Kagan Newsletter. You did not
22 mention our other exhibit showing the results of the CRT survey.
23 May I assume that you found that to be substantially correct,
24 a correct reflection of the industry as it exists?

25 A Obviously, I have not seen the data that was analyzed.

1 You had many more systems. I don't know your precise
2 methodology, but I did not criticize it.
3 Q You have no criticism of it. Thank you. On your
4 Exhibit No. 10, I have a great deal of difficulty with this.
5 CHAIRMAN BURG: Excuse me one moment, Mr. Attaway.
6 Ms. Beales, could you put your larger chart back, please?
7 THE WITNESS: Sure.
8 CHAIRMAN BURG: Thank you.
9 BY MR. ATTAWAY:
10 Q I had a great deal of difficulty to try to reconcile
11 these numbers. I understand the 96 cents, and I understand the
12 88 cents. When I got to the 19 percent, I was totally con-
13 fused. Now, I think I understand why the 88 cents is what was
14 granted out of what was requested, right?
15 A That is correct.
16 Q 88 cents is 92 percent of 96 cents, right?
17 A That is correct.
18 Q So, on the average, the cable systems got 92 percent
19 of what they asked for?
20 A Based on this, yes.
21 Q Based on this survey. Now, moving to the 19 percent,
22 I thought that was to reflect the percent that they did not
23 get. That is not really true. They did not get 8 percent of
24 what they asked for, right? If they got 92 percent, they did
25 not get 8 percent.
A Right.

Q The 19 percent has no relationship to the previous two numbers?

A Well, it has a relatiohship in that it utilizes the same data, but you are right. No, it does not. It is measuring something different.

Q It's apples, apples, and peanuts?

(There was general laughter.)

A Yes, what it measures in the percented systems. They were granted an amount less than that requested.

Q But you don't know what that amount is? Excuse me, that amount would be 8 percent on the average, right?

A On the average. There were cases, of course, where they got nothing. There were cases were they got 16 percent on the average. They got 88 cents. And in 98 percent of the cases, they got an amount less than what they were asking for.

Q Footnote two chart says that the data was based on 350 responses. In Chart No. 7, you said that you tabulated 551 CRT responses?

A That is correct.

Q Why did you exclude the missing 201 responses?

A Well, in question number 8, the form directed a system only to fill out this section if they were regulated. That excluded a large number of systems from even filling out question 8. We did have some cases that excluded in addition to that because they did not fill out all of the questions that were necessary to tabulate. They would tell you the date of the

first action, but they would not tell you the time when the City Council acted on it.

Q Thank you. So, this survey only includes that portion of the industry that is regulated?

A That is correct. That was the instruction on the form.

Q I would like to point out that 201 systems that were responses , that were not included, not reflected in this chart equal 36.5 percent of the total 551 responses in Chart No. 7. That is a substantial percentage.

A That was not a question.

Q It was a question. No, I'm sorry. It was not. You are right. So, this chart certainly does not reflect the entire cable industry?

A That is true. But it does reflect the regulated portion of the industry which is, of course, the majority.

Q Does the reflected system ask for an increase?

A Yes. If they reported in Question No. 8--No. They only filled it out if they asked for an increase. And there are, as I have pointed out, many systems that thought the direction was to include every rate increase that they had in the period. So, they showed two, three, four; and they would try to right them in and so on.

There were others that only included one. So, you could not tell from the data that it was every single rate increase for every single system. Obviously, systems

1 interpreted the questionnaire differently.

2 Q In addition to unregulated systems, systems that did

3 not reflect an increase, are not reflected in this chart?

4 A That is correct.

5 Q You mentioned some responses included more than one

6 request, were they counted once or twice?

7 A They were counted for every request.

8 Q For every one?

9 A Yes. There were 350 separate rate requests that were

10 counted. For the 350 figure that I listed as my base, that

11 was all of the requests that were included if they gave complete

12 information as to when they requested it and when it was acted

13 on, and so on.

14 Q If a system made one request and got less than what

15 they asked and made a subsequent request and didn't get what they

16 asked, that would be counted twice. The first one would show

17 a grant of less than that which was requested?

18 A Right. Because we were dealing with such a long period

19 of time, four years, there are a number of systems who asked for

20 a rate increase more than once. We felt that that was what the

21 Tribunal was trying to find out.

22 Q All right. Let's move to Chart No. 11? For the

23 Tribunal, would you put that on the easel, please? I believe

24 you stated that of the total systems sent your NCTA survey

25 questionnaire, only 27 percent responded?

A No. What I told you was that there are 718 systems

listed in the fact book with subscribers of more than 5,000. That was our universe. We drew a random sample of that which was 241 systems. We had 191 send us completed information.

The 27 percent indicates that 191, it is 27 percent of the entire universe that we tried to measure.

Q All right. What percent of those sent questionnaires responded?

A 79 percent.

Q Did you make any attempt to determine why the 21 percent that did not respond failed to do so?

A Yes. We, in fact, conducted a phone follow-up on the systems that had not responded which increased our response rate. We found three unusable forms, seven systems refused to participate. We telephoned 22, and they said they would respond, and they never did, or not by our cut-off time. Eight had busy signals. Ten had no answers.

Q Could it be that those systems which did not respond did not do so because they experienced no time lag and did not think they would be helping the NCTA?

A I have no idea why they did not respond. I can tell you I conducted a number of other surveys for NCTA. On the average, we get about a 33 percent return rate. So, I thought we were extremely fortunate to get 79 percent, as was the Tribunal to get 50 percent of the entire universe to respond. The FCC gets something like 80 percent.

CHAIRMAN BURG: Mr. Attaway, would you indulge me?

1 MR. ATTAWAY: All right.

2 CHAIRMAN BURG: I understand, Ms. Beales, the universe.

3 And you took a random sample?

4 THE WITNESS: That's right. 241 was selected.

5 CHAIRMAN BURG: On Chart No. 11, why is your second

6 footnote based on 128 responses for the average at the time

7 of request?

8 THE WITNESS: Because we used the same form that you

9 had sent out or a modified version. So, this question was only

10 asked of those systems that were regulated and had asked for

11 a rate increase during the period. It was the same instruction

12 that you included. So the two charts that we have just looked

13 at,10 and 11, are comparable on this question.

14 CHAIRMAN BURG: Thank you.

15 MR. ATTAWAY: Thank you, Madam Chairman.

16 BY MR. ATTAWAY:

17 Q This chart, also, only reflects regulated systems?

18 A That is correct.

19 Q What time period was covered by this survey?

20 A The questions were asked from October 19, 1976, the

21 start of the period to April 1, 1980, the end of the period,

22 the same as the Tribunals.

23 Q Were the cable systems you surveyed told the purpose

24 of this survey?

25 A I have a copy of the questionnaire and letter that

1 accompanied it if you would like that submitted into the
2 record. They were told that we were conducting a follow-up
3 survey, and that they may have already filled out a form for the
4 Tribunal. They could perhaps rely on the same information
5 if they had already gathered it together.
6 Q I would like you to submit that cover letter into
7 the record. They were told--and the questionnaire--excuse me.
8 They were advised that this was for purposes of the CRT
9 proceedings?
10 A Yes. It may take me a second to find it.
11 MR. FELDSTEIN: You can find it, and we can submit
12 it after lunch?
13 THE WITNESS: If that is acceptable.
14 MR. FELDSTEIN: We have to make copies. Is that all
15 right?
16 MR. ATTAWAY: All right. Ms. Beales, I may want to
17 ask some questions on it once I have seen it.
18 THE WITNESS: All right.
19 BY MR. ATTAWAY:
20 Q Now, let's turn to Chart No. 12. Does this chart
21 also reflect only those systems that were regulated and that
22 asked for a rate increase during the relevant time period?
23 A This reflects an added-on page which was asked of
24 all systems. The question was, and I will read it into the
25 record, "In an attempt to quantify the total time required to
gain a rate increase between October 19, 1976 , April 1, 1980,

1 please tell us (A) The amount of time in months between
2 forcasting the need for a rate increase and the first formalized
3 internal business step? (B) The amount of time in months
4 between taking the first formalized internal business step and
5 your formal petition for a rate increase to your regulatory
6 body?"
7 This page was also entitled "Oops We Goofed." We
8 forgot to add that in.
9 Q Didn't you say the universal systems-- to which you sent
10 the questionnaire--only included regulated systems?
11 A No. The universe included all systems. The universe
12 was all systems with more than 5,000 subscribers of which we
13 took a random survey and a sampling of 241.
14 Q If the system was not regulated, would it have
15 responded to this question?
16 A To this question, the system could have responded.
17 Yes.
18 Q How many did?
19 A I did not tabulate that.
20 Q Is it reflected on this chart?
21 A All systems that responded are reflected in this
22 chart. What we were attempting to do with this chart was not
23 to tell you that every system experiences all of these problems,
24 but only give you an indication that for some portion of our
25 industry, which is very hard to quantify, there is a problem.
It takes a long time. That is what we were attempting to use

this for. That is what these numbers reflect. As you can see, of course, we have used one source for one number and another source for another number. We are not trying to say this is all from the same survey.

Q The largest period of delay is 4.6 months. The reason for that was the period needed to forcast the need for an increase and the first formalized internal business step. Wouldn't an unregulated system have to do the same thing? Doesn't an unregulated system have to determine whether they needed a rate increase or not and institute whatever procedures a cable system would institute to achieve a rate increase, notify subscribers and so forth?

A That is correct. We could retabulate this information based on regulated and unregulated because, of course, we have an indication. It was clear -- I can tell you from looking at the surveys, that the unrelated systems would say we are not regulated. We don't fill this out.

However, I did not tabulate that way so I cannot tell you in every case or give you the percentages.

Q This is not a factor that relates to only regulated systems. It also relates to unregulated systems?

A It could.

Q But, yet, you are calling it regulatory restraints?

A That is correct. One important point to keep in mind, and this is something that you will be hearing much more detail about from some of our other witnesses, is that the

1 term "unregulated or deregulated" is very difficult for a
2 cable system. It is not consistently utilized by cable systems.
3 We found in analyzing the results of the Tribunal survey that
4 systems classified themselves as deregulated if their City
5 Council had told them; for example, you are deregulated. You
6 can go in and ask for a rate increase but you can only get 60
7 percent of the CPI; or you are deregulated and you can increase
8 your rate anytime you want. And the system right next to yours
9 in the geographical boarder area is still regulated. There
10 rates are X. Hence, your subscribers will not continue to buy
11 your services because the rates are different from the next
12 geographical area.
13 There are a lot of definitional problems with what is
14 regulated. Another example--and we saw this frequently on
15 the Tribunal's forms. We are a deregulated system and we can
16 go in according to our City Council and raise our rates up to
17 five percent any time we want, but only once a year.
18 So, it is hard to know what that definition is. It
19 was clear from the forms that different systems interpreted
20 it differently.
21 Q Could we get back to my line of questioning, please?
22 A Sure.
23 Q I am trying to establish here--certainly, the second
24 factor relating to time lag, is experienced by all systems.
25 I think the third factor is as well. After an unregulated
system has determined it needs a rate increase, it also has to

take time to send out notices to subscribers that there will be a rate increase which, I think, is a good business practice that is probably followed by most systems.

So, the third factor, as well , is probably experienced by unregulated sytems. I don't see how you can say that the second and third factors are matters of regulatory restraint. They are matters of doing business of operating a cable television system without regard to whether they are regulated or not?

A No. If I may read the question again, I think that that will clarify the point. Point B was asking the system to tell us the amount of time in months between taking the first formalized internal business step and your formal petition for a rate increase to your regulatory body. That includes the regulated systems. This does not include systems who are only notifying their subscribers the questions specifically asked to your regulatory body.

Q Well, if a system was unregulated, it probably would not answer that question.

A That is correct.

Q Then it would not be reflected in this chart.

A That is correct.

Q Didn't you say earlier that unregulated systems were reflected in the chart?

