BEFORE THE

COPYRIGHT ARBITRATION ROYALTY PANEL

GENERAL COUNSEL
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DISTRIBUTION OF 1990, 1991 AND 1992 CABLE ROYALTY FUNDS	Docket No. 94-3-CARP-CD90-92

Hearing Room 414, Fourth Floor
Madison Building
Library of Congress
101 Independence Avenue, S.E.
Washington D.C.

Thursday, December 7, 1995

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE MEL R. JIGANTI, Chairperson

THE HONORABLE JOHN B. FARMAKIDES

THE HONORABLE RONALD WERTHEIM

APPEARANCES:

On Behalf of Joint Sports Claimants:

Major League Baseball

ROBERT ALAN GARRETT, ESQ.,
DAVID D. GERSCH, ESQ., and
PETER G. NEIMAN, ESQ.
of: Arnold & Porter
555 12th Street, N.W.
Washington D.C. 20004-1202
(202) 942-5444

National Basketball Association and
National Hockey League

PHILIP R. HOCHBERG, ESQ.
of: Baraff, Koerner, Olender & Hochberg, P.C.
Suite 640
Three Bethesda Metro Center
Bethesda, Maryland 20814-5330
(301) 686-3200

National Collegiate Athletic Association

JUDITH JUIN SEMO, ESQ.
of: Squire, Sanders & Dempsey
Suite 400
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 626-6606

On Behalf of Devotional Claimants:

CLIFFORD M. HARRINGTON, ESQ.
BARRY H. GOTTFRIED, ESQ.
of: Fisher, Wayland, Cooper, Leader
& Zaragoza, L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 420
Washington D.C. 20006-1851
(202) 775-3539

APPEARANCES: (cont.)

On Behalf of Devotional Claimants: (cont.)

RICHARD M. CAMPANELLI, ESQ.
GEORGE R. GRANGE, II, ESQ.
of: Gammon & Grange, P.C.
Seventh Floor
8280 Greensboro Drive
McLean, Virginia 22102-3807
(703) 761-5000

JOHN H. MIDLEN, JR.
Chartered
3238 Prospect Street, N.W.
Washington D.C. 20007-3214
(202) 333-1500

On Behalf of the National Association of Broadcasters:

BENJAMIN F.P. IVINS, ESQ.
MELISSA BLEVINS, ESQ.
of: National Association of Broadcasters
1771 N Street, N.W.
Washington D.C. 20036
(202) 429-5460

JACQUELINE E. HAND, ESQ.
JOHN J. STEWART, ESQ.
of: Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington D.C. 20004-2595
(202) 624-2793

On Behalf of the Canadian Claimants:

VICTOR J. COSENTINO, ESQ.
L. KENDALL SATTERFIELD, ESQ.
of: Finkelstein, Thompson & Loughran
2828 Pennsylvania Avenue, N.W.
Washington D.C. 20007
(202) 337-8000

APPEARANCES: (cont.)

On Behalf of the Public
Broadcasting Corporation Claimants:

GARY D. POON, ESQ.
Assistant General Counsel
1320 Braddock Place
Alexandria, VA 22314
(703) 739-7532

MICHELE J. WOODS, ESQ.
TIMOTHY C. HESTER, ESQ.
of: Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington D.C. 20044
(202) 662-5324

On Behalf of the Program Suppliers:

Motion Picture Association of America:

DENNIS LANE, ESQ.,
of: Morrison & Hecker, L.L.P.
1150 18th Street, N.W.
Suite 800
Washington D.C. 20036-3816
(202) 785-9100

I N D E X

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E X H I B I T S

Exhibit No.	Description	Marked	Received
Public Broadcasting			
1-X	Table 11 with notes	689 703	703
National Association of Broadcasters			
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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:34 a.m.)

3 CHAIRPERSON JIGANTI: You may proceed when

4 you are ready Counsel.

5 MR. GERSCH: We concluded our direct

6 examination.

7 CHAIRPERSON JIGANTI: Okay, I thought that

8 there was one question left at the end there and I

9 wasn't certain.

10 Let the record show that this is Day Three

11 of the proceedings. We are proceeding with Mr. Bortz

12 cross examination. Mr. Lane are you going to proceed

13 first?

14 MR. LANE: Mr. Chairman, I understand that

15 the other parties who support the Bortz study have

16 questions, and I would prefer to go after they have

17 questions. Since I believe that I am the only party

18 that really opposes the Bortz study.

19 ARBITRATOR WERTHEIM: You'd rather bat

20 clean up.

21 MR. LANE: Exactly.

22 CHAIRPERSON JIGANTI: All right, counsel

23 or anybody else wish to examine Mr. Bortz?

24 MR. STEWART: Yes, thank you. Your Honor,

25 I'd like first with your leave, to make a statement

1 for the record writing a motion that Mr. Lane's client
2 filed on Monday of this week.
3 As you know we discussed it yesterday, we
4 are filing our response this morning.
5 ARBITRATOR WERTHEIM: This is the motion
6 to strike the 1990 survey?
7 MR. STEWART: Yes sir. And my statement
8 is this. Mr. Lane, in accordance with the rules,
9 served attorneys by Federal Express by overnight
10 delivery.
11 Though he filed it on Monday, he could
12 have handed it to us here in the hearing on Monday or
13 on Tuesday morning or had it home delivered to us.
14 Given the timing exigencies of this
15 particular matter, I would have appreciated as an
16 accommodation to counsel, hand delivered. Although he
17 did serve us in accordance with the rules.
18 MR. LANE: If I might make a statement for
19 the record. There are two reasons why I didn't do it
20 hand delivered. First of all, I sent it on Friday so
21 that it was delivered via counsel's office on Monday
22 morning within an hour of me filing a second.
23 I thought if I hand delivered it it would
24 disrupt Mr. Garrett's opening statement. So I thought
25 that was appropriately done.

1 CHAIRPERSON JIGANTI: Your comments are on
2 the record.
3 ARBITRATOR WERTHEIM: Mr. Stewart, I'm not
4 quite clear on what you think, or what you are
5 requesting should be the consequence of your
6 statement. Are you asking for additional time to
7 respond, or what?
8 MR. STEWART: Your Honor, you will see
9 when we hand it to you this morning, that our response
10 is short. We were able to produce a response.
11 My statement was merely to suggest that as
12 an accommodation to counsel the matters with such
13 short term consequences, our counsel served each other
14 in the most expeditious way possible even though they
15 were permitted to do so otherwise under the rules.
16 Its merely a request for accommodation.
17 CHAIRPERSON JIGANTI: Counsel, do you have
18 a comment?
19 MR. GARRETT: A related, but its on a
20 different matter.
21 CHAIRPERSON JIGANTI: State your name so
22 that the Court Reporter can identify you.
23 MR. GARRETT: Tom Garrett for the Joint
24 Sports Claimants. Mr. Chairman I had promised to file
25 responses to Mr. Lane's motion by this morning. I did

1 give a copy to Ms. Sandros.

2 ARBITRATOR WERTHEIM: I think we just

3 received it.

4 MR. GARRETT: Okay, I want to be certain

5 and to also reflect that hand delivery -- I have in

6 fact hand delivered it to all of the other counsel.

7 This morning we were able to locate a

8 document. I don't know whether its going to, its not,

9 it doesn't appear to be exactly what it is that Mr.

10 Lane is asking for here.

11 I don't know whether or not its going to

12 satisfy his needs, but we have to check it and be

13 certain exactly what the document is here.

14 It is possible that we can move the motion

15 out, I've asked therefore for a ruling on the motion

16 at least until we got and double checked what

17 documentation we have and whether or not it will be a

18 satisfactory substitute for what it is that Mr. Lane

19 has asked for.

20 MR. LANE: That's agreeable with me, Mr.

21 Chairman.

22 MR. STEWART: Thank you.

23 ARBITRATOR FARMAKIDES: Let's get back to

24 Mr. Stewart's and Mr. Lane's situation. Why don't we

25 use fax, why don't you all use fax. Its such a, all

1 of us are now in the business, every single one of you
2 has a fax machine and we are talking about minutes
3 rather than days.
4 And frankly, from now on, because of the
5 time situation in this particular case, it would seem
6 to me that exchanging motions or responses by fax is
7 the way to go. Do you disagree?
8 MR. LANE: If that's how you want us to do
9 it we --
10 ARBITRATOR FARMAKIDES: No, no, no, as an
11 option to alleviate the problem Mr. Stewart had
12 brought up this morning.
13 MR. GOTTFRIED: Subject to both, I don't
14 think you want to be faxing around 50 page documents.
15 ARBITRATOR WERTHEIM: I just want to note
16 that I don't yet have a fax. I am getting one in
17 January.
18 MR. LANE: Does that mean all this is --
19 CHAIRPERSON JIGANTI: Mr. Stewart, you may
20 proceed whenever you are ready.
21 ARBITRATOR WERTHEIM: Just to say, can I
22 have a question with respect to devotion that Mr.
23 Garrett was just addressing. My recollection is that
24 that motion relates to the testimony of Mr. Trautman.
25 MR. GARRETT: That's correct, Your Honor.

1 ARBITRATOR WERTHEIM: And in what sequence
2 is he to be called as a witness? Is he the next
3 witness?
4 MR. GARRETT: Yes, he is the next witness.
5 ARBITRATOR WERTHEIM: When do you
6 anticipate he will be reached?
7 MR. GARRETT: There is still --
8 MR. LANE: I can stall as long as you
9 like, Your Honor.
10 ARBITRATOR WERTHEIM: Well, I just think
11 its great if the parties can move it up, but we are
12 probably going to have to have it resolved one way or
13 another before Mr. Trautman commences his testimony.
14 MR. GARRETT: I understand the situation,
15 Your Honor, and expect to be able to confirm what the
16 document is over the lunch break today and I will
17 report to Mr. Lane immediately thereafter and then we
18 will either have an agreement or not.
19 If the panel wants to go ahead and read
20 the motions and make a decision, that's not fine with
21 the Chairman, but --
22 CHAIRPERSON JIGANTI: We appreciate you
23 getting together and trying to work it out yourselves,
24 we think its a better solution that way to present to
25 us.

1 MR. GARRETT: We will report it to you
2 right after the lunch break.
3 CHAIRPERSON JIGANTI: Very good. Now Mr.
4 Stewart, you may proceed.
5 CROSS EXAMINATION
6 BY MR. STEWART:
7 Q Thank you, good morning, Mr. Bortz. I am
8 John Stewart and I am here with my colleague,
9 Jacqueline Hand, on behalf of the National Association
10 of Broadcasters.
11 We are making a claim for news public
12 affairs programs and other programs that are produced
13 by the stations and broadcast only by the producing
14 station. Would you turn, please, to Page 24 of your
15 testimony, your written testimony please?
16 A Yes, I have it.
17 Q Do you see on Table 7 there, the 1992
18 results in the column labeled Percent Mentioned as
19 Most Popular for news and public affairs programs, you
20 see there is 19.0 percent there?
21 A That is correct.
22 Q That means that on an unaided basis when
23 asked what types of programming were most popular
24 among their subscribers, 19 percent of your
25 respondents answered with some reference to news and

1 public affairs?

2 A Yes, that's correct.

3 Q And if you would turn over to Page 26,

4 please? Do you see in Table 9 there, in the 1992

5 results, in the Percent Using Column, there is, for

6 news and public affairs programs, there is a 23.6

7 percent number?

8 A Yes, that's correct.

9 ARBITRATOR WERTHEIM: What page are you

10 on?