A I said this question was asked of everyone. In general, unregulated systems who classified themselves as deregulated,

1 did not fill out this page. And would not have filled out that
2 particular question because it asked only of the regulatory
3 body.
4 Q Well, I would like to repeat my question which is
5 not specifically related to your questionnaire. Is it
6 not true that the second and third factor listed on that chart
7 would relate to unregulated systems as well as regulated
8 systems?
9 A They could.
10 Q Thank you. Ms. Beales, rather than going to Chart
11 No. 13, I would like to leave that for the end of my cross
12 examination and now go back to your testimony of two days
13 ago.
14 In your testimony, you mentioned a number of
15 factors that you feel that this Tribunal should consider in
16 reaching its decision, four factors to be specific. I
17 would like to turn to Chart No. 1 which is the specific
18 statutory provision under which we are all operating.
19 A Chart No. 1?
20 Q Yes, ma'am.
21 A Would you hike that up?
22 Q Yes, please. It might be easier to follow. If
23 you would look at the Subsection A, what are the two factors
24 that are to be reflected in the Tribunal's decision?
25 A One, the rates established by May be adjusted to
reflect one national monetary inflation or deflation, or two,

1 changes in the average rates charged cable subscribers for the
2 basic service of providing secondary transmission.
3 Q Thank you. Is there any mention there about DSE's?
4 A No.
5 Q Is there any mention about growth of systems into a
6 higher DSE payment category?
7 A No.
8 Q Isn't it quite specific that these are two, and only two
9 factors to be reflected in this decision?
10 A I believe if you continue on in the sentence--
11 Q Ms. Beales, I did not ask you what the purpose of
12 the revision was. I asked you what two factors are to be
13 reflected in the decision?
14 A I am not a lawyer. I have just read this to you.
15 Q Are you familiar with the CRT questionnaire that was sent
16 out earlier this year?
17 A Yes.
18 Q I would like to quote from that questionnaire which
19 has been introduced in the record of this proceeding. First
20 paragraph: "The purpose of this review and any adjustments
21 of royalty rates that may result is to assure that the value
22 of the royalty fees paid by cable systems is not eroded by
23 changes in the value dollar or changes in average rates
24 charged cable subscribers."
25 Now, there are a number of questions in the question-
naire 11. Were you afforded an opportunity to examine

1 this questionnaire before it was sent out?

2 A I believe that NCTA looked at it.

3 Q Did you make any suggestions?

4 A I believe that some suggestions were made. I personally

5 did not make them.

6 Q You understand that some suggestions were made to

7 include or exclude questions that related to the purpose of

8 this proceeding?

9 A I understand that NCTA, yes, suggested some changes.

10 I do not know what they were nor do I know if they were

11 adopted.

12 Q Are there any questions in this questionnaire that

13 related to the addition of the signals or addition of

14 DSE's?

15 A No, not that I know of.

16 Q Are there any questions in this questionnaire that

17 relate to movement of cable systems into the DSE category?

18 A No.

19 Q At the time NCTA reviewed this questionnaire did

20 NCTA, anyone at NCTA, to your knowledge, feel that these

21 factors were relevant?

22 A I have no idea. I did not review it personally.

23 So,I can not speak to that question.

24 Q You did not want to assume if someone--

25 MR. FELDSTEIN: I object to this line of questioning.

The witness has stated already that she had no part in the

in the process. It is not only a question of hearsay. It is a question of her having no knowledge of it. She testified she was not involved in the questionnaire review.

MR. ATTAWAY: I will withdraw the question.

BY MR. ATTAWAY:

Q Let's turn now to Chart No. 3, please. In your testimony, I believe you made it abundantly clear, as in fact, this chart and the House Report does state that the numbers listed here were estimates, isn't that correct?

A That is correct.

Q It is also clear, is it not, that they were estimates supplied to Congress, not estimates made by Congress?

A That is correct. Although, they were clearly accepted by Congress because it was put in their report.

Q Do you know for a fact that they were accepted by Congress as reflecting the state of the industry during or could it be that they were accepted by Congress for whatever their value because they were the only estimates that existed--

COMMISSIONER BRENNAN: Could you modify your question and say "accepted by the House of Representatives"?

(There was general laughter.)

MR. ATTAWAY: You are absolutely correct, Commissioner Brennan. By the House of Representatives.

THE WITNESS: I believe I testified on Tuesday that I was not involved in this process, and I do not know the

1 the specific circumstances.

2 BY MR. ATTAWAY:

3 Q You don't know if they were actually accepted at their

4 face value. I believe you also mentioned in your testimony

5 that these estimates were probably taken from the 1976 fact

6 book?

7 A The estimated number of subscribers utilized was

8 10.8 million subscribers. The 1976 fact book, at the time

9 back in 1976, had estimated 10.8 million subscribers and later

10 changed that to their hard actual projection of the number of

11 subscribers at the time. It could be a great coincidence that

12 these two numbers matched. It would appear that someone may

13 have consulted the fact book.

14 Q Having been involved in the process at the time, I

15 think you are quite accurate in stating that these numbers

16 probably came from the fact book. Are you familiar with

17 the fact book and how the data in the fact book is selected?

18 A Somewhat.

19 Q Are you familiar specifically with the time lag

20 between the time data is submitted to the fact book and the

21 time that it is published?

22 A Not specifically in every case. I would assume there

23 would be some time lag for printing and so on.

24 Q In the 1976 fact book, it states that the reporting

25 dates for most systems are mid March--1975. It also states

that some of the information contained in the fact book is

much older. It cites FCC 325 information ending December 31, 1973. On the basis of your experience in using the fact book, I assume you do, do you regard the information contained in this fact book as being up to date?

A For many systems it is. Many systems do not change their subscribers.

Q It is up to date for systems that don't change their subscribers?

A I think that would be accurate. Yes.

Q If, in fact, Congress did use the 1976 fact book in reaching it's estimate of 10.8 million subscribers in 1976, is it not fair to say that that estimate was probably considerably in error as a result of delay in reporting this information by the fact book?

A I would assume that. Many systems may not have changed their subscribers from 1973. Hence, they did not change the number reported in the fact book. I don't think there is any way for me to determine that that is an error.

Q Even if one would assume that this information in this fact book was absolutely 100 percent up to date on the day that this was published, it would only reflect the cable television industry as it existed on January 1,1976?

A That is the date they used for their source. Yes, that is correct.

Q Not the entire year?

A No, not the entire year. Of course, the subscribers

probably increased by the time the Act was passed using their month projections. It looks like it is probably 11.6 million which would make the royalty fee per subscriber, of course, even lower, and hence, our increase even greater over the period.

Q You are straying from answering my question. I wish you would try to refrain from doing that.

A I'll try.

Q Ms. Beales, so we can be sure that we have a complete record for the record, would you read this paragraph out of the 1976 Fact Book, please?

A Certainly. The whole page is entitled,"Directory of Cable CATV Systems." And the section is entitled,"Subscriber Counts." "Computation of subscribers is based on FCC formula wherein: (1) The total individual dwelling subscribers are added to two. Total revenues from both rate subscribers(such as motels) divided by rate of individual dwelling units."

Do you also want me to read the note?

Q Yes, if you will.

A Note: "Total U. S. subscribers reported in this directory is 9,995, 115. Reports from systems are of varing dates. The reporting dates for systems are mid March 1976, and the forgoing total is as of that date. Television Fact Book estimates the total as of January 1, 1975, at 9.8 million, as of September 1, 1975, 10.45 million."

Q Thank you. Staying with the fact book, I believe you mentioned today that you checked on a representation we made in our direct testimony with respect to the listing in the

fact book for Honolulu, Hawaii and found that to be an error?

A That is correct.

Q Is it not true that errors are often found in the fact book?

A I think we all make errors.

Q To specifically answer my last question, is it true, as you in fact demonstrated today, that there are errors in the fact book?

A We found an error in the listing in the Honolulu system.

Q Thank you. Since the 1976 Fact Book contains data collected in 1975, in making your calculation on some of the subsequent charts, many of the subsequent charts, why did you use the 1976 Fact Book?

Why didn't you use the '77 Fact Book or '78 Fact Book to obtain data that related to the period in question which was October 19, 1976?

A I utilized the 1976 Fact Book because based on the worksheets in NCTA's files, it was the source of the calculations that NCTA prepared to present.

Q So, what these charts reflects is the cable industry as it existed in 1976 by the cable industry as reflected in the 1976 Fact Book?

A That is correct. The total number of subscribers, of course, which was an estimate at that time was later changed by the fact book as to this number of how many subscribers

existed in 1976.

COMMISSIONER JAMES: Out of courtesy,in the fact book, if you have a hotel, is that considered one subscriber; or if it is 100 rooms, is it 100 subscribers? Does the witness know?

THE WITNESS: As we just read from that, you take total revenues and divide by--I'm sorry. I don't really know how it was worded. You take total revenues from the bulk rate of subscribers motel, divide by individual dwelling units--is the direction listed?

COMMISSIONER JAMES: That does not answer my question. If you have Marriot that has 200 rooms in it, is that 200 subscribers or one subscriber from what you are reading there?

THE WITNESS: You take the total revenues from bulk rate subscribers, divide by rate of individual dwelling units. I would interpret that if you got $100 from you motel--I don't know how I would interpret it actually. That is what they are directed to do. In conversations with some people, the fact book, and with some of our cable systems, I have learned many of them do not understand that phrase very well. They put their total first set subscribers down.

COMMISSIONER JAMES: Say the last part again?

THE WITNESS: I have talked with some. I don't claim it to be a representative sample. They don't understand it very well. They report to the fact book their total first set subscribers.

Q Would that include in my example if they had a hotel with 200?

A They might not count it.

Q Thank you.

BY MR. ATTAWAY:

Q When you computed the subscriber counts in the 1976 Fact Book for DSE systems and smaller systems, how did you handle commercial subscribers, hotels, motels, apartment buildings and so forth?

A I did not do any separate calculations for them.

Q In fact, there is no way of knowing that information from the fact book?

A I did not find a way to do it.

Q When you calculated DSE's for DSE systems from the 1976 Fact Book--

A I did not do that.

Q Well, you have information in these charts relating to DSE's Form Three systems.

A Not in the charts that I presented today.

Q Let's turn to Chart No. 3b, and don't put it up because we will spend a lot of time on that later. You have estimated subscribers total royalty fee and royaty fee per subscriber. In order to determine the total royalty fee and the royalty fee per subscriber, would not you have had to determine the DSE carried by those systems?

A No. As I testified, we calculated the information for

1 small systems. They pay on a fixed fee basis. We added those
2 all up and substracted it from the known total. So, we did not
3 calculate the DSE.
4 Q What known total?
5 A 10.6 million subscribers, 8.7 million dollars.
6 Q You say known total 58. You testified those were
7 estimates based on the 1976 Fact Book data.
8 A Certainly. This is a unique proceeding obviously.
9 We are relying on estimate. I don't think I, as
10 a reseacher, can say each of these numbers is precisely 29.257.
11 We are dealing with estimates. Based on the best information
12 available, these estimates looked very reasonable then. They
13 look reasonable now. It has been related to me that the 8.7
14 million dollar figure, which is included in legislative history,
15 was that figure that Congress wanted to achieve. Given the
16 known subscribers when you divide that out, that is the royalty
17 fee per subscriber.
18 Q Ms. Beales, what knowledge do you have that, that is
19 the number that Congress wanted to achieve?
20 A The included it in the legislative history.
21 Q Does that mean that they wanted to achieve it or
22 the included it in the legislative history as a number given
23 to them a number that might be?
24 A Since I was not there, I cannot tell you.
25 Q You don't know that, that is the number they wanted to
achieve?

A I only know it is what is in the legislative history.

Q Are you familiar with files by NCTA on May 19 in this proceeding, the charts?

A Yes, I am.

Q The chart is not numbered. It lists the distant signal equivalent for cable systems in 1976?

A Yes.

Q How did you arrive at 2.5 DSE equivalents?

A That chart was corrected from worksheets in the NCTA file. The estimates came from a sampling fact book at the current time, going through each system listed and figuring out how many DSE systems they carried and coming up with this estimate. I found evidence that MPA conducted a similar survey, and it was 2.5. We decided to change our methodology for this procedure to reflect publicly available data. It is hard to reflect what people were thinking in '76. Of course, the results come out very similar between the two methodologies.

Q You said publicly available data?

A Yes. It is publicly available.

Q But not the latest publicly available information?

A No. Just publicly available.

Q You could have worked up data that was reflective of the actual industry as it did exist in 1976 on the basis of subsequent data?

A I believe the information that was available in '76 was accurate as any subsequent information.

1 Q We determined already the data in the 1976 Fact Book
2 to be considerably out of date. There are fact books now for
3 1979 that would have reflected the cable industry as it existed
4 in 1976. Is that not true?
5 A We have not determined that it was inaccurate.
6 Q I did not say it was inaccurate. I said it was not
7 up to date.
8 A We don't know that the cable systems changed their
9 subscribers.
10 Q You are telling me that you proceeded under the
11 assumption that cable systems would not have changed their
12 subscribers between March of '76 to October 19, 1976?
13 A Some of them may or may not. I utilized the fact
14 book that was utilized when the data was compiled back in
15 1976.
16 Q Getting back to the estimate of 2.5 DSE's in you
17 April or May filing, do you have any idea as to how those
18 DSE's were calculated?
19 A I understand theypulled a sample of 100 cable systems
20 on NCTA's part and 100 cable systems on MPA's part and analyzed
21 how many DSE's were carried on those systems and carried up
22 with an estimate of 2.5.
23 Q How was that analysis conducted?
24 A I did not do it. I do not know the details of it. I
25 only know that was the study. I think an outside consultant
was hired.