11 WITNESS: This is Page 26, Table 9. The

12 number is 23.6 percent.

13 BY MR. STEWART:

14 Q And that means that almost one out of

15 four, 23.6 percent of your respondents, said that they

16 used or referred to news and public affairs programs

17 on distant signals in advertising and promotion that

18 they did vis-a-vis their subscribers, is that correct?

19 A Yes.

20 Q All right, now, if you would turn over to

21 Page 28 of your testimony. In those prior tables,

22 cable operator respondents were allowed to name as

23 many different program categories as they, either

24 thought were popular with their subscribers or used in

25 advertising and promotion. Correct?

1 A That's right.

2 Q But here you tried to focus them in and

3 allow them to give only a single response as to which

4 of those categories was the most important in terms of

5 advertising and promotion. Is that correct?

6 A Yes.

7 Q Now the news and public affairs programs

8 there for 1994, shows that 4.4 percent of your

9 respondents identify news and public affairs as most

10 important. Is that correct?

11 A That is correct.

12 Q There is a wide confidence interval there

13 so that could have equally have been a zero, is that

14 right?

15 A Yes, well, not equally, this is the

16 midpoint, but yes, it certainly could have been a

17 zero.

18 Q All right, possibly a zero, possibly as

19 high as 12 percent or so.

20 A That's right. That would be the interval

21 within which we would have a certain level of

22 confidence, 95 percent confidence, that the actual

23 value would fall within that interval.

24 So the 4.4 percent that we show, plus or

25 minus 7.6 percent, it obviously can't be a negative

1 number. So on the minus side it would be zero.
2 Between zero and essentially 12 percent.
3 We can state with only a five percent
4 chance of stating incorrectly, that the actual value
5 is in that range.
6 Q Given this result, one would not conclude
7 that news and public affairs were the most important
8 programming type across the country for all cable
9 subscribers, I'm sorry, for all cable operators in all
10 different circumstances.
11 A That's correct.
12 Q Now, if you will turn over to Page 31 of
13 your testimony and look at Table 11. You will see in
14 the Column, 1992 Results Percent Allocation, that your
15 respondents allocated 12.4 percent of the total value
16 of none that were programs on distant signals to the
17 news and public affairs programs category, do you see
18 that?
19 A Yes, that's the result.
20 Q Now, is there any consistency in your
21 mind, between cable operators identifying sports as
22 the most important program category for promotional
23 purposes, and yet allocating 12.4 percent of the value
24 to news and public affairs programming?
25 A No, there is no inconsistency there at

1 all.

2 Q Why is that?

3 A Well we asked for the most important.

4 That means you had to choose one and sports is a

5 heavily promotable category, as I described yesterday

6 for a number of reasons.

7 It has a certain excitement. Its stars

8 are promoted by the leagues extensively. They endorse

9 products, they are on television, so that's a

10 promotional item.

11 That would rank them as the most

12 important. But when you then allocate again, because

13 cable operators are trying to have a mixed programming

14 and you allocated this in the signal budget, you would

15 spread that across a number of different categories,

16 with sports getting the largest amount consistent with

17 being the most important.

18 But, by no means, would you expect the

19 allocation of the dollars to match the single most

20 important kind of a statement.

21 Q So is it fair to conclude from your Table

22 11 on Page 31 that each of the different types of

23 programs represented here on a distant signal basis,

24 does contribute some value to cable operators and

25 you've measured it as indicated on Table 11?

1 A Yes. And I think its important to note,
2 I think Table 11 reflects very much, what we were
3 talking about yesterday. Its that collection of
4 programs and program types. Its the collection, not
5 any single one.
6 That is the package that is sold by cable
7 operators. And news and public affairs, as well as
8 these other categories, all have points.
9 MR. STEWART: I have no further questions.
10 CHAIRPERSON JIGANTI: Thank you, Mr.
11 Stewart. Any other examination? Counsel?
12 CROSS EXAMINATION
13 BY MR. HESTER:
14 Q Good morning, Mr. Bortz.
15 A Good morning.
16 Q Timothy Hester representing the public
17 television claimants. I have only a few questions for
18 you. I wanted first to circle back to a question that
19 Judge Wertheim asked you yesterday about the results
20 for public television as reflected in your Table 11.
21 If you could turn to that or perhaps you
22 are already on it at Page 31 of your testimony.
23 A Yes, I have it.
24 Q You see that you show there a result for
25 PBS and other television programming. I take it that

1 that reference in the chart is to PBS and all other
2 public television programming?
3 A All other public television programming,
4 yes.
5 Q Right. And the result shown there is
6 three percent. And I believe the Judge had asked you
7 yesterday, what that figure represented. And I wanted
8 simply to clarify what that three percent is as to
9 PBS.
10 And let me begin, just by having you
11 explain again how you went about developing assigned
12 values for PBS. I take it that you focused on those
13 operators that actually carried a distant PBS signal
14 during the survey here?
15 A Yes, as I discussed yesterday, although
16 the question was raised in the 1989 proceeding, as to
17 whether an adjustment should be made for systems that
18 did not carry a distant public television station
19 because they might have seen value in it, but not the
20 price of carrying that signal, might have been at such
21 a level that it exceeded the value that they saw.
22 And I, as I indicated, I understand that
23 point. But it was my understanding that what we were
24 to measure for your decision making, was to measure
25 the relative value assigned by the operator to signals

1 that they carried.

2 So, yes, this represents only systems that

3 carry their signals.

4 Q But then the three percent figure that is

5 shown here is an average from among all of those

6 respondents included in your survey. Is that right?

7 A Yes. When we build up the, essentially

8 the weighted responses. And this is weighted both by

9 the stratum that they are in, we give proper weight to

10 the stratum and we give proper weight to the copyright

11 royalty payments paid.

12 So there is sort of a two step adjustment

13 there. And its that weighted value that we have three

14 percent.

15 ARBITRATOR WERTHEIM: Just to clarify, is

16 this three percent of all those respondents who

17 included some PBS programming, or its three percent of

18 all those surveyed, whether they actually carried it

19 or not.

20 WITNESS: This would be, that on a

21 weighted basis, cable operators would assign three

22 percent of a fixed program budget to public

23 broadcasting. Now how do we get that?

24 Its not three percent of all of those who

25 responded, because that would be a totally unweighted

1 calculation. What we do is that we sample. And so
2 within each stratum, we have to give the system the
3 appropriate weight.
4 So we adjust for, let's say we sample one
5 of seven systems. Then, in a particular stratum.
6 Then essentially we would get, we would say that this
7 response is weighted, is representing seven systems.
8 And then we weighted --
9 ARBITRATOR WERTHEIM: Yes, but I
10 understand that would be true whether they actually
11 carried PBS or not. You still have the weighted
12 study.
13 WITNESS: They were only asked to allocate
14 the values to, on programming to signals that they,
15 that particular system actually carried.
16 ARBITRATOR WERTHEIM: Now what happens if,
17 for your purpose, to the response by a system that
18 says we didn't carry any PBS. Do they get counted in
19 as zero in arriving at what is ultimately this three
20 percent figure?
21 WITNESS: That's correct, they get counted
22 as zero.
23 BY MR. HESTER:
24 Q And let me see if I can just confirm this
25 with a simple example, if you will just bear with me

1 here. I know the math isn't going to be exactly
2 right.
3 But if we have here eight respondents in
4 your survey, assume these are the only two that
5 actually carried a public television signal during the
6 survey year. And assume these are the values they
7 gave.
8 These other respondents, I take it, would
9 be assigned a zero value, is that the way you --
10 A That's correct.
11 Q That was the methodology. And then in
12 computing the average or the share that's shown in
13 your Table 11, you have taken the average across all
14 of those survey respondents, not simply those that
15 actually recorded a value for PBS?
16 A Conceptually, except that we wouldn't just
17 average the response because each system would be
18 assigned a weight due to the stratum that it's in and
19 due to the amount of royalties that they pay.
20 So we would make an adjustment to the ten
21 based on the stratum sampling and the royalties that
22 are paid by that system and similarly to the 12.
23 Of course, all the zeros are zeros. So
24 that would be the process. But conceptually yes, that
25 would be the approach subject to the weight.

1 Q So your point is that there would be a
2 weighted average taken from among those survey
3 respondents?
4 A Yes, that's correct.
5 Q But, the weighted average includes all of
6 the zero values that are assigned?
7 A That's correct.
8 Q And, for instance, in 1992, do you know
9 how many of the survey respondents, approximately,
10 were assigned a zero value for PBS?
11 A I don't recall off the top of my head,
12 what date, what the number was. It was a large
13 number.
14 Q It was substantially more than half of the
15 survey respondents were assigned a zero value?
16 A That's correct.
17 ARBITRATOR FARMAKIDES: When you weight
18 these, do you use formulas?
19 WITNESS: Yes.
20 ARBITRATOR FARMAKIDES: They are all
21 consistent?
22 WITNESS: Yes, the formulas are presented.
23 ARBITRATOR FARMAKIDES: They don't change.
24 The formulas do not change? When you weight these
25 various factors, are you --

1 WITNESS: Oh, the weighting for a given
2 system is the same for each program element. So if we
3 are weighting the response for sports and then we make
4 an adjustment for the stratum and an adjustment for
5 the royalties paid, that would be, that adjustment
6 would be the same for sports, for movies, for
7 syndicated, for public television.
8 ARBITRATOR FARMAKIDES: Okay, and that,
9 okay fine, that's part of the question. The other
10 part is that adjustment is really an equation that you
11 have devised. Is that equation consistent?
12 WITNESS: Yes.
13 ARBITRATOR FARMAKIDES: Okay.
14 ARBITRATOR WERTHEIM: Mr. Bortz, just to
15 follow through on Mr. Hester's little table there, if
16 we ignore the weighting for the moment.
17 WITNESS: All right.
18 ARBITRATOR WERTHEIM: Would I be correct
19 in understanding that what you do is for those eight
20 systems, you add up your total allocated for PBS you
21 get a total of 22, you divide that by eight and your
22 result would be something like 2.7?
23 WITNESS: That's correct. Let's just
24 assume for the purposes of this example that this is
25 after the weighting.

1 MR. HESTER: Maybe I can even make it
2 easier if I change this to 14, I'm really clever.
3 MR. GARRETT: Maybe change it to seven.
4 MR. HESTER: I like 14 better. Go ahead.
5 WITNESS: So, let's assume that this has
6 been through the weighting process and yes we would
7 add the ten, the 14 and get 24 and we would divide by
8 eight and get three.
9 ARBITRATOR WERTHEIM: Did you get three or
10 33?
11 WITNESS: Three.
12 MR. HESTER: Three, it would be --
13 ARBITRATOR WERTHEIM: Wouldn't it be 33
14 percent?
15 BY MR. HESTER:
16 Q The sum of, let me see, Mr. Bortz, the sum
17 of these eight observations would be 24?
18 A Twenty-four.
19 Q We have ten, 14 and then six zeros,
20 summing to 24. And then you would divide that by
21 eight to come up with a result for PBS of three?
22 A Of three, in essence three percent of the
23 program budget.
24 Q Oh, I see. And let me clarify that these
25 are all in percentage terms?

1 A Yes.

2 Q So you are taking an average of the

3 percentage allocations?

4 A Yes. Let's just keep in mind that we are

5 working with a simplified example here, not going

6 through the weighting process. But this example, I

7 think, is very illustrative of the way the number is

8 derived.

9 Q Now, as for all other programming

10 categories listed in Table 11, aside from PBS and

11 Canadian programming, am I right that there was no

12 automatic zero value assigned to any programming

13 category in the survey methodology?

14 A Other than those two.

15 Q Other than those two.

16 A That is correct.

17 Q Let me ask you to look at the difference

18 between the 1989 and 1992 results for PBS in Table 11.

19 You see that the figure for 1989 is 1.3?

20 A Yes.

21 Q And obviously the figure that we have been

22 discussing for 1992 is 3.0, correct?

23 A That's correct.

24 Q Is that a statistically significant

25 increase in your judgement?

1 A Yes, yes it is.

2 Q And could you explain why it is a

3 statistically significant increase?

4 A Well, its hard to identify all of the

5 reasons, but I think one that is most obvious is that

6 there was in the 1989 survey and not in the others

7 that Mr. Trautman will be going through in 92.

8 But for some reason, in the sample that

9 was drawn in 1989, the systems that we had under

10 represented. The universe of carriage in public

11 stations. And in that proceeding, I believe that was

12 discussed.

13 And we, I agreed that during that

14 testimony that an adjustment would be appropriate to

15 account for the under representation in the sample.

16 In 1992, the sample almost exactly matches the

17 universe of carriage.

18 Q Is it also likely that the change reflects

19 a change or an increase in cable operator preference

20 or evaluation of public television programming?

21 A I think it could. Certainly because the

22 adjustment that we made in 1989 didn't bring it up to

23 a three, so we still have some further increase and I

24 would expect that that would be an element of it.

25 Q So even after taking account of the

1 adjustment for the sample that you just mentioned,
2 would you agree with me that the result for 1992, is
3 a statistically significant increase over 1989?
4 A Well let me say that I think that it
5 represents an increase and it might very well be
6 statistically significant, but that's not something
7 that we've tested.
8 Q Okay. And let me ask you to --
9 ARBITRATOR WERTHEIM: Do you have a figure
10 for your adjusted 89 allocation?
11 WITNESS: Its been a number of years since
12 I've looked at that. We could certainly provide that
13 figure from my 1989 testimony.
14 MR. HESTER: Your Honor, I believe its
15 also referred to in the 1989 allocation decision of
16 the copyright tribunal.
17 WITNESS: To give you some, just a very
18 general idea and I hope you wouldn't hold me to that
19 number, the 1.3 I believe, came up somewhere in the
20 range of 1.8 or 1.9 after the adjustment. Something
21 like that.
22 BY MR. HESTER:
23 Q So if the 1.3 came up to the range of 1.8
24 or 1.9 it would still have a confidence interval
25 roughly of 0.6?

1 A That's correct.

2 Q So that an increase to three would be

3 beyond the confidence interval, is that right?

4 A Yes. Although I would caution that I am

5 testing my memory to recall that 1.8 or 1.9, so.

6 Q Let me ask you if you can look back please

7 to the Table 9 results shown on Page 26.

8 A The bottom of Page 26?

9 Q Yes, Table 9. Do you also see here a

10 statistically significant increase in those operators

11 who mentioned PBS and public television programming as

12 something that they used in advertising and promotion?

13 A Yes.

14 Q And could you explain why those results

15 are statistically significant?

16 A Well, as you can see, the 0.7 that

17 occurred in 1989, had a confidence interval about it

18 of .6. And so we would, with 95 percent confidence,

19 assume that the real number was between .1 and 1.3.

20 Clearly 8.1 is substantially above that.

21 Q And for the record, for 1992, you show

22 that PBS was mentioned 8.1 percent of the time, among

23 those who used distant signal programming for

24 advertising and promotional purposes?

25 A That's correct.

1 Q And in 1989 the number was 0.7 percent?

2 A That's correct.

3 Q Let me ask you also to look back at Table

4 7, please, on Page 24 of your testimony.

5 A Yes.

6 Q And, again, could you explain briefly what

7 this Table 7 is showing?

8 A Well, again, it shows a very significant

9 increase in the category of PBS and other public

10 television programming.

11 From 1.1 percent in 1989, to 7.3 percent

12 and clearly that would be statistically significant.

13 Q So almost an increase by a factor of seven

14 in that measure?

15 A Yes, a substantial increase.

16 Q And this table is intended to measure the

17 types of distant signal programming that cable

18 operators identified as most popular among there

19 subscribers?

20 A Yes. And in that the operator can list

21 more than one category as most popular. So, as you

22 will see, if you were to add up that column under

23 Percent Mentioned as Most Popular on Page 24, it will

24 add up to more than 100 percent.

25 And that's because the number of operators

1 might say, for example, that movies and public
2 television were most popular. And so both would be
3 noted. So the responses on this question can total
4 more than 100 percent.
5 CHAIRPERSON JIGANTI: You saved me the
6 last question that I was going to ask you.
7 A Yes.
8 BY MR. HESTER:
9 Q Mr. Bortz, on your Table 11 again at Page
10 31. One more question on that for you. Could you
11 explain what is meant by the confidence interval shown
12 here with respect to PBS and public television
13 programming?
14 A Well, it would say that, again, with 95
15 percent confidence or with only a five percent chance
16 of being incorrect, we can assert that the actual
17 value and we, had we interviewed every system in the
18 universe, would fall between 1.6 percent, which is the
19 three minus 1.4 and 4.4 percent.
20 ARBITRATOR WERTHEIM: You are referring
21 now to the 92 figures.
22 WITNESS: The 92 figure, yes. That would
23 be 3.0 plus or minus 1.4 percent. And, you know, the
24 outcome is centered around a 3.0 and we would only
25 have a five percent chance of making an error in

1 asserting that it falls within the overall bounds of
2 1.6 to 4.4 percent.
3 BY MR. HESTER:
4 Q And so within your 95 percent confidence
5 range, the value for PBS could be as high as 4.4?
6 A That's correct.
7 ARBITRATOR WERTHEIM: But even after you
8 are applying your confidence interval that's still
9 only within a 95 percent degree of confidence.
10 WITNESS: That's correct, that's correct.
11 And you know there is a five percent chance that it
12 could fall outside those boundaries.
13 BY MR. HESTER:
14 Q Let me ask you to turn to Page 13 of your
15 testimony, please. You see at the bottom of the page
16 there is a sentence under the Heading B, Determinants
17 of Program Value that reads, in making decisions about
18 which services to carry, many cable operators are
19 faced with channel capacity constraints.
20 A Yes, I do.
21 Q And could you explain what you mean there
22 by channel capacity constraints?
23 A Okay a system, cable systems, when built
24 can pass only a certain number of signals with an
25 adequate signal quality. So that's the capacity of

1 the system.

2 Sort of a state of the art, until very

3 recently, has been to have in the range of 50 to 60

4 channels, what we call 450 megahertz systems. And

5 what we see is that about a third of the cable

6 subscribers are on systems that have that capacity of

7 54 channels or more.

8 And about 60 percent of the subscribers

9 are on systems with capacity between 30 and 53. Now,

10 there are certain signals that are mandated to be

11 carried by the FCC rules and so that absorbs some of

12 that capacity.

13 Typically in agreeing to a franchise with

14 a city, they will commit some other channels.

15 Remember we mentioned access channels yesterday, that

16 go for public access, education access, governmental

17 access. And those are committed.

18 So you take the total channel capacity,

19 subtract what they have to carry, and the rest is

20 where they have choice as to what they carry.

21 And since there are 100 choices, clearly

22 virtually every system in the country has to make a

23 choice because they are constrained by not having

24 enough channels to carry all the networks or signals

25 that are available.

1 Q And how does the fact of capacity
2 constraints relate to the cable operators decision
3 about importing distant signals?
4 A Well I think it is certainly a factor.
5 You consider capacity constraints and I'm sure they
6 also consider what the copyright obligation would be
7 and what the other channel alternatives are.
8 Q And is that what you mean by your
9 reference on Page 14, if you look at the top paragraph
10 on Page 14, where you refer to the opportunity costs
11 of adding new programming services?
12 A That's exactly it. And when you add, when
13 you decide to carry a particular service, it means
14 that you have also decided not to carry the other
15 services.
16 Q So that when a cable operator decides to
17 import a distant signal, its incurring an opportunity
18 cost in addition to whatever royalties it has to pay
19 to the copyright office?
20 A That's correct.
21 Q And that opportunity cost consists, I take
22 it, first of foregoing alternative programming?
23 A Yes.
24 Q And another element of the opportunity
25 cost with respect to a distant signal would be that

1 the cable operator may be foregoing advertising
2 revenue?
3 A That's correct. If he puts on a distant
4 signal, he would not be putting on a cable network
5 where maybe he could sell some advertising.
6 Q And is it true that on essentially all of
7 the cable networks, the cable operator has some
8 opportunity to sell advertising space?
9 A Well, that's true in theory, but the fact
10 is that most operators sell on only a minority of the
11 cable networks that they carry.
12 All the cable networks in order to get
13 carriage, will say we will give you two minutes of
14 advertising per hour.
15 But the fact is that a lot of these
16 networks are, don't get that much viewing. When you
17 go out to local advertisers they tend to say no we
18 want to go with the popular ones that we know.
19 And there are exceptions to it. And there
20 is a cost for having the technical equipment in the
21 systems to do what we call insertion. Which is if you
22 have those two minutes an hour.
23 When you get to that point where they are
24 allowing the local advertising or local avails to be
25 used, you really need automated equipment to click

1 your ad off.

2 Okay, you've got a national feed coming

3 out and now suddenly its time for local advertising.

4 You can't have somebody running around with a video

5 tape and put it in and start it.

6 First of all it would look sloppy and it

7 just wouldn't work well. So that's automated

8 equipment. What we find is, that typically today, say

9 a 60 channel system might carry 40 cable networks.

10 They might do ad insertion on only eight or ten of the

11 40.

12 So its not always a cost by not carrying

13 a cable network.

14 Q The, so in terms of identifying

15 opportunity costs, your point is that the principal

16 opportunity cost would be the foregone alternative

17 programming?

18 A Yes.

19 Q And, then, as to at least some cable

20 networks, there would be another opportunity cost of

21 foregone advertising revenue?

22 A Yes, I think that would be relatively

23 small. Because if it is a network that was right on

24 the bubble, that they decided not to carry, its

25 probably not one that has much potential for

1 advertising revenue.

2 Q Let me ask you to turn to Page 10 of your

3 testimony, please.

4 A Yes, I assume you are talking about the

5 top of Page 10?

6 Q Yes, talking about the top, not the

7 material that was stricken. In this paragraph you say

8 that cable television has extended its reach and

9 captured the interests of consumers in major markets

10 by offering a large number of channels featuring a

11 wide variety of programming types. Do you see that?

12 A Yes, yes.

13 Q And then in the next sentence you say, in

14 addition to improved reception, the choice and variety

15 provided by cable television has contributed to the

16 industry's substantial growth. Do you see that?

17 A Yes.

18 Q Can you explain why it is that choice and

19 variety have fueled the growth of cable television?

20 What is it about choice and variety that is important?

21 A Okay, we are looking here at the period

22 starting in the mid 70's. At that point, most of the

23 rural areas that were economically feasible to bill

24 for cable in order to deliver, say, the broadcast

25 signals, had been built.