1 MR. FELDSTEIN: In light of the fact a large number of
2 facts were being directed on how a calculation was made in
3 1976 which Ms. Beales did not take part in, this is the one by the
4 copyright owner's counsel and his research people and person
5 who is presently working with the National Cable Television
6 Association. We would be pleased to proffer her as a witness.
7 The questions can be directed to her as to precisely how the
8 1976 estimates were derived which were supplied to Congress.
9 MR. ATTAWAY: Madam Chairman, this witness testified
10 to information contained in these charts. That information was
11 based on the 1976 Fact Book and calculations made from that
12 fact book.
13 MR. FELDSTEIN: I will remind counsel for the copyright
14 owners you are asking questions about a chart in the May
15 filing to which Ms. Beales did not testify to.
16 MR. ATTAWAY: Well, let me move on to questions that do
17 not relate specifically to the calculations that were actually
18 done, information that I assume this witnesss has available
19 to her.
20 BY MR. ATTAWAY:
21 Q Ms. Beales, are you familiar with statements of
22 account that are filed by cable systems?
23 A Yes.
24 Q Have you reviewed a fair number of them?
25 A Yes.
Q Is it true, Ms. Beales, very frequently , you find

1 DSE cable systems that report part-time charge one or more
2 signals?
3 A Some systems do. Yes.
4 Q We found in our review of 1978 one statement of
5 account, for purposes of distribution proceeding, that 36.1
6 percent carried at least one part-time signal for which they paid
7 less than a full DSE value. Is that a reasonable estimate
8 A I have no idea. I have never calculated a percentage.
9 I never looked at this.
10 Q Is there any way to determine from the data in the
11 fact book whether 1976 or any other year which signals are
12 carried full-time and which signals are carried part-time?
13 A I don't know.
14 Q It is likely then whatever analysis was done of the
15 1976 Fact Book assumed incorrectly that all systems or all
16 DSE's were carried full-time?
17 A I have no idea. I did not participate in formulating
18 that data.
19 CHAIRMAN BURG: Let's take a brief recess.
20 (A brief recess was taken.)
21
22
23
24
25

CHAIRMAN BURG: Back on the record.

MR. ATTAWAY: May I proceed?

CHAIRMAN BURG: Yes. Please do.

BY MR. ATTAWAY:

Q Mrs. Beales, you testified that the 8.10 million subscriber estimate probably relied on the 1976 --

A I believe the number was 10.8.

Q 10.8. Excuse me.

If the $8.7 million estimated royalty figure is also derived from information probably it is derived from information in the 1976 Fact Book; is that correct?

A I do not know that the $8.7 million figure came from the Fact Book.

Q Where would it have come from?

A I was not there at the time.

MR. FELDSTEIN: Again, Madam Chairman, this line of questioning, she has testified as to what she found in the legislative list Friday. She does not know how those figures were arrived at. I repeat, I can proffer a witness who can testify, if that line of questioning is considered to be important to this proceeding.

BY MR. ATTAWAY:

Q Is it fair to say the 8.10 per subscriber estimate in the House Report was reached by dividing 10.8 million subscribers listed in the House Report into $8.7 million listed in the House Report?

A That certainly appears to be correct.

Q When one does that division, you do reach 81 cents?

A Yes. That is correct.

Q If whatever information Congress relied upon in estimating 10.8 million subscribers and $8.7 million in royalty payments was out of date, incomplete, inaccurate, then the 81 cents per subscription fee per subscriber could also not be relied on?

A I believe if anything the 81 cents might be too high. It might be a lower number.

Q It might be a higher number.

A We do know there were more subscribers at the time the law was enacted. The information was January 1. The Act was in October. The estimate important to end of the year was higher. So there was subscriber royalty which would make the 81 cents even lower, probably about 75 cents.

Q Mrs. Beales, to your knowledge, does anyone know or has anyone attempted to determine, based on information now available, what the per subscriber royalty fee would have been in 1978 if cable systems had in fact paid royalty fees in 1976?

A I do not know.

Q To your knowledge, no one knows; is that correct?

A That is correct.

Q Thank you.

Turn now to Chart 3-A, please. Let's look first at the denominator of your equation here. How does one determine

1 the number of cable subscribers in this formula?

2 A You can do it a number of different ways. However
3 you choose to find out. You can call every cable systems and
4 ask how many subscribers they have. You can go visit every
5 cable systems. You can look in the Fact Book data, the data
6 information, what they report. You can look at various sources
7 of information.

8 Q How did you do it when you applied this formula in your
9 subsequent charts?

10 A For 197- --

11 Q For any year.

12 A We utilized the Statement of Account forms.

13 Q How did you reach this number from the Statement of
14 Account forms?

15 A We used a subscribing household basis. So we relied
16 in the form, Block E, number of subsidiaries that are
17 reported. I have a copy of the form. We took the information
18 out of Section E, Block 1 and at the latter part of the form
19 on page 7. Actually, it would be D, Section L, where the
20 systems report how much they are paying.

21 MR. ATTAWAY: I would like to introduce at this time
22 Copyright Owners Exhibit C-1 which is a Statement of Account,
23 received on August 29, 1979, by the Copyright Office.

24 MR. FELDSTEIN: Madam Chairman, I object to the
25 introduction of an exhibit, an unsponsored exhibit on cross-
examination. If they wish to do something like this, they

JK-4

would use their own witness on rebuttal.

MR. ATTAWAY: The Witness testified she used the Statement of Account to arrive at a subscriber number which is an element of the formula. I would like her to demonstrate, based on a Statement of Account which was actually filed, how she could possibly reach this number based on the Statement of Account.

MR. FELDSTEIN: We have not seen this. We would certainly need time to do this.

CHAIRMAN BURG: I am going to overrule the objection and recess for lunch. We will resume at 1:30.

(Whereupon, the Hearing recessed at 12:00 p.m., to be resumed at 1:30 p.m. on the same day.)

MR. FELDSTEIN: Madam Chairman, Mr. Attaway, when we were on Direct, when NCTA was on Direct, when you were making your indirect, there was a question about the questionnaire NCTA sent. It was stated it would be placed in the record when we had it duplicated. This is Exhibit 15.

CHAIRMAN BURG: All right.

(Exhibit No. 15 was marked and received.)

MR. ATTAWAY: May I proceed?

CHAIRMAN BURG: Please.

CROSS-EXAMINATION (Continued)

BY MR. ATTAWAY:

Q Mrs. Beales, We were examining this formula and how you applied this formula to reach much of the data contained

in subsequent exhibits. We were talking about how you reached the denominator, cable subscribers for this equation. You stated, I believe, one of your sources was the Statements of Account filed by cable systems. I introduced as Copyright Owners' Exhibit X-1 a Statement of Account filed by cable systems, WTNJ, Inc. in August of 1979.

Could you explain to me and the Tribunal how many subscribers this cable system had?

A I believe if you turn to Section E, Block 1, you will see number of subscribers residential service to first set, 4,341. They list service to additional sets at 1,114. They have no FM radio. They list 5 under hotel/motels. Six under commercial. Nothing under converter, residential or non-residential.

Q Excuse me, please, Mrs. Beales. I think we can all read it. I would like you to just answer the question. How many subscribers does this system have with respect to your formula? When you came across this Statement of Account, which I assume you did, how many subscribers did you list to apply in this formula?

A In the sample that we took, or in our examination of the universe, we serviced the first set -- 4,341.

Q 4,341.

A That's right.

Q Nothing else?

A Nothing else.

Q What did you divide that into?

A Of course, we did it for the entire sample once we gathered all the data, but in this particular one, we used total gross receipts. Here it is, Section L, page 7, block 5, total royalty fee payable for accounting period.

Q Do not those total gross receipts or should they not reflect revenues paid for motels and hotels, commercial and hospital elderly, whatever that is.

A I would presume those are included.

Q What you did was divide the number of first set subscribers into copyright payments which reflected copyright payments for subscribers, based on subscribers not included in the denominator?

A That is correct. It of course includes the service to additional sets because it's per a household basis. But the hotel/motel is not included. We did some tests to show that this was a relatively small portion and we did other checks which indicated that this is a fairly accurate number and can be relied upon.

Q Fairly accurate?

A Mm-hmm.

Q Mrs. Beales, I think this is critical because this goes to the very heart of the information you have presented to the Tribunal. You can't rely on this; you can't rely on any of the portion.

A Oh, I believe it is very reliable. I think the best

1 test.

2 Q I'm sure you do believe it's reliable. I'm not so

3 sure myself. I would like to show you another Statement of

4 Account. I would like you to tell me and the Tribunal how

5 you would have used that in your calculation.

6 MR. FELDSTEIN: Madam Chairman, I have the same

7 objection I had before. We did have an opportunity to at least

8 examine the other one. This one could have perhaps been

9 handed out before lunch as well.

10 CHAIRMAN BURG: Hand it out, Mr. Attaway, and we'll

11 take some time so Mr. Feldstein can examine it.

12 MR. FELDSTEIN: If you have anymore, perhaps it

13 would save us some time.

14 MR. ATTAWAY: No, I don't.

15 (A discussion was held off the record.)

16 CHAIRMAN BURG: On the record.

17 MR. ATTAWAY: May I proceed?

18 CHAIRMAN BURG: Please.

19 BY MR. ATTAWAY:

20 Q Mrs. Beales, on this exhibit, Copyright Owner

21 Exhibit X-1-A, the Statement of Account filed by Warner

22 Cable Corporation in August of 1979, how many subscribers

23 would you have counted in your analysis?

24 A There are 870 subscribing households.

25 Q You would have divided that number of subscribers

into the royalty fee which is on page 7, block 5, $2,080.91;

is that correct?

A Yes.

Q If you will do that calculation, what is the result?

A $2.39

Q I would like to show you the 1980 Fact Book where that same system is listed. How many subscribers did the Fact Book indicate for this cable system as of 5/31/79?

A Well, it puts it under Stephenville, although it's filed under Dublin/Stephenville. I'm not sure it's the same system.

Q If you will examine the first page of the Statement of Account, I think you'll see listed there both Stephenville and Dublin.

A Right. Plus the Warner Cable Corporation of Dublin/Stephenville. And here is the the Warner Cable of Stephenville, which may well be the same system. I don't know that.

Q If in fact this system had 3,553 subscribers, would you divide that into the royalty fee paid, $2,080.91?

A Would I do that hypothetically or do you want me to do it now?

A Yes, please.

MR. FELDSTEIN: Madam Chairman, we object to this. Data which we have done has not been on a per system basis. We testified it is an industry averaging basis. We're going to get one kind of answer for one system, one kind of answer for another system, and what we have done is an average of all

JK-9

systems. She is being asked to do something which has not been done, which is inconsistent with the testimony and the methodology which we have testified that we used.

MR. ATTAWAY: Madam Chairman, if I can demonstrate that the individual parts that went into the whole are unreliable and inaccurate, I think it will cast grave doubt as to the accuracy of the information in these exhibits. That's exactly what I'm trying to establish.

MR. FELDSTEIN: Madam Chairman, an average is an average. You're going to have high results. You're going to have low results. You're going to have middle results. The result for one system is indeed just that, the result of one system. And we are not relying on the result for one system, either this system or any other system.

CHAIRMAN BURG: Mr. Feldstein, the Chair overrules that objection.

WITNESS: It rounds to 59 cents. 58.5676.

BY MR. ATTAWAY:

Q As opposed to the $2.39 you would have reached had you used the subscriber count indicated on the Statement of Account?

A Yes.

Q Mrs. Beales, did you make any attempt to check the accuracy of the information that you used in compiling this information?

A No, the forms we used were from the Public Information

JK-10

1 file, which presumably have been checked by the Copyright
2 Office.
3 Q On the face of the statements themselves, did you
4 make any calculations to see if the information listed on
5 these statements was reasonable?
6 A I assumed that what the Copyright Office put in
7 their Public Information file was accurate.
8 COMMISSIONER JAMES: Excuse me, Counselor, could
9 you go back just a minute? I am a little confused.
10 Going back to your very first example of dividing.
11 What was the numerator. Was it $209,400 divided by 870
12 subscribers?
13 MR. ATTAWAY: Yes, sir.
14 THE WITNESS: No, it was not.
15 MR. COOPER: The royalty fee.
16 THE WITNESS: In Block L --
17 COMMISSIONER JAMES: Oh, I see.
18 THE WITNESS: It's the payment, the actual royalty
19 payment.
20 COMMISSIONER JAMES: Thank you.
21 MR. ATTAWAY: Commissioner James, you've touched upon
22 the next point I was going to make.
23 BY MR. ATTAWAY:
24 Q Had you attempted to introduce a system of quality --
25 COMMISSIONER JAMES: Excuse me just one more time.
I'm getting a different figure each time. You

divided what by what now?