1 To move into the larger television
2 markets, where typically people would have three or
3 four or five over the air stations, you had to have
4 some alternative choices in order to encourage them to
5 subscribe.
6 In the early years, they had some, it was
7 HBO and similar kinds of services and as we mentioned,
8 early on, ESPN was there, WTBS was there. And that
9 helped.
10 But it was still very difficult to get
11 people to take cable television if they had a lot of
12 signals available over the air.
13 And so they added more and more channels
14 with more variety and more choices so that they could
15 expand their penetration in the market place.
16 Q And is it still, in your judgement, true
17 today, that variety and choice are very important in
18 terms of attracting and retaining subscribers to cable
19 television?
20 A Its absolutely fundamental to the
21 business.
22 MR. HESTER: Thank you. Those are all the
23 questions I have.
24 CROSS EXAMINATION
25 BY MR. GOTTFRIED:

1 Q Good morning, Mr. Bortz, Barry Gottfried
2 again on behalf of the Devotional Programmers.
3 A Good morning.
4 Q If I can turn your attention, sir, for the
5 moment again to Page 31 of your testimony. The table.
6 And if you will look at the, I want to focus on the
7 devotional column and the difference between 1989 and
8 1992.
9 A Yes.
10 Q I guess its shown on this chart, but also,
11 I just wanted to look at the confidence intervals, if
12 we can, just for a second. I think in 1989, correct
13 me if I'm wrong, 1992, the mid point of the range is
14 3.9, is that correct?
15 A That's correct.
16 Q But if I look at the confidence interval,
17 what does that tell me about the 95 percent confidence
18 range?
19 A Again, within a 95 percent confidence we
20 would assert that the real number, if we had looked at
21 the whole universe, would be between 3.3 and 4.5
22 percent.
23 CHAIRPERSON JIGANTI: Mr. Gottfried, I'm
24 sorry, I missed the exhibit.
25 MR. GOTTFRIED: I'm sorry, its Table 11 on

1 Page 31.

2 WITNESS: Page 31 table and we are looking

3 at the Devotional and Religious programming.

4 MR. GOTTFRIED: I'm just trying to focus,

5 Judge Jiganti, on this difference that shows up on the

6 chart here, it kind of stares you in the face.

7 ARBITRATOR WERTHEIM: And what you are

8 doing --

9 MR. GOTTFRIED: 4.3 and 3.9, just going

10 over the confidence intervals on the devotional

11 programming.

12 ARBITRATOR WERTHEIM: Okay, so the range

13 in 89 --

14 MR. GOTTFRIED: Well, we did 92, first.

15 The range in 92 is somewhere between 3.3 and 4.5.

16 ARBITRATOR WERTHEIM: Is that right, Mr.

17 Bortz?

18 WITNESS: That's correct.

19 BY MR. GOTTFRIED:

20 Q And how about for 1989, Mr. Bortz?

21 A Well, it would 4.3 percent plus or minus

22 .9, so it would be between 3.4 percent and 5.2

23 percent.

24 Q So is it fair to say that, well would you

25 agree with me that there is no statistical --

1 ARBITRATOR FARMAKIDES: I'm sorry, I think
2 that's incorrect. That 43 should be, 4.3 minus .9,
3 isn't it?
4 WITNESS: You're right, 4.5.
5 ARBITRATOR FARMAKIDES: It should be 4.5.
6 WITNESS: Or 3.5.
7 ARBITRATOR FARMAKIDES: 3.5
8 WITNESS: .9, 3. --
9 ARBITRATOR FARMAKIDES: 4.3 minus .9,
10 gentlemen, isn't that it?
11 WITNESS: Yes, 3.4.
12 ARBITRATOR FARMAKIDES: Okay. You have it
13 way up there.
14 MR. GOTTFRIED: I have the bottom, Your
15 Honor, I put the bottom --
16 ARBITRATOR FARMAKIDES: All right, sorry.
17 MR. GOTTFRIED: I put the top on the
18 bottom and the bottom on the top. I'm sorry, Judge,
19 it was just that I wanted to show that it was
20 somewhere in between 3.4 and 5. --
21 BY MR. GOTTFRIED:
22 Q Is it fair to say, Mr. Bortz at least as
23 I look at it, there is not statistical difference
24 between these two numbers?
25 A Right, we haven't done the, there is a

1 particular test that you would do there, but what we
2 have is that they are overlapping, the confidence
3 levels.
4 So the universe population could have been
5 the same in the two years. If we did the whole
6 universe. With 95 percent confidence, looking at both
7 of them, it could have been actually the same value in
8 89 as it was in 92. It very well may not have been.
9 Q But at least it is fair to say, that for
10 either year, we can say that within 95 percent
11 confidence, the cable operators thought that at least
12 these two numbers, 3.3, 3.4, I would think that we
13 would be at more or less the same, wouldn't we?
14 A Yes.
15 Q And that at least, they thought at least
16 that percentage of the value, in both years, in
17 attributable to the devotional programming?
18 A That's fair to say, yes, I would agree
19 with that.
20 ARBITRATOR WERTHEIM: Excuse me, I have a
21 question about the figures for 89. As I read what you
22 have up there, you say that the actual range would
23 have been 3.4 to 5.2?
24 WITNESS: Yes, that's 4.3 percent which is
25 the --

1 ARBITRATOR WERTHEIM: Okay.

2 WITNESS: Okay, plus or minus .9.

3 ARBITRATOR WERTHEIM: Now, but the 4.3 is
4 not the mid point as in 92, the mid point coincides
5 with the figure you reported, the 3.9. Can you
6 explain that?

7 WITNESS: I'm not sure I understand the
8 question.

9 ARBITRATOR WERTHEIM: If you just look at
10 the chart, Mr. Gottfried has put in the middle, the
11 figure actually reported. 4.3 for 89 and 3.9 for 92.

12 The 3.9 for 92, actually represents the
13 mid point between your range of 3.3 and 4.5

14 WITNESS: Yes.

15 ARBITRATOR WERTHEIM: However, the figure
16 4.3 in 89 is not the mid point.

17 WITNESS: Well it is the mid point for,
18 see we had a different confidence interval, it is the
19 mid point between 3.4 and 5.2.

20 MR. GOTTFRIED: Its .9

21 ARBITRATOR WERTHEIM: Oh, .9, okay.

22 WITNESS: Simply because of the
23 differences in the sample, we have a somewhat
24 difference confidence zone.

25 ARBITRATOR WERTHEIM: Okay, thank you,

1 that helps.

2 BY MR. GOTTFRIED:

3 Q But, Mr. Bortz, I don't want to belabor

4 the point that Mr. Stewart made, but if we look at

5 Page 28, Table 10, and you look at devotional

6 programming in both 1989 and 1992.

7 I take it that the line means nobody

8 reported that devotional programming was the most

9 important distant signal programming for advertising

10 promotional purposes.

11 A That's correct.

12 Q And just a couple, I believe that you told

13 Mr. Stewart that it is not inconsistent with your

14 findings on Table 31, is that correct?

15 A It is not inconsistent, because in this

16 question we want the single most. So, the fact that

17 some get no ranking is not at all indicative of the

18 answers to Question 4, because there can only be one

19 most important in each system.

20 Q So the fact that the devotional

21 programming wasn't the most, is not an indication that

22 it had no value.

23 A That's correct.

24 Q Okay, let me turn you just for a moment to

25 Page 34 of your testimony. And I think that we've

1 already established on voir dire, Mr. Bortz, that you
2 are no expert on devotional programming and you've
3 never worked for us or done anything for us.
4 So I am not going to ask you any
5 questions, particularly about devotion, I just want to
6 ask you some generic questions.
7 You say, in Paragraph A, the fourth line
8 down, that the key here is what kind of programs
9 attract and retain subscribers. Is that right?
10 A That's correct.
11 Q And I assume that you are saying that any
12 program that serves to do has a value to the cable
13 operator.
14 A Yes.
15 Q I think you said yesterday --
16 A Page 34, the fourth line down in the first
17 paragraph.
18 Q Its sole value lies on its ability to
19 contribute to the operators efforts to attract and to
20 save fact. I believe the point there was that there
21 was no advertising, is that correct.
22 A That's correct.
23 Q I think you said yesterday and correct me
24 if I'm wrong. The key was to get programs in which
25 people were involved on a continuing basis. Did I

1 hear you correctly?

2 A Involved certainly, yes, that's right, the

3 continuing basis, I don't know if I may have used that

4 term, but yes, it is something that is important.

5 There is an intensity of interest, and

6 that intensity of interest is likely to have somebody

7 decide to subscribe. There may be plenty of things

8 that they are willing to watch, but if, but they

9 wouldn't have subscribed to get.

10 Once they subscribe and you pay the $25.00

11 a month to the cable operator, you've got 50 channels.

12 Now you may watch some of those channels that never

13 would have induced you alone to subscribe.

14 May be you've got it because you wanted to

15 watch sports. Or maybe you got it because you wanted

16 to watch public television. Or maybe you got it

17 because you wanted to watch movies.

18 That doesn't mean that you won't watch the

19 other sources like a syndicated series. You will

20 watch it, but that's not why you are paying the

21 $25.00. And if you didn't have the sports, even

22 though that syndicated series was still there, you

23 might just, you might discontinue.

24 And I think certainly with devotional

25 programming, it has a special, its a special niche,

1 with an intensity of interest.

2 Q And further down in the next paragraph

3 down, you talk about its new, first run, do you see

4 that line, the second line of the next paragraph?

5 A Yes.

6 Q Its new and first run. And, again, just

7 generically, any program that is new and first run is

8 the kind of thing that you are talking about there,

9 not just sports programming, isn't that right?

10 A Well, the context here is sports. Its not

11 enough for something just to be new and first run. I

12 mean, one of the things that a lot of channels do, not

13 have very low programming budgets.

14 Is they spend hours with talk shows.

15 Maybe not even very good talk hosts, but you can fill

16 a hell of a lot of time, spending very little money

17 with talk shows.

18 Talking heads, low production costs. So,

19 no, I would not generalize it. Here, I am referring

20 specifically to sports.

21 Q All right, and if we could go back to Page

22 10 for a moment. What you were talking to Mr. Hester.

23 And here, I have to do something for my partner, Mr.

24 Harrington, who showed up the first day, because he

25 never would forgive me if I didn't.

1 Do you see where you talk about the choice
2 and variety provided by cable television. And you
3 were talking to Mr. Hester about that a little while
4 ago.
5 A Yes.
6 Q I don't know if you are aware of this, but
7 early on in this proceeding, Mr. Harrington,
8 introduced a metaphor called a program bouquet, is
9 what the cable operators wanted.
10 And I wanted to get, if you would agree
11 that that's what we are talking about here, a bouquet
12 of programs to serve various tastes and niches.
13 A It is. It actually is a jargon term in
14 Europe. We work with European cable operators and
15 they often use the term of bouquet.
16 MR. GOTTFRIED: I have nothing further,
17 thank you. Mr. Bortz.
18 CHAIRPERSON JIGANTI: Thank you, Mr.
19 Gottfried, are there any other --
20 MR. SATTERFIELD: The Canadian claimants
21 are, would really prefer to wait and withhold our
22 questions --
23 ARBITRATOR WERTHEIM: Identify yourself
24 for the --
25 MR. SATTERFIELD: Kendall Satterfield of

1 the Canadian claimants.

2 MR. STEWART: Mr. Chairman?

3 CHAIRPERSON JIGANTI: Yes, Mr. Stewart?

4 MR. STEWART: John Stewart. Just so the

5 record is clear, and although Mr. Lane characterized

6 us as supporting the Boards study, we believe that we

7 are not sponsors nor involved in the preparation of

8 this study and Mr. Bortz is not our witness.

9 We are happy to accommodate Mr. Lane, but

10 we do not support the survey methodology and results

11 and Mr. Bortz is not our witness.

12 CHAIRPERSON JIGANTI: The record speaks

13 for itself on that issue. One thing that I neglected

14 to do with Mr. Hester, Mr. Hester you were referring

15 a great deal to that chart.

16 MR. HESTER: Yes.

17 CHAIRPERSON JIGANTI: Do you want that

18 chart in the record? Because as it stands right now,

19 it is not in the record and somebody reading the

20 record will probably have a little bit of difficulty.

21 MR. HESTER: Maybe just for easy reference

22 I would propose to reduce it into a single piece of

23 paper and submit it as an exhibit. Would that be

24 acceptable to the panel?

25 CHAIRPERSON JIGANTI: Well, you can do it

1 --

2 MR. HESTER: I'm to just include that

3 piece of paper. I'm just concerned its unreadable.

4 CHAIRPERSON JIGANTI: Its up to you as to

5 what you want to do.

6 ARBITRATOR WERTHEIM: Well, I think your

7 suggestion is a good one, because at the end of this

8 proceeding we are required to transmit the entire

9 record along with our decision.

10 And its a lot easier to have it included

11 in the record if you were to reduce it to page size.

12 MR. GARRETT: No one can read his writing

13 anyway.

14 MR. HESTER: Well, I will undertake to do

15 that over the, at least by lunch and I can submit and

16 confirm with Mr. Bortz that it is accurate before Mr.

17 Lane closes.

18 ARBITRATOR WERTHEIM: How do you want to

19 have it marked?

20 MR. HESTER: I'll propose to mark it as

21 PBS Exhibit 1X.

22 CHAIRPERSON JIGANTI: And as it stands

23 right now, there is nothing done, you will do

24 something in the future?

25 MR. HESTER: I will undertake it.

1 (Whereupon, above-mentioned
2 document was marked as PBS
3 Exhibit 1X for identification.)
4 CHAIRPERSON JIGANTI: Okay, its up to you.
5 Okay, Mr. Lane?
6 MR. LANE: Thank you, Mr. Chairman.
7 CROSS EXAMINATION
8 BY MR. LANE:
9 Q Mr. Bortz, I would just like to clear up
10 a couple things from yesterday. Do you remember there
11 was a discussion about passive and aggressive --
12 A Superstations.
13 Q Yes, and that is what I would like to
14 clear up. Isn't that, when we talked about passive
15 and aggressive in the distant signal marketplace, we
16 are just talking about superstations, correct? We are
17 not talking about cable networks?
18 A We are talking about superstations.
19 Q Only. And the difference, could you just
20 explain why people think WTBS is an aggressive
21 superstation and for example WGN is not, is a passive
22 superstation?
23 A Well an aggressive superstation actively
24 promotes its carriage and in particular its carriage
25 nationwide. TBS has always done that with a very high

1 profile presence in the cable industry.

2 You know, Ted Turner always asserts that

3 he was cable before cable was cool. And as a pioneer,

4 introducing TBS in the late 70's, he certainly was

5 ahead of the curve.

6 WGN, in my opinion, is also an aggressive

7 superstation. Seeking various sports rights, spending

8 obviously millions of dollars in litigation to make

9 sure that it keeps those sports, that particular sport

10 on its station.

11 And again, you will see an indicator of

12 aggressive in terms of putting out a feed for which

13 there are no syndicated exclusivity problems.

14 The passive superstation or passive

15 station or independent station, is one that really

16 does little or nothing. Where do you draw the line?

17 There could be a grey area, but typically they've got

18 programming.

19 Some of it might be cleared to be carried

20 nationally, others may have to be blocked out. They

21 carry the programming solely based on the local

22 economics of carrying that program.

23 But under the rules, a common carrier can

24 pick up their signal and take it anywhere and market

25 it. And that's, that I would say would be a passive

1 superstation.

2 MR. LANE: Thank you. Another question

3 that came up yesterday and just to clarify. Network

4 affiliates, if they are carried as a distant signal,

5 there is a royalty fee attached to that, is that

6 correct?

7 A That's correct.

8 Q So, the cable networks, when they are

9 carried by a cable system, there is no section 111,

10 compulsory license royalty fee attached to them,

11 correct?

12 A That is correct.

13 Q And cable networks essentially pay so many

14 cents per subscriber, I'm sorry, the cable system pays

15 so many cents per subscriber per month to get a cable

16 network. Is that correct?

17 A That is the typical arrangement.

18 Q And that's totally outside of anything

19 here in Washington or any statutory provision, is that

20 correct?

21 A Yes.

22 Q Thank you. Mr. Bortz, would you turn to

23 Appendix A of your testimony?

24 MR. GERSCH: I'm sorry, what page?

25 MR. LANE: Page 39.

1 WITNESS: Yes.

2 BY MR. LANE:

3 Q And you've listed on your resume, have you
4 not, various assignments that you've done for a whole
5 bunch of parties, correct? And you've testified about
6 them yesterday?

7 A Yes.

8 Q Have you ever used the same group of
9 respondents that is found in the 1989 or 1992 surveys
10 that you are presenting here, for any of these
11 purposes?

12 A The same group of respondents?

13 Q Yes.

14 A We certainly have contacted cable system
15 operators, but the sample that we drew was a sample
16 drawn solely for this study.

17 Q And have you ever used the results of either the
18 1989 or 1992 studies that you are presenting here, for
19 any other purpose than could be presented here?

20 A No.

21 Q Have either the 1989 of 1992 studies that
22 you present here been audited by any survey research
23 group?

24 A No.

25 Q Have you ever published the results in any

1 scholarly journal or anywhere other than in testimony
2 before this proceeding?
3 A No, I have not.
4 Q Have they ever been reviewed by anyone
5 other than the people with who you have mentioned that
6 you work with?
7 A Those are the people who review it, there
8 has been no other review.
9 Q And counsel?
10 A Certainly in the proceedings of 89 that
11 you have included.
12 Q Could you turn to Page 8 of your testimony
13 please. I am looking in the second paragraph under
14 the A section, and about the fourth line you refer to
15 cable programming ventures.
16 Could you define what you mean by that
17 term?
18 A These would be cable program networks,
19 both existing and proposed.
20 Q And the line to me, in fact almost
21 immediately below that, you referred to program
22 concept. Could you define what that is?
23 A Yes, that would be an entity coming to us
24 and saying we are thinking about pursuing a cable
25 network and here are some of the ideas that we have

1 for that network.

2 We would then, essentially talk to cable

3 operators and cable marketing people to see what their

4 interest would be in that concept as well as other

5 concepts.

6 Q And in the line immediately below that,

7 you talked about individual cable systems

8 subscribership. Do you see that?

9 A Yes.

10 Q Can you define what you mean by that term?

11 A This would be, it says the impact on

12 individual cable system subscribership of certain

13 cable network programs. Did the addition of a certain

14 type of programming to a cable network increase

15 subscribership levels, would be an example of that.

16 Asking that question and ascertaining

17 whether there was, indeed, an increase in the level of

18 subscriber due to certain programming.

19 Q And what kind of valuations of cable

20 programming from the subscriber perspective do you do,

21 or did you do or have you done?

22 A Again this is surveys of both operators

23 and subscribers as to how they would allocate their

24 interests into different types of programs.

25 I think I referred yesterday to the fact

1 that this is used often by cable operators in
2 determining, well we are going to expand our system
3 from 55 channels to 70, now what do we want to add.
4 The question to ask then is, is what is
5 your interest in certain kinds of programming. Now do
6 you do this for the individual cable system, or do you
7 do this for MSO's?
8 A The work will be done, sometimes for
9 MSO's, sometimes if the system level is focused at the
10 system level.
11 The question is what to add to that
12 system. I don't think you want, say an executive at
13 Time Warner cable in New York, deciding what would be
14 the appropriate channels to add to a system in Texas.
15 Q And how many of these have you done,
16 roughly?
17 A In terms of looking at the cable
18 programming and subscriber and operator perspective?
19 Q Just the subscriber perspective, please.
20 A I couldn't tell you, its certainly
21 several.
22 Q More than ten?
23 A Well, if we are including the operators
24 perspective of the interest of their subscribers then
25 it would be more than ten I think.

1 Q What about just subscribers and then we
2 will get into the operator perspective with
3 subscribers. We can differentiate those two and add
4 them up. Tell us what they are individually.
5 A I could certainly provide that to you, I
6 can't recall at this point.
7 Q Now if you turn to Page 9, under C, we
8 talked about survey in the third line, survey research
9 studies regarding consumer demand for sports
10 programming. Do you see that?
11 A Yes.
12 Q And what did you mean by that? What type
13 of studies was that.
14 A Well, we have again looked at the demand
15 for various channels and that includes sports
16 channels. We have done a lot of work with ESPN
17 regarding its programming in particular, and the
18 demand for certain types of programming.
19 Q And is this the, what is the term, the
20 individual cable system subscribership type of study.
21 A This was done at the system level, the
22 system operator level.
23 Q And was that included in the number of
24 studies you mentioned earlier?
25 A Yes.

1 Q So all these studies and I'm not holding
2 you to an exact number, but somewhere around ten.
3 A As I say, I can total those up and let you
4 know that, but I can't tell you for sure what it
5 means.
6 Q Could you turn to Page 12 in your
7 testimony please. On the bottom of the page, you have
8 a table of, these are all cable networks, are they
9 not?
10 A Yes they are.
11 Q And how did you determine which ones to
12 list in there?
13 A These are the major networks that you will
14 find. I don't know if it is exclusively in the top,
15 say top 15. But these are the highest popular,
16 broadly distributed.
17 Q Do you get these from a list someplace?
18 A That will only work with cable, this --
19 Q No, but I meant, I'm sorry.
20 A Yes, I think that --
21 Q You said they were most popular and I was
22 wondering if there was a list like that somewhere and
23 you just took it from that list.
24 A I think there is a list, there are lists
25 of cable networks, their total revenues, and it

1 probably came from a list of that nature.

2 Q So you think this is based on total

3 revenues?

4 A And circulation, as we say, widely

5 distributed. In other words the number of houses that

6 these reach. A lot of cable network evaluation is

7 based on how many household do you get to.

8 Q I want to refer, if you will, to a

9 sentence that Mr. Hester talked about on Page 13.

10 That was in the second full paragraph, ways to

11 encourage subscriber growth in areas where local

12 broadcast signal was adequate.

13 I take it by that, you meant, well we've

14 referred to as the larger are in the top 50 or to 100

15 markets. Is that a fair statement?

16 A Yes that is.

17 Q And would you include regional sports next

18 works in the type of service that would encourage

19 subscriber growth in those areas?

20 A Yes. Particularly if they are sold on a

21 basic, as part of the basic package, rather than as a

22 pay service. And increasingly over the years, most

23 cable sports networks have become basic cable

24 networks.