THE WITNESS: I took $2,080.91.

COMMISSIONER BURG: Block 4 and 5.

THE WITNESS: Block 4 and 5 are identical.

COMMISSIONER JAMES: And divided by?

THE WITNESS: The subscriber figure on this Form 870, service to first set residential.

COMMISSIONER JAMES: Okay. Thank you.

BY MR. ATTAWAY:

Q Mrs. Beales, if you would divide the number of subscribers into the gross receipts listed on page 7, block K, a very high number, $240.69.

A You have given me two samples. Which one am I supposed to be looking at right now?

Q 1-A.

A The Warner Cable of Dublin/Stephenville or WTMJ?

Q Yes, ma'am, Warner Cable.

A Warner Cable, yes.

Q I say again, if you divide the number of subscribers listed into the total gross receipts, 209,400, would you get, would you do that for me? Divide 209,400, which is the gross receipts listed, by 870.

A Which give you a gross receipts per subscriber of $240.69, rounded.

Q If you divide that by six to calculate the monthly fee per subscriber.

A Divided by six, it's $40.11.

Q That's a fairly high monthly fee; is it not?

A I don't know what the situation is.

Q Are you aware of any cable system that charges $40 per month per subscriber?

A Not personally.

Q How does that compare with what the cable system itself reported as their monthly basic rate?

A It is larger.

Q What did they report?

A They reported $7.50 per month for the first set residential.

Q Turning away from the denominator of this equation and looking at the numerator, what elements are reflected in copyright payments? How do you calculate copyright payments?

A I did not calculate copyright payments other than to take the royalty fee that was listed on the form for each system. I didn't calculate it for the system.

Q How did cable systems do it? Not the exact number but what elements go into this calculation?

A As I understand it from the form, not working for cable systems, you would include your gross receipts which you are directed to take from the secondary transmission service section and come up with a minimum fee. You include your DSEs. You carry out the calculation to indicate whether you have distant stations. You put in your distant signal

1 equivalents and you multiply this as a factor, and you come
2 up with a royalty fee.
3 Q It is not a result of total basic subscriber revenues
4 and the number of distant signals carried?
5 A That sounds accurate.
6 Q Turning back to the statute where you read the two
7 factors that the decision of this Tribunal is supposed to
8 reflect, was it not inflation and subscriber charges?
9 MR. FELDSTEIN: Objection. This was the answer that
10 you gave in our argument. We stated that there were other
11 factors relevant. You're asking her for a legal conclusion.
12 BY MR. ATTAWAY:
13 Q It is true, is it not Mrs. Beales, that this equation
14 does include other factors than inflation and subscriber
15 charges and specifically the factor of number of distant
16 signal carriers?
17 A On the form?
18 Q In your formula, the numerator.
19 A Copyright payments?
20 Q Right.
21 A Copyright payments are paid on the basis of DSEs, in
22 addition to other things.
23 Q Mrs. Beales, were you present when Mr. Crandall
24 testified on behalf of NCTA?
25 A Yes, I was.
Q Do you recall that with respect to one of our

exhibits, Mr. Crandle was critical of our showing of the increase in payments made by television stations for programs because it reflected both increase in program pricing and an increase in amount of programs that were purchased. Do you recall that?

A Yes.

Q Doesn't your formula suffer from exactly the same flaw?

A We did a number of tests before we gathered the data in the manner that we did. You have shown us some extreme examples of difficulties in dealing with the data.

Q Excuse me. This question has no relationship at all to the accuracy of the data from the Statement of Accounts. I'm just saying that does not your formula include both or reflect both an increase in subscriber payments and an increase in the amount of programs used which was Dr. Crandle's objection to our exhibit?

A It may or may not include an increase in the programs used. We did not test that on this entire sample. It certainly includes an increase on the basic subscriber charge.

Q I believe I have already showed you a page from your May filing where you estimated DSEs in 1978 would have been 2.5 and on your Chart No. 9, you estimate the DSEs in 1979 to be 2.90. Is that not an increase?

A The 2.5 increase, of course, was for 1976, not for 1978.

Q Well, let's just take your chart now. In 1978, one, you list DSEs at 2.65 and 1979, two, you list DSEs as 2.90. Is that not an increase?

A Yes.

Q You are reflecting an increase in DSEs or increase in programs carried?

A From '78, one to '79, two, yes, there was an increase, based on that particular sample. It was not a whole universe.

Q Would you apply this formula to cable systems -- when you applied this formula, is there any way to distinguish between cable systemsthat increase their subscriber rates and systems that increase their DSEs.

A Not if you are taking total royalty fees paid.

Q You don't know; is that correct?

A If the basis is total royalty fees, I wouldn't presume to separate it for a system.

Q Let's take a sample to illustrate this. You have a cable system with 1,000 subscribers. $100,000 of gross revenues carrying one DSE or .675 percent value. How would you calculate the royalty fee per subscriber? Once again, 1,000 subscribers. 1,000 is your denominator.

A I wouldn't calculate it. I took the information off the forms. I didn't calculate it for any of the systems. Whatever the system reported. I don't work --

Q Is it not important to determine in this proceeding

whether the royalty fee per subscriber resulted from carriage of more programs or increase of subscriber rates?

A I don't think it is important.

Q Turn to Chart 3-B, please.

A Okay.

Q As an initial matter, you noted when we examined this chart that this chart lists for DSE systems and throughout I am going to be talking about DSE system only. Estimated subscribers of 7,586,000. Your May 19 filing on a similar chart for 1976 DSEs systems subs, you listed 7,776,000 subscribers. Similarly, there is a discrepancy in the royalty fee listed here and not listed in the May pleading, and the per subscriber royalty fee. What accounts for these differences?

A Different methodologies, as I explained earlier.

Q I'm sorry. I must have missed that explanation. I thought all of this data was derived from the 1976 Fact Book.

A No. The estimate that was included in the May filing, as I indicated in response to your earlier question today, was based on worksheets which were in NCTA files which ultimately had relied upon the Fact Book. They were, it is just a different methodology in how we calculated this particular chart which came only from publicly available data. It did not rely on any worksheets or whatever. Of course, the results are similar.

Q What was the publicly related data relied upon for these numbers?

JK-17

A As I explained yesterday, the subscriber figures were based upon the 1976 Fact Book. The average basic subscriber rate was based on responses to the Tribunal survey as to the rates charged by cable systems in October 19, 1976.

Q Mrs. Beales, are you saying that you used the monthly service charges reflected in the CRT questionnaire for 1976 in reaching these numbers?

A Yes.

Q I find that hard to believe. I would like to explore this in some considerable detail. Let's start out with the royalty fee for DSE systems, 7,444,752. Now, the average DSEs in 1976, according to your May filing, was 2.5. 2.5 DSEs, I believe equal a royalty percentage payment of .013125. If your counsel would like to check my arithmetic, please do so.

Do you accept that?

A Fine.

Q In order to determine gross revenues, I think you would take the royalty fee; would you do this calculation, please. 7,444,752 divided by .013125.

Q Could you state the results and write this down for further reference, please?

A I am not sure how many zeros are on this. 567,219,200.

Q That's correct.

Now, if we divide that number, which would be the gross receipts, by the total number of subscribers, estimated

subscribers, and please do this calculation so you can follow through with me, divide 567,219,200 divided by 7,586,050. What is the result?

A 74.77.

Q And if we further divide that by 12, we get the average monthly subscriber charge. It is 623, is it not?

A Yes.

Q Tht 623 would include first sets and additional sets, would it not?

A Yes.

Q Since both first set revenue and additional set revenue are supposed to be used to compute the royalty payment. Now, referring back to Copyright Owners Exhibit showing the results of the CRT survey, I believe we found that the average first set only royalty fee in 1976 was $6.61. Your exhibit found that it was $6.69. So, for purposes of going through this calculation, let's strike an average of between $6.65. Now, if your Exhibit 8 you said that 30 percent of subscribers pay for additional sets; is that correct?

A In 1978-1.

Q You also said that or indicated on that chart that the average payment for additional sets was 22.5 percent of the first set rate.

A In '78-1? That's not on my chart. I didn't put that on my chart.

Q I think that was included in your oral testimony.

JK-19

A I don't believe so.

Q What I am trying to do, Mrs. Beales, is reduce this $6.23 to an average firm set rate that is reflected in your chart 3-B. If you will accept that 20 percent of subscribers paid for additional sets and that average payment for an additional set is somewhere in the vicinity of 22.5 percent and you used that in an equation where $6.23, the first set revenue plus additional sets, equals --

MR. FELDSTEIN: Madam Chairman, I'm very troubled by this line of questioning because Mrs. Beales, in her exhibits, did not in any way pretent to calculate in this fashion. She used the 81 cents per royalty fee per subscriber which was found in the legislative history. She went back using the methodology, having nothing to do, as she described before, having nothing to do with the kind of methodology which Mr. Attaway is attempting to take her through in order to break this down through DSE systems and small systems. We said we did not beleive it was necessary because you could use the legislative history data for all systems. She testified on the basis of that, the correct measure was the royalty fee per subscriber in 1976 and the royalty fee per subscriber in 1980. She did not testify that this determination went on a number of DSEs, per DSEs, royalty fee per DSE, royalty fee per set, royalty fee per programming. Only royalty fee per subscriber. Only royalty fee per subscriber. And she made no such similar calculations. If Mr. Attaway has a purpose in running this

kind of a calculation back through using a different methodology, perhaps he ought to put a witness on of his own on rebuttal to prove or disprove some points.

MR. ATTAWAY: Madam Chairman, the Witness clearly and specifically testified that in constructing this chart, she used the average royalty payment for first set as reflected in the CRT survey, the average subscriber fee. I submit to you that she could not have possibly used that because these numbers do not reflect such a subscriber fee. In fact, they reflect a much lower subscriber fee. In fact, according to my calculations, a fee of $5.88, not the $6.69 that the NCTA exhibit shows and Mrs. Beales testified that she used.

MR. FELDSTEIN: She has testified on Chart 3-C that she figured out for the small systems using the methodology that was described. She has testified that the remainder was an estimate based on subtraction. That is the only calculation that she made on DSE systems.

CHAIRMAN BURG: Mr. Feldstein, again the Tribunal is going to overrule that objection.

BY MR. ATTAWAY:

Q Mrs. Beales, how did you use the CRT subscriber basic rate which is reflected in your exhibit, I think, as $6.69 in this chart?

A I did not.

Q Earlier you testified that you did.

A If you will look at 3-C, you will see that I testified

JK-21

that I used the $6.16, which was the average basic monthly subscriber rate which was for the systems less than 80,000 in gross receipts. I also testified that I used the figure of $6.64 for the medium sized systems. Those are systems with gross receipts of 80,000 to 160,000 and 160 to 320. Those were the only two figures that I usedfrom the Tribunal questionnaire.

Q Why didn't you use the Tribunal number for the DSE systems?

A I felt that I could not accurately estimate the DSEs. I didn't know what they were. Hence, where you had a fixed fee or flat formula to pay on for the small systems, it was relatively easy to make an estimate of the smaller systems, total estimated subscribers and royalty fee. I subtracted that from the known number, which is 10.8 million subscribers and $8.7. That's what I testified earlier.

Q Mrs. Beales, I think we've already established the 10.8 million subscribers was not a known number. It was an estimated number.

A Which was later converted to the estimate for that year.

Q I think we have already established that that estimated number is subject to serious challenge with respect to its accuracy. So, please don't refer to it as a known number.

A The number listed in the legislative history that Congress relied on.

Q Thank you.

Had you have used the basic subscriber rate listed in the CRT survey in calculating the royalty fee per subscriber for DSE systems, how would that have affected your result?

A I have no idea. I did not do it that way.

Q If the royalty fee in your chart is too low, then the royalty fee per subscriber is also too low; is it not? It would be much more.

A I'm not attempting to say that this is absolutely 98.00. I have never maintained that. What I'm trying to give you is an estimate based on estimated data which obviously has some limitations. We have admitted this from the very beginning. I think what you see here is a reasonable estimate as to what the royalty fee per subscriber was, utilizing the information that was listed in the legislative history.

Q But, Mrs. Beales, please appreciate my problem that for systems you're using the Congressional estimate and the Fact Book data. For others, you are using the CRT questionnaire data, and I can't make heads or tails of this.

A I'm sorry.

Q I don't understand how the Tribunal can.

Well, let's pass this. Turn to Chart 3-C, please. Referring to this chart, does the average monthly subscriber rate include second set revenues?

A The average basic monthly subscriber rate comes from

JK-23

1 the CRT questionnaire which I believe asks for average basic
2 monthly subscriber rates. So it's what the systems interpreted
3 the CRT's questionnaire.
4 Q I believe the questionnaire refers to service to the
5 first set, the retransmission of television-radio broadcast.
6 A That is where the figure comes from.
7 Q How were the subscribers estimated?
8 A We utilized the chart called, "System by Subscriber
9 Size," from the 1976 Television Fact Book as the basis of the
10 information. That is the source. Do you want more information?
11 Q No. That's fine.
12 How did you arrive at the average basic monthly
13 subscriber rate listed here?
14 A I'm sorry. I didn't hear the last part. Could you
15 repeat?
16 Q How did you arrive at the average basic monthly
17 subscriber rate listed on this chart?
18 A We took that information from the responses to the
19 Copyright Royalty Tribunal survey.
20 Q Now, here again, we have a combination of 1976 Fact
21 Book Data and 1980 CRT questionnaire data.
22 A Right. Which we reflect the basic subscriber rate on
23 October 19, 1976.
24 Q Since you used the Fact Book for gross receipts and
25 number of subscribers, why didn't you calculate an average basic
monthly subscriber rate from the Fact Book so we had all

JK-24

consistent source material in here?

A I did not go through and add up all 3,000 or 4,000 basic subscriber rates that were listed when I had a very reasonable estimate of what the systems reported to the Copyright Tribunal their rate was at that time. It's an average. It looked like a very reasonable average based on a large sample. Only the subscribers, per se, came from the Fact Book.

Q Let's turn to Chart 4, please.

I believe in your testimony two days ago in answer to a question from Commissioner James you stated that this information was collected in-house?

A That is correct.

Q I noted that in your May filing, there was a chart containing very similar information and the source is given as BI Associates. Did you use, did you redo this data or did you use the information provided by BI Associates?

A Which chart are you referring to? In this chart, the source indicates, "Summary of Payments By Category for All Systems by BI Associates," indicates that the 41,500 to 160,000 categories accounted for 8 percent of total payments in '78-1, and 9 percent in 1979-1. That was the only time we ever used that information.

Q So there's no data based on an outside source in this chart?

A That is right.

Q I notice that in May filing, 3,676 systems were analyzed on the chart. Eighty less than listed on this chart. Yet, in the May filing, the total 1979-2 royalty payments were $7,760,740, $274,771 more than shown here.

CHAIRMAN BURG: Would you give us that figure again?

MR. ATTAWAY: I'm sorry. I said in the May 1979, in the May NCTA filing, the total 1979-2 royalty payments were listed as $7,760,740, which is $274,771 more than shown here.

BY MR. ATTAWAY:

Q What is the reason for this discrepancy?

A In the filing that we made in May, we did not do an analysis of the Statement of Account forms. The source clearly indicates the information from the May filing came from a conversation with a person in the Copyright Office who gave me these figures. This is a study that we did looking at all of the 1979-2 Statement of Account forms that were in the Public Information file as of September 9th, 1980, where we went through and transferred information off of those forms, the subscribers and the royalty fee that they listed. We added them up and divided. The form that we provided in May was just information that we received from the Copyright Office as to the totals that they had at that point. The figures, of course, do not correspond. In May, we reported that 7.7 million had been collected. Now, of course, that number is up to 8.1 million.

Q That is a satisfactory explanation.

JK-26

1 Let's go to 4-A. I believe you said that you
2 arrived at the subscriber counts used and reflected on this
3 chart, as well as the previous chart, on the basis of your
4 examination of Statements of Account.
5 A That is correct.
6 Q Keeping in mind Copyright Owners' Exhibit X-1,
7 which indicated -- which illustrated that the only way to
8 obtain a number for any given cable system, a subscriber number
9 from any given cable system filing a statement of account
10 would be to list the number of first set, non-commercial
11 subscribers listed; is that correct?
12 A You stated that that was the only way to get it.
13 Q If I'm incorrect, please inform me.
14 A What we took off the form as I have testified, was
15 the first set figure.
16 Q Now, by failing to include any commercial subscribers
17 in your subscriber count, have you not seriously -- strike,
18 please.
19 Have you not underestimated the number of subscribers?
20 A Based on tests we did, we felt if we understated it,
21 it was by a very slight amount.
22 Q If you did underestimate the number of subscribers,
23 would not all of the figures in the last column, the royalty
24 fee per subscriber, be too high?
25 A Based on our test, it could change by a cent or two.
Q That's not what I asked. I asked if you underestimated

subscribers, would not the annualized royalty fee per subscriber in the last column be too high? Not how much.

A If we had underestimated them, it could have been too high.

Q Thank you.

Let's go to Chart 5, please.

What I would like to do, since we only examined the DSE systems in our examination of the CRT Statement of Account, and because only the royalty rates for DSE systems are subject to adjustment in this proceeding, I would like to use your format here, but only for DSE systems.

I believe in previous charts you have represented that DSE systems in 1976 had a royalty payment per subscriber of 98 cents; is that correct?

A Yes. That's what I've estimated.

Q That figure in 1980 was given as $1.28; is that correct?

A Yes.

Q That is an increase of 31 percent, I believe; is that correct?

A That is how I calculated, as well.

Q I believe you also testified that this increase results from two factors: increase in basic subscriber charges, and increase in DSEs carried; is that correct?

A I have testified that there are four components which can affect it, and I have data comparing '76 to '80 for the basic

JK-28

1 subscriber rate. I have other periods of time which seem to
2 show increases in some of the other factors.
3 Q I think you have provided us with information by
4 which we can extract exactly how much of this 31 percent
5 increase is due to increases in subscriber payments and,
6 excuse me, increase in subscriber charges, and how much is
7 due to increase in DSEs. I would like to work through this with
8 you, if I may. I think it is very important to the Tribunal
9 to be able to separate out these two elements from your
10 equation.
11 MR. FELDSTEIN: I object to that, Madam Chairman.
12 If Counsel wishes to do this, he can do this using his own
13 direct witness. We have not attempted to do this. We have
14 stated only that the royalty per subscriber had indeed
15 increased from 1976 to 1980. We have identified those
16 factors which we think contribute to that. We have not
17 attempted to quantify them. If Counsel at all -- my witness
18 has not attempted to quantify them, has not quantify them, has
19 not tried to quantify them. If Counsel for the Copyright
20 Owners wants to try to quantify them, he is entitled to do so,
21 but I believe it ought to be done by him using his witness, and
22 on rebuttal.
23 MR. ATTAWAY: Madam Chairman, the only data I have
24 available on this subject is supplied by NCTA, supervised, or
25 actually accomplished by this witness. I think that this
witness would be more competent to go through these calculations

JK-29

with, based on her data than any witness I can provide.

MR. FELDMAN: Do you think your own witness -- would Counsel's witness be the same as an adverse witness provided by NCTA? The data is the data.

CHAIRMAN BURG: The Chair overrules the objection.

MR. ATTAWAY: Thank you.

CHAIRMAN BURG: Let's take a recess.

(A recess was taken.)

CHAIRMAN BURG: Back on the record.

MR. ATTAWAY: I would like to pass out at this time two exhibits that are only to permit the witness and the Tribunal to follow along with the calculations and allow the record to reflect these calculations that we are about to make.

(Copyright Owners Exhibts 2 and 3 were marked and received in the record.)

MR. FELDSTEIN: Madam Chairman, I object. Mr. Attaway is handing out his exhibits so that the witness and the Tribunal can follow along with the calculations that he is about to make in the cross-examination as NCTA's witness.

MR. ATTAWAY: Madam Chairman, I believe --

CHAIRMAN BURG: Just one moment, please.

With respect to what you just said, Mr. Felstein, we have a number of precedents from other proceedings where we have allowed this. We are proceeding on precedents that we, ourselves, have set.

MR. ATTAWAY: I was merely going to make that same

JK-30

1 point, that I was following the precedents that the Tribunal
2 previously made.
3 BY MR. ATTAWAY:
4 Q Mrs. Beales, If you will refer to COX-2, we've listed
5 here the 1976 gross revenue for basic service per subscriber
6 annualized which we extracted from NCTA Exhibit 3-B. We
7 calculated by taking the royalty payments divided by the
8 average number of DSEs which you said existed, would have
9 existed in 1976, in order to determine gross revenues, and we
10 divided gross revenues by your subscriber count to reach an
11 annual 1976 per subscriber payment of $74.77. If you want to
12 check any of these numbers, please stop me at any point.
13 We determined the 1979-2 annualized gross revenues
14 for basic service by essentially the same calculations. Are all
15 of these numbers that we have used the numbers that you
16 included in your exhibits?
17 A I did not include the estimate of DSEs.
18 Q Excuse me. That's correct. The DSE estimate was
19 taken from the May filing of NCTA. They were not introduced
20 in Mrs. Beales' testimony.
21 We then calculated an annual royalty payment per
22 subscriber based on this data in NCTA Exhibit 3-B and 4-A. We
23 calculated 98 cents per payment per subscriber in 1976, a $1.28
24 royalty payment per subscriber in 1979-2. In fact, those were
25 the numbers listed on one of your exhibits; is that correct?
A Yes.

JK-31

Q That reflects, does it not, a 30 cent increase during that period?

A Yes.

Q Which is a 30.6 percent increase during that period; is that correct?

A Yes.

Q That's 1979-2 over 1976.

A Yes.

Q If you turn to COX-3, please. Again, using the same data extracted from NCTA's May filing and Mrs. Beales' testimony, we have calculated the royalty percentage equivalent to 2.5 DSEs and 2.9 DSEs. The percentages are 1.3125 for 2.5 DSEs and 1.4825 for 2.9 DSEs. The DSEs increased a total of 16 percent. Because the royalty rate is graduated, a smaller rate as the number of signals increase, the percentage of decrease in the royalty percentage is smaller. It's 13 percent. Going down to the next heading, "Increase in Royalty Payments per Subscriber Due to Increase in Distant Signal Equivalents." If we multiply the 1976 annual revenue per subscriber by the effective DSE percentage or 2.5 DSEs, we reach 98 cents, which is the royalty fee per subscriber listed on Mrs. Beales' chart. If we apply the same 1976 annual per subscriber revenue to the royalty percent or 2.9 DSEs, which is the increase, we get $1.11. That's a 13 percent increase. Are those figures correct?

A I'm not -- I don't know if your figures are correct --

I don't know --

MR. FELDSTEIN: Objection. There's no way she can attest to the correctness of these figures. These are not her calculations.

CHAIRMAN BURG: Are you asking her to do the calculations?

MR. ATTAWAY: If she wishes to.

CHAIRMAN BURG: If you wish to.

THE WITNESS: I do not wish to do the mathematics.

BY MR. ATTAWAY:

Q Going on at the bottom of this Exhibit, if 1976 royalty per subscriber is 98 percent as you presented.

CHAIRMAN BURG: 98 cents.

BY MR. ATTAWAY:

Q Excuse me. 98 cents. And the 1979-2 royalty payment per subscriber is $1.28 as you represented, an increase of 30 cents, the increase due to additional DSEs which we've just calculated would be 13 cents and the increase due to higher basic revenues would be 17 cents. From that we can see the percent increase due to higher basic revenues was 17.3 percent. That's not too far off from the percent increase in basic revenues extracted from the CRT survey information; is that correct?

A If these numbers are correct.

Q What was the percent increase in basic subscriber rates from the CRT questionnaire that you calculated?

JK-33

A For DSE systems only?

Q Yes, ma'am.

A Fourteen percent.

Q These figures, this calculation was all used -- this calculation was exclusively used as data in the NCTA exhibits. If your estimate for the royalty payment per subscriber in 1976 which was based on the Fact Book data was too low, the percent increase from '76 to '79-2 would be reduced; would it not?

A If it were too low.

Q Let's turn now to Exhibit 7. We will skip an exhibit.

COMMISSIONER GARCIA: How did you compute that on your cross-examination Exhibit 3, that 1.3125? From the statute?

MR. ATTAWAY: Excuse me, the --

COMMISSIONER GARCIA: The royalty percent of gross revenues for two-and-a-half distant signals.

MR. ATTAWAY: Oh, that's just adding the DSEs. You add .675 for the first DSE, plus .425 for the second DSE and half of .425 for the .5 DSE.

COMMISSIONER GARCIA: That's what I did. I got a different figure and I just wondered.

THE WITNESS: I get that figure.

COMMISSIONER GARCIA: Okay. Maybe I did something wrong.

JK-34

MR. ATTAWAY: It works out on my calculator.

COMMISSIONER GARCIA: Okay.

BY MR. ATTAWAY:

Q Mrs. Beales, could we go to Chart 7, now?