25 Q Can we turn to Page 14, please?

1 CHAIRPERSON JIGANTI: Mr. Lane, would this
2 be a convenient time in your presentation?
3 MR. LANE: If it is for you, it is for me.
4 CHAIRPERSON JIGANTI: It is, so we will
5 take a 10 minute break.
6 (Whereupon, the proceedings went off the
7 record at 10:42 a.m.)
8 CHAIRPERSON JIGANTI: The question we were
9 discussing, a model -- should we model ourselves after
10 Judge Ito and drink coffee on the bench?
11 MR. LANE: Who will send you -- stuff?
12 ARBITRATOR WERTHEIM: I could drink vodka
13 in the pitcher.
14 CHAIRPERSON JIGANTI: One of my colleagues
15 used to do that.
16 (Asides.)
17 MR. STEWART: With Mr. Lane's permission,
18 I wanted to take care of a couple of housekeeping
19 items before he commences his cross examination.
20 First, I wanted to hand the Panel copies
21 of our responsive pleading and to the motion we
22 discussed this morning. And we have served copies on
23 the parties.
24 ARBITRATOR WERTHEIM: This is the one
25 we're to wait until after lunch before ruling?

1 MR. STEWART: Yes, if you wish or you may
2 rule --
3 CHAIRPERSON JIGANTI: We wish.
4 MR. STEWART: Secondly, in yesterday's
5 hearing session, I submitted a cross examination
6 exhibit NAB 1990-92, Exhibit 1-X in my cross
7 examination of Dr. Lemieux.
8 It was requested by the Sports Claimants
9 that I provide a copy of the entire portion of the
10 print-out of which I had provided the first page. And
11 I now would distribute copies to the Counsel and to
12 the Reporter and the Panel.
13 ARBITRATOR FARMAKIDES: The other 19
14 pages?
15 MR. STEWART: That's right. I think it
16 may be a different number from 19, but it seems to be
17 the complete set. And I would move the admission, at
18 this point, of this cross examination exhibit into the
19 record that Dr. Lemieux did properly sponsor.
20 CHAIRPERSON JIGANTI: Is there any
21 objection to the admission of this exhibit into
22 evidence? That would be NAB Exhibit No. 1 on cross
23 examination. Yes?
24 MR. GARRETT: Mr. Chairman, we --
25 CHAIRPERSON JIGANTI: Mr. Garrett?

1 MR. GARRETT: -- obviously have no
2 objection to having it admitted into evidence -- in
3 the record as well as having Dr. Lemieux as the
4 sponsor.
5 We would, however, ask to supplement at
6 this filing here with the same document, it's
7 subheaded as stations' arranged according to the
8 amount of royalties that cable operators actually paid
9 for the stations.
10 As you know, this list here has all of the
11 stations arranged according to the number of
12 subscribers. And Dr. Lemieux, during his redirect
13 examination, didn't testify concerning the --
14 according to the royalties paid to the systems.
15 We would obtain that print-out and make
16 copies, and distribute them as a subheading.
17 CHAIRPERSON JIGANTI: Is that satisfactory
18 to you, Mr. Stewart?
19 MR. STEWART: As long as we don't have to
20 pay the copying costs.
21 CHAIRPERSON JIGANTI: All right. Just for
22 purposes of the record though, I don't want to have
23 this in any way contingent because the orderliness of
24 it gets sort of skewed by -- if this is admitted today
25 as an exhibit and then somehow, sometime later under

1 different circumstances, there's going to be a request
2 to put something else in the record. I would prefer
3 to be consistent.
4 What I suggest is that we admit this, and
5 at a later point, you make a motion to withdraw what
6 had been submitted as this. Move to withdraw.
7 MR. GARRETT: Yes. I have no objection to
8 this being admitted. This can go into the record. I
9 will move separately, and then have the same
10 information put in but in rank according to the way
11 cable operators pay for the signal.
12 ARBITRATOR WERTHEIM: With the JSC
13 exhibit.
14 MR. GARRETT: I can do it with the JSC
15 exhibit, sure.
16 CHAIRPERSON JIGANTI: That will be a
17 better procedure. So for the present, unless I hear
18 any other, this will be admitted into evidence.
19 (Whereupon, NAB Exhibit No. 1-X
20 was received into evidence.)
21 MR. HESTER: Your Honor, one more
22 housekeeping matter.
23 CHAIRPERSON JIGANTI: Mr. Hester?
24 MR. HESTER: I have undertaken to prepare
25 a handwritten version of my prior scratchings on the

1 chart. And I've marked it as PBS Exhibit 1-X. It's
2 a homespun version, handwritten that undertakes to
3 recreate precisely what I had on the chart before in
4 the prior discussion with Mr. Bortz.
5 I've shown it to Counsel, and I think
6 Counsel are agreeable to this as a rendition of what
7 we had discussed before.
8 (Whereupon, the above
9 identified document was marked
10 as PBS Exhibit No. 1-X for
11 identification.)
12 CHAIRPERSON JIGANTI: Any objection to the
13 admission of this amendment?
14 MR. HESTER: And I would propose that it
15 be admitted with Mr. Bortz as the sponsoring witness.
16 CHAIRPERSON JIGANTI: Hearing no
17 objection, it will be admitted.
18 (Whereupon, PBS Exhibit No. 1-X
19 was received into evidence.)
20 CHAIRPERSON JIGANTI: Okay, Mr. Lane?
21 MR. LANE: I'll finish with one further
22 housekeeping matter. I'd like to show Mr. Bortz a
23 copy of the 1989 decision. Specifically, I'm
24 referring to 57 Federal Register at page 15-299 in the
25 right-hand column, and ask him if he agrees that this

1 shows the correction to the PBS share from 1.3, as you
2 remember he indicated was under-reported in his
3 survey, and there was an adjustment made?
4 And does that page show that adjustment?
5 THE WITNESS: Yes, it does.
6 BY MR. LANE:
7 Q Could you tell us what that is for the
8 record, please?
9 A Yes. It says, "The under-representation,"
10 -- I'm quoting: "The under-representation of PBS in
11 the survey required an upward adjustment of 2.0
12 percent." And that's consistent with my recall.
13 Q Mr. Bortz, could you turn to page 14 of
14 your testimony, please? On this page, you've set out,
15 have you not, the determinence that you believe that
16 cable operators use in making programming carriage
17 decisions. Is that correct?
18 A Yes.
19 Q And what do you mean by "a programming
20 service" as you use in the fourth line in the first
21 paragraph on the page?
22 A The could be a cable network. It could be
23 a distant signal. It could be something that they
24 locally originate at the system.
25 Q And I think you discussed this a little

1 bit this morning, is it your view that demand for
2 programming services is defined by channel capacity or
3 constrained by channel capacity?
4 A No.
5 Q Is that the primary consideration.
6 A That's not exactly what I said. I said
7 that the ability to add program services was limited
8 by the number of channels or the channel capacity on
9 a system.
10 How much demand there is for adding those
11 services is a subject of, obviously, a lot of debate
12 and questioning in the industry.
13 Q But is channel capacity the primary
14 consideration?
15 A Channel capacity and the cost of the
16 services. There are systems around that have not
17 filled up their channel capacity because they have
18 made the judgement that the services that are out
19 there that they want to carry -- that there aren't
20 services out there that they would want to carry and
21 would find value in adding to their package at this
22 time.
23 Q And you talk about the cost of adding a
24 new programming service in that same line, do you not?
25 A Yes.

1 Q And who sets that cost?

2 A That's a negotiation in the marketplace if

3 it's the cable network. It's the Copyright rules if

4 it's a distant signal.

5 Q And let's just take with the cable

6 networks, is that cost -- is there a stated cost

7 normally, as we discussed early, a cents per

8 subscriber cost?

9 A There is a cents per subscriber cost, yes.

10 Q And then you start negotiations from

11 there? Is that -- would that be fair to say?

12 A The term in the industry is there is a

13 rate card. This is our standard rate. And then there

14 is a negotiation from there, yes.

15 Q And who sets the rate card?

16 A Well, the -- any cable network going on

17 first is going to spend a lot of time doing market

18 research, meeting with cable system operators. They

19 have what they call an affiliate relations group that

20 goes out and contacts individual systems.

21 And they get a feel for what they might be

22 able to charge. They also look at what their costs

23 are and then try and come up with something they think

24 will maximize their carriage. It's a judgement.

25 You can go with a higher rate and maybe

1 reach fewer households. You can go with a lower rate
2 and reach more households. It's a classic
3 intersection of supply and demand curves in the
4 marketplace.
5 Q But the programmer is the one who is doing
6 that, the cable network service, in the first
7 instance that you've just discussed?
8 A They'll make the first offer.
9 Q Right.
10 A They'll make the opening offer.
11 Q Right. And then they bargain with the
12 buyer?
13 A And then they bargain with the buyer.
14 Q And would it be fair to say that in
15 general, if you're a large MSO like TCI, you would
16 probably have a lot more bargaining power than a
17 little mom-and-pop operation?
18 A I think it's fair to say that, yes.
19 Q Now you talk in, first the paragraph
20 number one there --
21 A Yes.
22 Q Do you see that?
23 A Yes.
24 Q You state that, "Cable operators maximize
25 revenue by attracting the largest number of

1 subscribers within their designated franchise area."
2 Do you see that?
3 A Yes.
4 Q Is it your testimony that the primary
5 concern of cable operators is attracting the largest
6 number of subscribers?
7 A No, I don't think I can fully agree with
8 this sentence in the sense that cable operators are
9 typically looking to maximize the cash flow in their
10 system.
11 And they might, in fact, keep revenues at
12 a level that wouldn't maximize subscribers, but it
13 would maximize not revenues, but cash flow.
14 Because when you acquire a subscriber,
15 there's an additional cost. So in setting the
16 pricing, the operators do what most business
17 operations do, and that is in to -- in the industry,
18 it's maximizing what we call "cash flow."
19 Not necessarily profit because it's an
20 industry with a very high depreciating capital base.
21 So they look -- the industry typically looks at cash
22 flow. I would have to say that that's what's
23 maximized is cash flow.
24 Q Okay. And how do you maximize cash flow?
25 A Well, it's a complex interplay of factors:

1 pricing, certainly, cost, whether it's the costs of
2 program services or other costs, the penetration
3 you're able to achieve, the amount of your investment
4 market, a number of factors to maximize cash flow.
5 Q So it isn't by simply attracting the
6 largest number of subscribers?
7 A No, I would have to say that I don't agree
8 with the way I phrased this here.
9 Q Now one thing that you talked about in the
10 sentence above that is that all other available
11 revenue sources are dependent on the number of
12 subscribers. Do you see that?
13 It's a parenthetical, but it's in the
14 fourth line of that same paragraph, the second line.
15 A Yes.
16 Q And what did you mean by that sentence?
17 A That certainly the number of individuals
18 who buy a premium service determines the revenue that
19 you get, if we assume a fixed cost -- a fixed price,
20 excuse me.
21 And as you go through the equipment
22 rental, say the converter box that sits on top of the
23 t.v. set, you might get charged one or two dollars a
24 month for that.
25 So the more people that take it, the more

1 revenues that come from that.

2 Installation fees are what are charged to

3 hook you up initially. And that is, again, on a per-

4 subscriber basis.

5 Advertising is, by and large, sold in this

6 "dollar a holler" way. It's the subscription level.

7 Q Don't use any trick terms, okay?

8 A Trick terms? Okay.

9 Q "Dollar a holler."

10 A It's used always -- it's a term used in

11 broadcasting and cable to say that you're not dealing

12 with an ad agency that's sitting down and trying to

13 measure the exact audience and the viewing audience.

14 You're selling it more -- it's a more

15 conceptual sell, and it's done often in radio as well,

16 where measurements are secondary to the setting of the

17 advertising ratings. And the rate is so low, "a

18 dollar a holler," $25 a television spot or $30 a

19 television spot, that the buyer says, "Look, I can

20 afford this $500 package, and I'm not going to hire an

21 ad agency to look in the ratings."