COMMISSIONER BURG: Mr. Cooper, before I forget, we need two more sets of these exhibits. Cross-exam 1 and Cross-exam 1-A.

Thank you.

MR. ATTAWAY: May I proceed?

COMMISSIONER BURG: Yes.

BY MR. ATTAWAY:

Q Mrs. Beales, it says or indicates here in this exhibit that you examined 524 DSE system questionnaires.

A Well, we examined 551. 524 had listed rates as of October 19, 1976.

Q In Mr. Cooper's testimony, I believe he stated he indicated 653, 129 more than you examined. Do you have any idea what could have accounted for this difference?

A Yes.

Q Would you please tell us?

A We examined the forms that had been received by the Tribunal as of July 15th, 1980, and I believe Mr. Cooper examined at a somewhat later date. Perhaps the Tribunal received some more forms.

Q You also examined more forms for the April 1980 number than you did -- you have listed more systems under

JK-35

1 April 1980 than you do under October 19, 1976. I believe
2 from your testimony that is because you did not measure the
3 change in system by system, but you measured the industry
4 average royalty payment or subscriber charge.
5 A That's the basic subscriber rate for all systems
6 reporting in one category and all systems reporting in the
7 other category. We had already submitted, of course, with the
8 Neilson survey a system to system change back in our May filing.
9 We thought this would add a new dimension to the information.
10 Q As I recall, the change in Neilson listed was 16
11 percent.
12 A Close to it. Yes. It rounded to that.
13 Q The change that Mr. Cooper found measuring only systems
14 with rates in both '76 and '78 was 15.15 percent. In both
15 cases higher than the percent change that you have.
16 A I believe the Neilson survey was the whole industry.
17 Mr. Cooper stated it was just the DSE systems.
18 Q Right. But that's measuring change rather than
19 averaging rates, which is what you did.
20 Isn't the change in rate the relevant factor here,
21 rather than the industry?
22 A I believe it could be both and I've included both.
23 Q Doesn't the statute speak in terms of a change?
24 A It does not say per system. It says change in basic
25 rates, and here we see the industry-wide change in basic rates.
Q You interpreted that to mean a change in the industry

1 average?

2 MR. FELDSTEIN: Point of order. The statute states

3 change in the average rates.

4 MR. ATTAWAY: Thank you.

5 BY MR. ATTAWAY:

6 Q Briefly on Chart 8, and I don't think it's necessary

7 to put it up. This is the chart increase in additional set

8 revenue again '78 and '80. Mrs. Beales, can you tell us

9 what was the percent of total gross revenues accounted for

10 by this change in the second set revenue? Any way you can

11 estimate that?

12 A I could prepare that calculation. I do not have it

13 with me.

14 Q Could you estimate whether it would be a significant

15 amount or a small amount?

16 A Once I did the calculation, I could estimate it. I

17 don't have it.

18 Q I believe in your answer to one of my questions when

19 I brought out the fact that you did not include second set

20 revenue in your -- when you used the average charges reflected

21 in the CRT questionnaire, that this omission was or would

22 result in a very small change.

23 A I'm sorry. Could you repeat the question. I did

24 not understand what you are asking me.

25 Q On Chart 3-C. I noticed that the average basis

monthly -- I'm sorry. I'll wait until you get it.

A Thank you. I have it now.

Q I said that the average basic monthly subscriber rates listed in that chart were based on the CRT questionnaire which listed first set charges only. I said that that would tend to understate, excuse me. Overstate the revenue per subscriber. I believe you answered that the changes would be negligible, or very small.

A I don't recall saying that. I don't recall your asking me that particular question. I don't know that I said that. I'm sorry.

Q Well, I was just wondering if in fact you did say that the change would have been small, why you felt it was the increase in the second set rates was important enough to warrant your supplying us a chart showing a 12 percent increase. You have no idea how that 12 percent increase would be reflected in gross revenue or the royalty payment made by the cable systems?

A No. As I testified, we included the chart to give the Tribunal an indication that some of these other factors may have experienced an increase in the period we are discussing. But I do not have 1976 data, so that I cannot quantify this precisely over the entire period.

Q On Chart 9, and again, don't bother to put this up, you show additional factors affecting increase in royalty fee per subscriber. I think we have already established, have we not, that those two factors at least are not specifically

JK-38

1 mentioned by the statute when it listed the two factors upon
2 which this decision is to be made?
3 MR. FELDSTEIN: Objection. That was your legal
4 conclusion.
5 MR. ATTAWAY: Excuse me. The witness read the
6 statute. The witness is competent to read.
7 CHAIRMAN BURG: The Tribunal knows what the statute
8 says, but proceed here.
9 THE WITNESS: May I comment that I read the statute
10 which said that royalty fee per subscriber. It did not say
11 royalty fee per DSE, program or channel. It said per sub-
12 scriber.
13 BY MR. ATTAWAY:
14 Q Mrs. Beales, I was referring to the two items listed
15 under small i and small 2.
16 Let's go now to Chart 10. I believe we have already
17 covered that. Excuse me. We started with that.
18 A couple of questions concerning your testimony on
19 tierings. You stated that you examined CL Exhibit 10 and you
20 said that 12 cities had granted -- 12 of the cities reflected
21 in that Exhibit included in that Exhibit were granted fran-
22 chises. Only three were in operation. Only one had any
23 information with respect to the subscriber charges. Did you
24 make any attempt to examine the subscriber charges and the
25 tiers of the other 11 cities that granted franchises but are
either not in operation or had no subscriber data?

A No. I did not. Of course, only two of them are offering the survey for free. The city selected. In all of the other cases, cable systems that were not willing to give their surveys for free in the first tier.

Q All of the others in the 12, or all of the others in the three that were in operation?

A In the 12. There are two that the city awarded their francise to a company that was going to offer the first tier for free. All of the others are charging.

CHAIRMAN BURG: I thought there was one.

THE WITNESS: Those are the operational. There are three operational. He was asking about the other 12 that had been awarded.

BY MR. ATTAWAY:

Q All right, Mrs. Beales, I would now like to refer once again to the questionnaire that NCTA sent out to cable systems dated August 8, 1980, from Catherine Creech, referencing the copyright questionnaire. Would you read into the record the second paragraph in the cover letter?

A Second paragraph?

Q Yes, ma'am.

A "In 1977, you started paying copyright fees. The Copyright Tribunal will soon review the payment levels to determine if you should be paying more copyright fees. Part of the review is to find out if your subscriber rates have kept up with inflation for the period between October 19, 1976 and

April 1, 1980."

Q So the cable systems that filled out this questionnaire were well aware of what use was going to be made of this information on this questionnaire, were they not?

A They presumably could have read this paragraph or did read this paragraph.

Q Incidentally, I don't know if this has any relevance to this proceeding but why did you say in 1977 you started paying copyright fees?

A I can't answer that. I noticed that right now myself.

Q I would like to see some of them.

COMMISSIONER BRENNAN: I don't think we would, Mr. Attaway.

(Laughter)

MR. FELDSTEIN: The Tribunal did not tell you about those.

(Laughter)

BY MR. ATTAWAY:

Q I'd like to go to Chart 13 and I think it would be well to display that.

Now, this chart reflects how you believe the small system category should be adjusted in light of inflation; is that correct?

A This chart reflects an example of the kind of adjustment that can be made, as I testified before.

JK-41

Q In this example, you are making your adjustment based on the PCE; is that correct?

A In this adjustment, the figure we used was 30 percent. That is roughly what the PCE deflator is.

Q Between October 1976 and April?

A Correct. March was the last month.

Q This adjustment is to be made according to the statute to assure that such -- excuse me -- to maintain the real constant dollar value of the exemption provided by such action; is that correct?

A I will take your word for it that it is in the Act.

Q Well, what was your purpose in making these adjustment?

A To show an increase in the category. In the gross receipts cateogry. The kind of adjustments that could be made to the total gross receipts category.

Q You are suggesting to the Tribunal, though, that they make this adjustment or some similar adjustment to reflect the statutory requirement, though, are you not?

A Yes.

Q Which is to maintain the value of the example shown.

Now, if as I believe your examination of the CRT, the survey indicates basic rates increased 15 percent during this period. You adjust the dollar limitations by 30 percent. Aren't you shifting a large number of systems that paid in a higher category in 1976 down to a lower category in 1980,

assuming that all the things stayed equal?

A Would you repeat the question?

Q If basic subscriber charges increased 15 percent and you adjust the dollar limitations 30 percent, you are shifting a large number of systems that were in a higher category in 1976 into a lower category in 1980 or 1981, whenever this would go into effect?

A I am not a lawyer. In reading the Act, the interpretation that we had was an adjustment for inflation. This was an adjustment for inflation. The impact this has on the system, I have not worked out.

Q That's not a legal conclusion. As a matter of fact, let me work through a hypothetical with you. Maybe that will help us.

Let's take a hypothetical system with 1976 revenues of $165,000. Had that system paid royalties in 1976, excuse me, semi-annual royalties of $165,000, revenues. It's been a long day for both of us.

Let me start over again. Let's take a hypothetical cable system with 1976 semi-annual revenues of $165,000. Is it correct that that system would have paid as DSE system?

A Yes. Semi-annually.

Q Semi-annually.

A Yes.

Q The limitation in the statute being $165,000 semi-annual revenues.

JK-43

A Yes.

Q If in 1980, that cable system's revenue had increased 15 percent based on the industry average subscriber charge increase of 15 percent and it had no more subscribers as one of your systems did not gain subscribers through the years, its 1980 semi-annual gross subscriber revenues would be $190,000; is that right?

A It sounds right.

Q If you multiply $165,000 times 1.15, you get $190,000. Now, if you multiply $160,000, which is the existing ceiling, by 1.3, which would reflect a 30 percent increase which you are suggesting to the Tribunal, you would create a situation where this cable systems would now be in a small system category, and would not pay under the DSE formula; is that correct?

A In this example.

Q Was that your intent in making this recommendation?

A The intent in making this recommendation was to fulfill the requirement of the statute as I read it which said to adjust the gross receipts limitation for inflation.

Q If this situation were to occur, would not the value of the exemption provided by this section have changed?

A It depends on how you define value.

Q I assume value means the value of this small system exemption to the cable system. In 1976, it had no value because you had too much revenues. But the value is quite high in 1980

because he's now a small business and he doesn't have to pay under the DSE formula. Is that a reasonable characterization?

A That's how you define value. You're a lawyer. I'm not a lawyer.

Q If you were a cable operator --

A I'm not a cable operator.

Q I think I've made my point.

Q One more question relating to the NCTA questionnaire. Was there any other advisory letters, notices, bulletins, relating to this survey?

A No.

Q What about the CRT survey? Did NCTA provide any assistance or encouragement to cable systems with respect to filling out and filing the CRT survey?

A We did not provide any assistance to the cable operators at all. I do recall and I'm not positive of this that we included an advisory in our president's weekly newsletter that said that CRT was sending out a questionnaire. That's the only thing I am positive that we did. But we did not provide assistanceto cable operators.

Q All right, Mrs. Beales. Thank you for your patience. I just have a couple of summary questions.

Is it correct that the charts you have introduced reflect a number of factors that you feel are relevant to this proceeding including the changes in subscriber charges, the changes in the DSEs, increase into higher payment categories, etc.?

A Yes.

Q You did not limit your examination to merely changes in charges to subscribers and inflation.

A I looked at royalty fee per subscriber.

Q That was foundation for everything that you did?

A I would say that is an accurate statement.

Q Mrs. Beales, in going through your charts and your testimony, I see that we have charts based on 1976 Fact Book data, Statement of Account data, CRT data, and NCTA survey data. What is the thread that holds all of this together? What is the basis from which all else grows that we can take something that we are sure of and relate it to all of these charts and all of the conclusions that you've reached?

A I don't know quite what you want me to tell you what you can be sure of. You can be sure that these charts reflect what I have testified it reflects.

Q But based on different sources of information; is that correct?

A Some of the points come from various sources of information, yes. I believe them to be an accurate reflection of the change in royalty fee per subscriber as we reported it.

Q Had you used one consistent source of information, would any of these charts have changed?

A I doubt it.

Q You're telling me that had you used the Fact Book

JK-46 1 throughout you would have reached all of the same conclusions?

2 A I have no way of knowing that. Obviously, parts of
3 the information would not be available in from some of the
4 sources, so I have no way of predicting what way it would come
5 out. I am fairly confident -- I am confident in these numbers
6 and I believe they would have come out the same way but I
7 cannot --

8 Q Mrs. Beales, I'm not challenging the numbers
9 themselves but the materials from which they are deprived. I'm
10 having a very difficult time trying to follow them because each
11 source is different. They are from different time periods,
12 different reasons for the compilation.

13 A Is that a question?

14 Q No. Meandering a little. Very tired person.

15 MR. ATTAWAY: I think that is all the questions I have.
16 Thank you very much for your patience.

17 CHAIRMAN BURG: Do you have any questions?

18 MR. FELDSTEIN: May I make a request and suggestion
19 and all of the above. I believe that we can finish our
20 redirect today in a half an hour. We have, because of the
21 juggling of yesterday and the juggling of people's business
22 schedules, we lost a businessman yesterday who came in on
23 vacation and left, etc. I have two industry witnesses at
24 this point who can make it tomorrow. If we are able to finish
25 today, we can start with them. Mr. Attaway and I have talked
about this. We can start with them at 10:00 tomorrow morning.

1 Before I commence my redirect, however, is it
2 possible that I could have a short break?
3 COMMISSIONER BURG: Of course.
4 (A brief recess was taken.)
5 CHAIRMAN BURG: Proceed please.
6 MR. FELDSTEIN: Before I proceed with asking
7 Mrs. Beales questions on redirect, with all due deference to
8 the Tribunal and the past procedures which you have stated that
9 you have adopted, for the record, I would like to state that
10 the problem with allowing the Copyright Owners to use our
11 witness in ostensible cross examination to introduce their
12 exhibit, specifically CX-one, two and three, is that it denies
13 us the opportunity to cross examine their exhibits. There is
14 no response from the Copyright Owners' side.
15 We believe that our due process is denied thereby.
16 We want to put it on the record and note it for the record, we
17 intend to preserve our rights in appeal or whatever, if
18 necessary.
19 CHAIRMAN BURG: So noted.
20 REDIRECT EXAMINATION
21 BY MR. FELDSTEIN:
22 Q Mrs.Beales, Mr. Attaway led you through a reading
23 exercise in the statute which did not tap your statistical
24 expertise, but your ability to read. In reading that same
25 statute and considering what might be relevant for your

1 numbers, immediately below little "i" and double little "i",
2 how was your data constructed in terms of purpose? What were
3 the words that you constructed your data on?
4 A I was interested in this portion of this sentence,
5 and certainly the first portions, but the maintenance of that
6 real constant dollar level of the royalty fee per subscriber
7 which enacted as of the date of this act.
8 Q In doing so, how did you arrive at a decision as
9 to what factors ought to be culled from the available data?
10 A I looked at all factors that could be culled. In
11 reading this same paragraph, I found the sentence saying the
12 Commission may consider all factors or rely together to the
13 maintenance of such level of payment, including--and so on.
14 Q Thus, you read the potential of all factors being
15 relevant to the maintenance of the royalty fee per subscriber?
16 A Right.
17 CHAIRMAN BURG: Mrs. Beales, you misspoke when you
18 read that. You said "enacted" instead of "existed as of the
19 date of this act."
20 THE WITNESS: I'm sorry. Thank you. I've been
21 reading too much today.
22 BY MR. FELDSTEIN:
23 Q Thus, in calculating the increase in royalty fee
24 per subscriber, you included, not just increase in subscriber
25 rate?

A That's correct.

Q Is that because the royalty fee per subscribers also increased when revenues from additional assets increase?

A Yes.

Q Is that also because the royalty fee per subscriber increases when the number of DSs carried by a system are increased?

A Yes.

Q Taking the questions in somewhat--the topics in somewhat the same order that Mr. Attaway did, in reviewing your data taken from NCTA Survey and the Copyright Royalty Tribunal Survey on regulatory restraint which, for your charts 10 and 11?

A Yes.

Q And 11 and 12?

A That's right.

Q I notice in terms of delay on your chart 12, you

***

used 3.5 months on the top line for delay between requests to a city and effectuation of a rate increase; is that correct?

A That's correct.

Q NCTA's showed that time period was how much?

A NCTA's result was 4.3 months.

Q Thus, you used the more conservative figure in your chart?

A Yes. I used the more conservative figure. Both figures, as I testified, are conservative, because we used a

1 four-week month as a standardized feature in tabulating both.
2 Hence, the significant number of systems that waited more
3 than a year, we added in 48 weeks instead of 52. It is conserva-
4 tive for simplicity's sake.
5 Q Mr. Attaway also made a point about the fact that
6 a significant percentage somewhere in the neighborhood of
7 30 percent, as I recollect, of CATV systems responding to the
8 CRTV Survey 27.7 percent indeed in the Copyright Owner's
9 Exhibits were unrelated systems?
10 A Yes.
11 Q From the responses to the surveys, is it your view
12 an unregulated system is truly unfeatured from a regulatory
13 standpoint in terms of its rate increases?
14 A No. I saw examples where you could tell from the
15 notes written that they were not truly unfeatured.
16 Q Can you describe a few of these types of situations
17 for us?
18 A Some of them I have mentioned earlier, of course,
19 where the city or regulatory body will tie feature rate
20 increases to some faction of an inflation measure, saying you
21 can raise your rate any time you want as long as it is not
22 more than 60 percent of the increase in inflation. There are
23 time where the city will require cable systems to rebuild
24 their plants before they can get a rate increase, add additional
25 facilities, service programs and whatever. There are times

where the city will say you can raise your rate, but not more than once every year, every other year, every two years, as a condition, but you don't have to notice us.

There are times where the city will say you can raise your rate and you have to notify us and we will probably approve it, but we don't make any guarantees. Those are some examples.

Q In other words, it is not unvarnished figure 27.7 percent of CATV systems which are unregulated does not tell the whole story.

A I believe that to be accurate.

Q Thus, some so-called unregulated situations are in effected regulated situations are in effect regulated?

A Certainly, to some extent.

Q Thus, they are in the words of the statute, subject to some regulatory restraint?

A That is correct.

Q Turning again to NCTA Chart Number 12, this was the chart where the three types of time periods, one from the CRT Survey and two from the NCTA survey were added for a total time lag of 11 months. There was some confusion engendered by the 4.6 month period. Did you notice that the answers to this page were, so far as you can tell, virtually all figured out by systems which were subject to rate regulations?

A Yes.

1 A Yes.

2 Q Thus, this 4.6 month time period was experienced

3 because the systems were rate regulated?

4 A Yes.

5 Q This is because the regulated system must fill

6 out a rate increase request?

7 A Yes. Certainly there is paperwork anytime you

8 are involved in dealing with a regulatory body.

9 Q If there was a regulated system involved and it

10 had decided internally that it needed a rate increase, would

11 a time anywhere near this be needed?

12 A Not in my judgement.

13 MR. ATTAWAY: I have to object to this line of

14 questioning. There is no foundation laid for the expertise

15 of this witness. I believe she told me she had no experience

16 in franchising.

17 MR. FELDSTEIN: She had no experience in filling

18 out copyright forms.

19 CHAIRMAN BURG: Are you going to pursue this?

20 MR. FELDSTEIN: I'm through with that line of

21 questioning.

22 BY MR. FELDSTEIN:

23 Q Mr. Attaway made a considerable point of criticizing

24 the 1976 Fact Book. Did you or NCTA compile the 1978 Fact Book?

25 A No, we did not. It is produced by an organization

1 of TV Digest.

2 Q Despite the alleged limitations of the 1976 Fact

3 Book, was not the data contained therein relied on and

4 accepted by the Congress as evidenced by the legislative history?

5 A Yes.

6 COMMISSIONER JAMES: I don't see anything in the

7 legislative history that indicates it was relied on as

8 evidence.

9 MR. ATTAWAY: Moreoever, I think the witness

10 testified she does not know what Congress relied upon. She

11 testified that the only thing she can be sure of is that

12 10.8 million subscriber was contained in legislative history.

13 THE WITNESS: As was the 8.7 million figure.

14 CHAIRMAN BURG: Would you like to restate that

15 question, Mr. Feldstein?

16 MR. FELDSTEIN: I will withdraw it.

17 BY MR. FELDSTEIN:

18 Q In your calculations, the various calculations,

19 you used estimates as to the number of subscriber and the

20 number of cable television systems existing in 1976; is that

21 correct?

22 A That is correct.

23 Q Is that because there were no copyright or CRT

24 Data in existence at that time?

25 A That is correct.

1 Q Now, you used the CRT Data for the 1976 basic
2 subscriber rate; is that correct?
3 A That is correct.
4 Q It was obtained from the 1980 CRT Survey?
5 A That is correct.
6 Q Did you not use this because it was presumed to
7 be a more accurate measure of the 1976 rates than some other
8 type of estimates?
9 A Yes. It appeared to be a reasonable sized sample
10 of cable systems, reporting their actual rate as of October 19,
11 1976. It seemed to be a good source to rely upon.
12 Q Is it your understanding that the estimate in
13 the legislative history were used by Congress in passing the
14 Copyright Act?
15 A That is my understanding, because they utilized
16 those figures in their legislative history.
17 COMMISSIONER JAMES. Both houses?
18 THE WITNESS: I believe it was only in the House
19 Report.
20 BY MR. FELDSTEIN:
21 Q Did the House and the Senate bill differ?
22 Maybe that's an unfair question.
23 A I really wish I had been there, but I was not.
24 Q Since the House version of Section 111 was embodied
25 in the Copyright Act that was ultimately passed by the Congress,

1 did not take data relied upon in the House Report in the
2 estimate of the royalty fee per subscriber?
3 A Yes.
4 COMMISSIONER JAMES: Counsel, let me ask you
5 something for my clarification. I was not there. Wasn't that
6 bill sent over to the House?
7 MR. FELDSTEIN: Yes.
8 COMMISSIONER JAMES: So, no one knows what the
9 Senatè considered?
10 MR. FELDSTEIN: We do know what law was passed.
11 COMMISSIONER JAMES. But, it originated in the
12 Senate.
13 MR. FELDSTEIN: That's correct.
14 COMMISSIONER JAMES: Thank you.
15 BY MR. FELDSTEIN:
16 Q Does the estimate,in your view therefore, contained
17 in the House Report the baseline, initial calculations as to
18 royalty fee per subscriber from which the feature was intended
19 to be measured?
20 A Yes.
21 MR. ATTAWAY: I object to that.
22 BY MR. FELDSTEIN:
23 Q Is that why you used the figure?
24 A Yes.
25 MR. ATTAWAY: The witness cannot testify as to

1 what Congress had in mind with respect to these figures
2 unless there is some indication in the legislative history.
3 She admitted she was not there.
4 MR. FELDSTEIN: Excuse me. She has indicated she
5 has used those figures because of the fact that they appeared
6 in the legislative history. That is why she presented the
7 data she presented. She read, and it was put into evidence,
8 the page in the House of Representative's Report, which stated
9 underface that a necessary estimate had been made and that
10 these were the figures they were relying upon. That is in
11 Exhibit Three of NCTA.
12 MR. ATTAWAY: THat is what Congress was relying on
13 or that is what Mrs. Beales was relying on in doing her work?
14 MR. FELDSTEIN: Both.
15 MR. ATTAWAY: In that case,my objection stands.
16 I see no basis from which Mrs. Beales or anyone else can
17 determine what Congress was relying on.
18 MR. FELDSTEIN: It states they were relying on
19 based on projections submitted by the interested parties.
20 CHAIRMAN BURG: To direct myself to the objection
21 itself, I am going to sustain that. I understand what you
22 are saying.
23 MR. ATTAWAY: Thank you.
24 BY MR. FELDSTEIN:
25 Q Did cable television pay copyright as of 1976?

1 A No.

2 Q Thus, you could not determine what the royalty fee

3 per subscriber paid in 1976 was?

4 A That is correct.

5 Q Or would have been?

6 A That is correct.

7 Q So, there is no way of calculating the actual

8 royalty fee per subscriber in 1976?

9 A That is correct.

10 Q Therefore, you had to rely on some estimates; is

11 that not correct?

12 A That is correct.

13 Q What is the best estimate available to you?

14 A The best estimate and the only one I could find is

15 contained in the legislative history.

16 Q Problem being raised in terms of the 1976 estimate,

17 will there be a problem in subsequent review periods?

18 A Naturally, there will not because any procedure

19 that is determined here will be utilized in future proceedings

20 in the same methodology with actual data from cable systems who

21 are paying royalty rates.

22 Q In reviewing the Copyright Owners Exhibit X-1a,

23 which was the first completed form three which was handed out--

24 perhaps it was the second one. In any event--

25 CHAIRMAN BURG: It was the second one.

1 COMMISSIONER JAMES: And, Texas was second.

2 CHAIRMAN BURG: We have our own self interests.

3 MR. FELDSTEIN: I did not mean to get into that.

4 BY MR. FELDSTEIN:

5 Q Mr. Attaway asked you to divide the

*** 6 basic sub into total gross revenue of the system which

7 produced a royalty fee per subscriber level for that system;

8 correct?