22 So "dollar a holler" or our statement that

23 advertising is dependent on the number of subscribers

24 reflects that a good part of the sell of cable

25 networks is independent ratings.

1 ARBITRATOR FARMAKIDES: Could you kindly
2 redefine the difference between cash flow as being the
3 primary goal --
4 THE WITNESS: Yes.
5 ARBITRATOR FARMAKIDES: -- rather than
6 profits?
7 THE WITNESS: Sure.
8 ARBITRATOR FARMAKIDES: If you -- what you
9 just said, especially.
10 THE WITNESS: Okay, the cable operation is
11 very capital intensive. You have to bill physical
12 plant and you have to a converter box in the home.
13 You have to have satellite dishes and so forth.
14 The industry, for as long as I have been
15 involved, both values its systems and manages to
16 maximize cash flow.
17 And that would be operating profit before
18 depreciation and before interest charges. And so
19 that's what they look at.
20 It's essentially an operating profit
21 number before you subtract capital reinvestment,
22 depreciation of plant, and interest charges.
23 ARBITRATOR FARMAKIDES: Thank you.
24 BY MR. LANE:
25 Q Would this be an example of why you might

1 not what to maximize the number of -- get the largest
2 number of subscribers?
3 As you move from the center of a city,
4 let's say it's a relatively small town, you move
5 further out to the rural areas, the cost of adding the
6 cable to households that are farther and farther apart
7 might just be too high to really wire them up?
8 A Yes. At some point, you say that there's
9 too much investment there to get that additional
10 revenue. So they would not maximize revenue in that
11 case.
12 Q So you wouldn't want to attract the
13 largest number of subscribers in that situation?
14 A Well, I think that you need to emphasize
15 that this sentence says, "within the designated frame
16 size area."
17 And very often, most often, if you have a
18 franchise, you are obligated to bill plant throughout
19 the franchise.
20 So the example that you gave I don't think
21 would apply here. Within a franchise area, let's say
22 you -- maybe it's with a county, so it includes some
23 rural areas. And you may have some towns and then
24 you've got some rural areas.
25 But in your franchise agreement, you would

1 be obligated to build to a certain calendar schedule
2 a plant past all those homes.
3 Now once your plant has passed those
4 homes, you have sunk a lot of cost in. And so you
5 really do want to bill that penetration right up.
6 Now we know that in most systems, it's
7 real hard to get beyond 65, 70, 75 percent
8 penetration.
9 The reason I said I don't fully agree with
10 this is you might have to, in order to maximize the
11 subscribers to get that last 20 percent that aren't
12 very interested, cut the rates so low that you aren't
13 maximizing revenue.
14 But you would attempt to sell as many
15 houses as possible that you had built the plant by
16 because you have already made the investment, as long
17 as you were maximizing your cash flow. That's the --
18 Q And you might have a differential rate if
19 you're out in a rural area, a higher rate?
20 A If you could get by with that in a
21 franchise --
22 Q Right.
23 A Very often, the franchising authority will
24 say, "We want the service to our suburban and rural
25 constituents to be no more costly than the city."

1 It's like telephone services.

2 Q Gong back to the sentence that, "Other

3 available revenue sources are dependent on the number

4 of subscribers," is another way of way of saying that

5 is the more basic subscribers you have, that's going

6 to have an effect on how much pay revenue you have,

7 how much installation charges, all the other things

8 you mentioned?

9 A That's not necessarily a one-for-one

10 effect. And I think let's just, maybe for the Panel,

11 clarify. I'm comfortable using the term "basic" and

12 I think you are as well.

13 For that whole package that we talked

14 about yesterday which meant basic plus expanded basic,

15 the collection of all the cable networks. So to be

16 precise, I guess you should say basic and expanded

17 basic.

18 But I think if you're comfortable with it,

19 when I refer to "basic" it's a very special

20 application. I really mean expanded basic then.

21 Q But the more subscribers you have on basic

22 is also going to increase your pay revenues. That's

23 what this sentence means. Is that right?

24 A Yes. It doesn't happen proportionately

25 because the first people to sign up, those who are

1 most eager, are more likely to buy a lot of pay
2 services.
3 The ones that took a lot more enticement
4 to sign up are probably lighter television viewers.
5 They're less likely to take a pay service.
6 So there's a relationship, but it's not a
7 one-for-one relationship.
8 Q But there is a value to a cable operator
9 of a subscriber who is on basic beyond that sort of
10 potential, if you will, for the subscriber to taking
11 pay and buying other ancillary services?
12 A Yes.
13 Q And that would be a factor that the
14 operator would take into account in setting rates and
15 determining how to put out the service, right?
16 A Yes.
17 Q And another thing you mentioned this
18 morning, which is something that the operator also
19 takes into account I take it is that there are various
20 costs. You're talking about add -- what we call
21 "local avails" for the cable system.
22 That doesn't come cost-free, does it?
23 A To get -- to have the local avail to sell?
24 Q Right.
25 A No. I mean, they'll be paying a license

1 fee for the channel and they would have to have a
2 sales force to sell it. And they would have to have
3 the technical capability to insert the ad.
4 Q And those would be costs that -- if I were
5 a cable operator and I had none of those people and
6 none of that equipment or whatever I ended, I would
7 have to say to myself, okay, how much do I think I can
8 get in local avails revenues and then justify that
9 against the cost, right?
10 A Yes.
11 Q Now going to --
12 ARBITRATOR WERTHEIM: Now you mentioned a
13 license fee for the channel. Well, if you already
14 have the channel, do you need to pay an additional
15 license fee in order to program a local avail?
16 THE WITNESS: No. Usually in the
17 negotiation for a cable network, part of the deal is
18 we'll pay you 18 cents a month. The cable system will
19 pay the network 18 cents a month to carry the network.
20 In exchange, the network will typically
21 give them local add availabilities, which they can
22 sell and that's a potential revenue source.
23 They may also provide them a certain
24 amount of money to be used to help advertise and
25 promote that channel on that system.

1 So there are a number of deal points of
2 give and take between the two when they make it that
3 the marketplace arrangement is not simply how much do
4 you pay for the channel. It includes a number of
5 other elements.
6 ARBITRATOR WERTHEIM: Well, I just wanted
7 to clarify what you referred to, a license fee for the
8 channel.
9 THE WITNESS: Yes.
10 ARBITRATOR WERTHEIM: Were you referring
11 to something that you would have to -- a cost that you
12 would incur above and beyond what you would be
13 incurring if you were not utilizing any local avails?
14 THE WITNESS: You would probably end up
15 paying the same license fee whether or not you used
16 the local avails.
17 ARBITRATOR WERTHEIM: So in that sense,
18 the license fee is not a cost of getting local avails.
19 You would have that cost anyway.
20 THE WITNESS: I suppose you could
21 interpret it that way. It is the cost -- it would be
22 the cost of having the opportunity of selling the
23 local avails.
24 Maybe the would be the way to phrase it.
25 ARBITRATOR WERTHEIM: What's the range

1 we're talking about in relationship to dollars?

2 THE WITNESS: Oh, they range from a few

3 cents a month upwards to 50, 60 cents a month and even

4 more. As I mentioned, some of the regional sports

5 channels are as costly as a dollar per month per

6 subscriber.

7 BY MR. LANE:

8 Q And that would be -- just to make it

9 clear, you would multiply that cents per subscriber by

10 all the subscribers to the system that depend -- I

11 mean, there are different ways you would define "all

12 of the subscribers," but --

13 A Yes. Let's assume that 98 percent of the

14 subscribers are --

15 Q So you take around a 10,000 subscriber

16 system, and it's 15 cents a subscriber cable network.

17 A Okay, if it's 10,000 subscribers on

18 expanded basic where they have the cable network and

19 it's 15 cents a month per subscriber, then they would

20 pay $1,500 a month to the cable network in return for

21 getting to carry that network.

22 Q Okay. And --

23 CHAIRPERSON JIGANTI: I'm sorry. You

24 probably may have the same question as I do, so I'll

25 let you go ahead.

1 MR. LANE: I'm not sure I would ask the
2 same question. I was just going to say, would you
3 describe what the economics of the advertising for the
4 cable operator are, how the operator would get
5 revenues from the local avails on that same network?
6 A Okay, assuming that it's --
7 Q In dollars.
8 A Assuming that it's a dollar-for-dollar
9 network -- assuming that it's a network that they
10 would sell avails --
11 Q We're assuming that.
12 A -- then they would have a sales force that
13 would go out and sign up local buyers. Sometimes it
14 could be a big advertiser like automobile dealers.
15 But one of the things that cable can do
16 that broadcast can't is say in a metropolitan area
17 here, if you're the cable system in Alexandria, you
18 can go to ia merchant in Alexandria and sell
19 advertising time on your cable channel.
20 But to have television advertising in
21 Alexandria on a television station, you have to buy a
22 Washington station at a much higher rate so you can
23 sell it within small areas.
24 But -- so that's an economy to the
25 advertiser, but it's kind of costly. So the cost of

1 selling those ads is rather high.

2 In other words, a fairly high percentage

3 of advertising revenue gets eaten up in the cost of

4 selling the ads.

5 Q Is there a simple formula that you could

6 describe for the advertising? If I have this many

7 subscribers to this cable network, this is how much

8 advertising revenue I might expect to get.

9 A In a real general way -- I can't give you

10 the exact industry average, and it varies a lot by

11 system. But let's say that a typical system today

12 will average $32 or $33 a month of revenue per

13 subscriber.

14 Of that -- and then how much advertising

15 revenue do they generate per subscriber?

16 Q And when you say $32 or $33, you're

17 talking the cable operator getting his monthly fee

18 from each subscriber in that, right?

19 A Including pay services and --

20 Q Pay services, the whole bit, and that some

21 part of that is advertising.

22 A Some. And then what part of that might be

23 advertising revenues. That's from the subscribers,

24 not advertising in there.

25 But they might get a dollar, a dollar and

1 a half a month out of advertising.

2 So as we indicated, it's about five

3 percent of the cable industry, cable system revenues,

4 derives from advertising. And that's fairly

5 consistent. A dollar and a half would be five percent

6 of a $30 number.

7 Q So in total each month, the cable operator

8 could expect, in your example, roughly about $30 in

9 subscription fees that they're paying for what you

10 call the basic, expanded basic, any pay channels, plus

11 whatever advertising, plus whatever else you have,

12 maybe some equipment rental --

13 A Right.

14 Q -- some ancillary fees, right?

15 A That's correct.

16 Q And sot he magic then is -- that's the

17 cash flow to which you were referring to, right?

18 A That's the revenue. That's not the cash

19 flow.

20 Q You're right. And the cost --

21 A And you still have to deduct all your

22 operating expenses to get your cash flow.

23 Q Right.

24 ARBITRATOR FARMAKIDES: Now with these

25 cable modems that are being discussed now, that

1 promises to increase the revenues and the cash flow.

2 THE WITNESS: I think so. I think, at

3 this point, there are still cost issues. But we know

4 how electronic costs come down.

5 And in my personal opinion, and in the

6 advice that we have been giving clients, because we

7 have spent a lot of time looking at on-line services

8 with these modems, is I think it's going to generate

9 a lot of revenue from probably only a small percentage

10 of the subscribers.

11 ARBITRATOR FARMAKIDES: Can you visualize

12 any such revenue being subject to the compulsory

13 licensing copyright -- I would say I don't know. I'm

14 just asking if you if you can visualize --

15 THE WITNESS: No, no.

16 BY MR. LANE:

17 Q I would visualize that you would have to

18 know how politically influential the group that is

19 involved as to whether they will get a compulsory

20 license.