9 A Correct.

10 Q Is this the methodology you followed or did you

11 sum those amounts from all forms?

12 A I summed the amounts from all forms. Then, I

13 calculated the royalty fee per subscriber.

14 COMMISSIONER JAMES: May I ask a question? Working

15 with numbers, if you had done it system by system and taken

16 that average, would you have a figure?

17 THE WITNESS: In all probability, you would.

18 COMMISSIONER JAMES: Substantially different?

19 THE WITNESS: I don't know if it would be

20 substantially different, but in this case, you are using the

21 same base. You are not taking averages of averages which

22 could be changed in magnitude for the system that increases the

23 rate.

24 COMMISSIONER JAMES: You totalled all revenue

25 and subscribers and divided?

1 THE WITNESS: Yes.

2 COMMISSIONER JAMES: If you had done it system

3 by system, it could have been.

4 THE WITNESS: It could have been. We have worksheets

5 that we could do it that way.

6 COMMISSIONER JAMES: Out of curiousity, could

7 you do that and submit it during the rebuttal period later on?

8 I would just like to see it.

9 THE WITNESS: Sure.

10 BY MR. FELDSTEIN:

11 Q Did you rely upon the accuracy of the data reported

12 in the forms you studied?

13 A Yes, I did.

14 Q Did you attempt to reject those that, on their

15 face, showed a deficiency or inaccuracy?

16 A I rejected the forms that did not include the

17 relevant information, did not include a figure for subscriber

18 or if they had no page for the royalty fee missing, I would

19 reject those systems. But, I did not go back and calculate

20 every system, whether they had accurately filled out their

21 form.

22 Q Assuming some of the forms were inaccurate that

23 you used in terms of the revenues or the number of subscribers

24 they reported, in your opinion, would the errors that would have

25 appeared on such forms be more likely to have overstated or

understated the results which you reached?

1 MR. ATTAWAY: Excuse me, Madam Chairman. I
2 have to object to the way that question was phrased. I, in
3 my cross examination, never suggested that the statement of
4 account reflected inaccurate information. What I said was that
5 there was not sufficient information. I think there is a
6 major difference, and that should be pointed out.
7 MR. FELDSTEIN: I will rephrase the question.
8 CHAIRMAN BURG: Mr. Feldstein, would you
9 like to rephrase the question? You are withdrawing the question.
10 MR. FELDSTEIN: Yes, and pursue this.
11 BY MR. FELDSTEIN:
12 Q Do you believe that there was sufficient information
13 on those forms for you to accomplish the study that you
14 accomplished?
15 A Yes.
16 Q Was there anything on the forms that suggested
17 to you that there may have been overstatements or understatements?
18 A I cannot isolate specific examples, but I'm sure
19 everybody makes errors and errors go both ways. I doubt that.
20 I did not see specific examples that I felt were so out of
21 line or the cable system could have made an error. I did not
22 see forms like that. I found incomplete forms and those were
23 rejected. We still analyzed the vast majority of the forms
24 submitted during that period.
25 Q Mr. Attaway has taken, and I refer to NCTA

1 Exhibit Three B. In cross examining you on NCTA Exhibit 3-B-A,
2 Mr. Attaway has attempted to draw differences between the break-
3 down of DSE systems and small systems on this exhibit and
4 the exhibit which was submitted in May.
5 A That is correct. There were differences in the two.
6 Q Can you explain once again as you did on your
7 direct testimony the difference in the methodologies which
8 were used?
9 A In the estimate we provided to the Tribunal in
10 May, we relied on worksheets which we found in our files
11 and found an estimate based on studies that were conducted
12 by NCTA and MPAA were these estimated DSEs would average out
13 to about 2.5. In the current chart which has been submitted,
14 we decided that it would be good to utilize only publicly
15 available information. We would not be in a position to try
16 to second guess what Congress or the interested parties would
17 be providing. So, we conducted, we analyzed the same informa-
18 tion. We utilized publicly available information and came
19 up with a slighly different estimate of the royalty fee per
20 subscriber for DSEs systems.
21 However, it should be noted the estimates are
22 very close. The DSE systems, as appears in terms of the royalty
23 fee, as appears of 8.7 million comes out to be very similar
24 and similar to the amount the Copyright Office tells me is
25 being collected. They do not tabulate their data that way.

1 It is based on their impression. So, we don't have a hard
2 number on that.
3 Q You calculated this -- you calculated NCTA
4 Exhibit 3-B by calculating copyright for small systems
5 and you subtracted what you had for large systems.
6 A That is correct.
7 Q In the May exhibit from old NCTA worksheets, it
8 was for large systems and that was subtracted from 8.7 million
9 and you got the copyright for small systems.
10 A That is correct.
11 Q Those two results were similar alike?
12 A Quite similar.
13 Q To ask you to repeat the point you made a moment
14 ago, in both cases, it is percentage of the total copyright
15 payments paid by the DSEs systems were similar?
16 A Yes. It was a substantial amount of the total
17 fees that are paid in.
18 Q In the real experience in 78-1, 78-2 and 79-1 and
19 two has also tracked close to that percentage.
20 A It is estimated by people I talked to in the Copy-
21 right Office. They do not break out data by how many is paid
22 in each form. They give how much is paid out in each system.
23 They do give an estimate. They do track closely.
24 Q In Copyright Exhibit -- Copyright Owners Exhibit 1-a,
25 with is the Wisconsin Form Three which Mr. Attaway attempted
to question you on the use of the number of subscribers.

A That is correct.

Q You stated that you used the first set of numbers.

A Yes, we did.

Q He asked you, I believe, did he not, whether the revenues from hotel-motel, hop, et cetera, were included in gross revenues that you used?

A Yes. He asked me that.

Q Your answer was?

A Yes. I assumed so. I have not worked thorugh calculations for this system in detail.

Q He asked if that was done, whether the royalty fee per subscriber might be, if that was done on the average that the RFP might be or have been calculated a bit higher than it actually is. In your opinion, if that was done for each cable system, is he correct that there might be some overstatement?

A If every cable system had included revenues from hotel-motel, commercials, hop and elderly and so on, if there was a significant reporting of that in every case, yes. That would change it.

Q Have you examined what the worst case in such a situation might be?

A Well, that looks like a good worst case in the Copyright Owners Exhibit. That is a far more complicated

form than I generally had seen in my statement of account forms.

COMMISSIONER JAMES: What do you generally see?

THE WITNESS: I saw many systems had additional set of revenues. Very few systems had FM revenues. Some reported varying amounts of hotel-motel written down with different methodologies as in this example. They tell you they have five at $7.50. That is the first outlet right, and some at $1.50.

So, you cannot calculate exactly how much that contributes. That is why we did not include it. We took a sample internally when we started the process and found these factors to be what I considered relatively insignificant.

COMMISSIONER JAMES: Would reconnection be included under other services; outlet relocation?

THE WITNESS: Is this in F--

CHAIRMAN BURG: The bottom block one.

THE WITNESS: As I read the form, I believe they include in gross receipts the revenues gained from secondary transmission services.

BY MR. FELDSTEIN:

Q Thus, the block in the bottom is not to be included in gross revenues?

A The instructions under "K", gross receipts enter the total of all amounts, gross receipts paid to your cable

1 system by subscriber for the system secondary transmission
2 service.
3 COMMISSIONER JAMES: Can you take that, and I
4 hate to put you through the exercise, but I sure would like
5 to have you to get it for me. Backtrack to see just how
6 they got it. I'm on X-1, get the gross revenues and apply
7 the same base rate, and see if you can come up with the same
8 subscribers. I want to see what figure is included in
9 gross revenue.
10 THE WITNESS: I cannot divide the gross revenue
11 by a basic figure. As you can see, there are a lot of
12 different basic rates listed: $7.50, $1.75, and so on.
13 COMMISSIONER JAMES: I thought they only took the
14 first set rate.
15 BY MR. FELDSTEIN:
16 Q They have included, have they not, revenues from
17 the first set?
18 A That is correct.
19 Q Revenues from additional sets?
20 A Yes.
21 Q And revenues from other commercial outlets which
22 are found in block one and block two? Then, they have
23 excluded the revenues reported in Section F on the bottom
24 of the page?
25 A That is my understanding of how a system would

1 calculate this.

2 COMMISSIONER JAMES: We don't really know. That's

3 what I'm trying to figure out.

4 THE WITNESS: The instructions say to take all

5 amounts paid to your cable system by subscribers to systems

6 secondary transmission service, the basic service of retransmit-

7 ting television and radio broadcasts during the accounting

8 period.

9 So, that would seem to correspond with the

10 secondary transmission service Section E. Section F is

11 service other than secondary transmission.

12 COMMISSIONER JAMES: I asked the question of the

13 Copyright Owners. Has your organization done any verification

14 or checking on a survey basis with some of the gross receipts

15 that have to be reported in the franchise cities to see if

16 those reports are coming up similar?

17 THE WITNESS: Not to my knowledge. In fact, I

18 had not thought about the suggestion you made as a way of

19 checking, no. We have not conducted a survey like that.

20 COMMISSIONER JAMES: Thank you.

21 BY MR. FELDSTEIN:

22 Q The $1.08 that we have come up with as a royalty

23 fee per subscriber for the January 1, 1980, have you been

24 able to find an alternative method to check the accuracy of

25 that figure?

A Well, I have an alternative method. Yes. It checks the accuracy, tells me if it is in the right rank.

Q Can you tell us what that was and what the results were?

A If you were to utilize a similar technique as employed back in '76 to rely on the Television Fact Book data and compare it with the total amount collected by the Copyright Office in the royalty fees, you would have essentially the variables that go into the calculation. The last time I had talked with someone at the Copyright Office, which was on the 17th of September, I understand $8,160,140.82 had been collected for the 79-2 period. The 1980 Fact Book estimate total subscribers as of January 1, 1980 as 15.5 million subscribing households. If you divide those numbers out, you come out with 52 cents for a six-month period or $1.04, depending on rounding, it would be $1.05, in royalty fee per subscriber.

When you compare that, it's an increase of over 28 percent. It looks like the Fact Book contains the same methodology as used in '76. You know the figure is certainly in the ballpark. As a reseracher, I'm not trying to sit here and say this is precisely the number. You cannot do that when you rely on an estimate for the start date. What you have to be able to do is to look at the percentage increase and in every way I have calculated, it has come up about 30 percent,

1 slightly more or less, but right around 30 percent.
2 I think the estimate we have made is as accurate as we can
3 possibly make them.
4 CHAIRMAN BURG: Forgive me if I'm being repetitious.
5 You may have answered this. In this X-1 form in block one
6 service to first set 4,341, service to additional 1,115, did
7 you add those two figures?
8 THE WITNESS: No, you cannot do that. You are trying
9 to get subscribers. It is not set by households or units.
10 It is not a per set basis. 11,114 additional sets are
11 located in homes already that have cable service to them.
12 So, we did not add them together because we were getting a
13 subscriber household data per subscriber.
14 CHAIRMAN BURG: The reason I asked is because
15 in the instructions on the top of the page under block one,
16 note for an individual or organizations receiving service
17 that falls under different categories that person or entity
18 should be counted as a subscriber in each applicable category.
19 That is what is throwing me off.
20 THE WITNESS: If I added the two numbers together
21 additional and first set, I would overstate the number of
22 subscriber households considerably. I have based my calcula-
23 tions on subscriber households.
24 CHAIRMAN BURG: Thank you.
25 BY MR. FELDSTEIN:
Q Let me ask you this question: Was the reason that

you based your calculation on subscriber or subscribing household units based on what the Copyright Act speaks in terms of per subscriber?

A Yes.

Q It does not speak in terms of per set?

A Correct.

Q Or per program or DS?

A That's correct.

Q But, per subscriber?

A That is correct.

MR. FELDSTEIN: I have no more questions.

CHAIRMAN BURG: Mrs. Beales, thank you so very much. You have been a very good witness. Mr. Feldstein, we will adjourn for today. You will present your next witness at 10:00 tomorrow morning.

MR. ATTAWAY: Before we adjourn, Mr. Korn promised the Tribunal a redraft of his last exhibit corrected for two errors Commissioner Garcia pointed out to our mutual embarassment. It was the exhibit responding to Commissioner James' request for a comparison of how royalties or how systems of previous exhibits would pay under a system by system procedure and under an industry-wide procedure.

CHAIRMAN BURG: It is CO Exhibit 18.

(CO Exhibit No. 18 was marked for identification and received into evidence.)

***

CHAIRMAN BURG: Is that all you have for the moment?

MR. ATTAWAY: Yes.

CHAIRMAN BURG: We will now adjourn.

(Whereupon, at 4:22 p.m., the hearing was adjourned to reconvene the following morning at 10:00 a.m.)