21 A Microsoft would rather negotiate in the

22 so-called marketplace.

23 Q I'm sure they would. But I'm sure there

24 are users that would rather not, right?

25 A Yes.

1 Q Just referring now to the bottom paragraph
2 on page 14 --
3 A Yes.
4 Q -- you're saying that there is no direct
5 subscription revenue attributable to, I take it, the
6 basic cable networks in the third sentence of that
7 paragraph?
8 A Yes. What we're saying there is when the
9 package is sold, it's a package of 30 or 40 or 50
10 channels. And you can't -- and it's sold for, let's
11 say, $25 a month, that you can't say well of the $25
12 a month, 80 cents is because we're carrying USA
13 Network.
14 There is no way to do that. That's an
15 allocation.
16 Q And on the top of page 15, I take it
17 you're making the same point in the first paragraph on
18 that page as to distant signals?
19 A That's correct. It's really the same
20 point.
21 Q And that would be if we had a situation
22 with a limited basic service that just had local
23 signals and distant signals and then with an expanded
24 tier that just had basic cable networks, the economics
25 would work the same way, in your opinion, for both of

1 those situations?

2 A Yes. Again, it's an allocation decision.

3 Let's say we're only talking about basic cable in the

4 narrow sense, and that would mean, as I was describing

5 yesterday, the local broadcast signals would be in

6 that, some of the access channels would be in that,

7 maybe a couple of superstations would be in that.

8 And it would sell for, say, eight dollars

9 a month.

10 First of all, very few people only take

11 that package, but let's just look at that eight

12 dollars a month.

13 There is no specific allocation of those

14 eight dollars among the different signals.

15 Q Turning to page 16 of your testimony, I

16 take it in the middle of the first paragraph you talk

17 about the attractiveness of their concept. That's the

18 same programming concept to which you referred very

19 early on in your testimony?

20 A Yes.

21 Q And when you're talking about the concept

22 there, is that a concept for an entire -- like a cable

23 network, the entire program package?

24 A Typically, it's the concept for a cable

25 network, yes, the whole package.

1 Q Referring to the last line of -- the last
2 sentence of that same first paragraph on page 16, you
3 say that "Survey research is often an important tool
4 available in assessing potential behavior." Do you
5 see that?
6 A Yes.
7 Q Okay. And "potential behavior," that
8 means generally something that is going to happen in
9 the future, right?
10 A Yes.
11 Q And does your survey measure behavior
12 that's going to happen in the future, your 1989 or
13 1992 survey?
14 A No. Well, survey and research is used to
15 anticipate what behavior and in the future. And
16 survey and research is also used to measure what's
17 currently going on.
18 And what we did in the 1992 survey was to
19 use survey research to measure what is currently going
20 on.
21 Q And how would you measure what happened in
22 the past?
23 A Well, you would ask about the past. And
24 what we have done is in order to get the best possible
25 recollection for 1992, and yet have enough data in so

1 that we can draw a sample, we begin our survey as
2 quickly as we can, typically in December, and complete
3 it shortly after the end of 1992.
4 Q Why wouldn't you just look at the actual
5 behavior since it's in the past?
6 A Well what we're asking here -- the
7 behavior is there. That's the signal carriage that we
8 have. What we're asking people to do is assess the
9 relative value.
10 And we've gone through how we go about
11 assessing the relative value.
12 Q In the next paragraph, you state that you
13 asked -- in the first sentence of that paragraph that
14 you sought to address the issue of what they would pay
15 in a free marketplace. Do you see that?
16 A Well, we have attempted to do that as
17 directly as possible. There isn't a free marketplace.
18 And where they're going go out and
19 contract for WTBS and WGN in a free marketplace, they
20 would be contracting for a full signal, not for that
21 piece of your programming in that case.
22 So the charge, I think, to the Copyright
23 Office is to do an allocation that, in the
24 marketplace, would entail hundreds, certainly, if not
25 thousands of individual negotiations, with not only

1 individual systems, but between the station operators
2 and the holders of the program copyright that would go
3 onto the stations.
4 Q But my question is, did you ask them what
5 they would pay in a free marketplace?
6 A We said that we're talking about distant
7 signals; you have a fixed budget amount, allocate
8 that.
9 Q Right. And isn't the point that you
10 referred them right to the distant signals they
11 carried in 1989 and 1992 --
12 A Yes, we did.
13 Q -- depending on that survey?
14 A Yes, we did.
15 Q And weren't those distant signals subject
16 to a compulsory license --
17 A That's correct.
18 Q -- during those years? And didn't those
19 cable operators know that those distant signals were
20 subject to a compulsory license?
21 A Yes.
22 Q And how do you think that they translated
23 all of that into wheat they would do in a free
24 marketplace?
25 A They were thinking of the relative value

1 of the screens of programming, and they were thinking
2 in terms of their everyday job, which is how do I
3 attract subscribers? How do I retain subscribers?
4 And I'm carrying these two signals or
5 three signals or four signals, and, you know, what
6 judgement would I make as to the relative value of
7 those different signals?
8 Q Now, you didn't ask them about the
9 relative values of different signals, did you?
10 A We asked -- we got at that by asking them
11 to take a fixed budget amount and to allocate that
12 fixed budget amount.
13 So yes, by definition, it wasn't -- we
14 didn't explicitly use that term. But by definition,
15 when you're allocating a fixed budget amount, to
16 allocate more to one category means you allocate less
17 to another category.
18 And so they are giving us a measure of the
19 relative value.
20 ARBITRATOR WERTHEIM: Mr. Bortz, could we
21 explore this because I think the concept of the free
22 market being simulated is a little bit elusive here?
23 We're not really talking about what would
24 happen in a totally free market, are we?
25 THE WITNESS: No, we're trying to get the

1 best assessment of what might happen there. And in a
2 free --
3 ARBITRATOR WERTHEIM: What would happen
4 where?
5 THE WITNESS: In a free marketplace.
6 ARBITRATOR WERTHEIM: But in a free
7 market, everybody would be able to pick whatever
8 signals they wanted off the air, and a whole lot of
9 other things would be changed.
10 THE WITNESS: I agree.
11 ARBITRATOR WERTHEIM: So do you really
12 have any view of what this hypothetical free market
13 would look like?
14 THE WITNESS: No -- yes --
15 ARBITRATOR WERTHEIM: In other words, I'm
16 asking you aren't we looking at the existing situation
17 with the existing constraints, but making,
18 theoretically, a sole exception for how the royalty
19 fees are arrived at?
20 THE WITNESS: I think the only way you can
21 address it is through a combination of methodologies.
22 What we are providing here is the cable operators'
23 view of how they would allocate their program budget.
24 But it's only the cable operators' view.
25 Now what else can there be? You're going

1 to hear from Mr. Gerbrandt --

2 ARBITRATOR WERTHEIM: But even in a free

3 market, they wouldn't be negotiating with individual

4 groups of copyright owners. They would be negotiating

5 with cable networks.

6 THE WITNESS: Yes. You have a very tough

7 assignment because they -- you wouldn't be negotiating

8 say with USA Network, which carries some sports. Or

9 let's take TNT which has even more sports: carries

10 sports, carries movies, carries syndicated, carries

11 some other kinds of programming.

12 You wouldn't negotiate with TNT for sports

13 and then negotiate for their movie stuff. You would

14 be negotiating in total.

15 And so I think there -- as I mentioned

16 yesterday, it's true. Your charge is to do something

17 which doesn't happen in the marketplace.

18 But there are some close analogues. When

19 an operator is negotiating for a license fee for ESPN,

20 that's clean. They're negotiating for sports.

21 When they're negotiating for CNN, put

22 aside the packaging, the sort of blocked booking that

23 Turner likes to do, but CNN is news and public

24 affairs. American Movie Classics is movies.

25 So we have -- we have some measures in the

1 cable network world that are close analogues to the
2 charge to the Copyright Office.
3 ARBITRATOR WERTHEIM: Well, in trying to
4 simulate what the freely negotiated rates might be,
5 wouldn't it be helpful to construct a survey of cable
6 networks to see what their position would be on their
7 side of the table at any such negotiations?
8 THE WITNESS: Do you mean of the distant
9 signals? There are only three that account for most
10 of the carriage, and it would be tough to survey they.
11 Plus, I doubt that they would respond with
12 only three stations that account for most of the
13 carriage: WGN, WTBS, WWOR.
14 And so, it would be difficult to derive
15 anything that we could rely upon. From their
16 perspective, in theory --
17 ARBITRATOR WERTHEIM: But why would they
18 be any less reliable than your cable operators?
19 THE WITNESS: Because there is a sample of
20 three instead of a sample of hundreds; that it's three
21 providers and not thousands.
22 ARBITRATOR WERTHEIM: But if it was only
23 three, you could go at each one much more carefully
24 than you can a massive survey of operators.
25 THE WITNESS: In theory, we have tried in

1 the past to get information from Turner specifically
2 in regard to other things we were doing in the sports
3 marketplace. Not a chance.
4 ARBITRATOR WERTHEIM: They just regard all
5 of that as proprietary and they don't want to discuss
6 it?
7 THE WITNESS: They wouldn't let us -- they
8 wouldn't even give us ball park numbers.
9 ARBITRATOR FARMAKIDES: Now yesterday, you
10 said that you did not feel that there would be an
11 opportunity to simulate this industry.
12 THE WITNESS: To simulate a process of
13 allocating this flow of funds, yes.
14 ARBITRATOR FARMAKIDES: I gather from what
15 you said a moment ago, one of the reasons is because
16 of the valuation of the different programming and the
17 difficulty of that. It would be difficult, I would
18 believe, to create a model, an econometric model of
19 this industry.
20 We do it for the entire U.S. economy, so
21 this is one fraction of that.
22 But you feel that the real problem is the
23 valuation of the program?
24 THE WITNESS: Well, the valuation of the
25 program -- let me show you that our firm has a very

1 detailed model of the cable industry and the economics
2 of cable systems that are extremely detailed, the work
3 that we did for the National Cable Television
4 Association, where we had most of the major cable
5 operators participate with us and gathered data year
6 after year from hundreds of systems each year.
7 We can model a cable system economics a
8 lot, very, very accurately. So if you tell us the
9 size of the market, the size of the system, the number
10 of signals over the air, and we can run a model and
11 tell you the economics of that system.
12 It's this process of allocating the
13 programming then when we have looked at it, we have
14 found no reliable way to do it.
15 Now, you know, we do a lot of regression
16 analysis, for example, in our work. I don't know if
17 you're familiar with that term, but it's when you look
18 at a number of factors that you think might be
19 independent variables. And then they affect the value
20 of a dependent variable.
21 And maybe the dependent variable would be
22 the value of sports, the value of movies. Could we
23 then put a whole bunch of terms in there that would
24 allow us, in a statistically valid way, to come up
25 with the value?

1 And I would say no. I can't certainly do
2 regression analyses that relate variables. But we're
3 looking for value and causality here, not just the
4 fact that something is correlating itself.
5 And because this is a unique process,
6 there is not a database out there that I think can
7 appropriately address that.
8 And that's my opinion. And that is a
9 tool, a technique that we have used -- used
10 repeatedly, and I have used in litigation processes
11 that have been subject to substantial cross
12 examination.
13 And in my judgement, regression modelling
14 of this is not likely to give us anything that
15 realistically represents the marketplace.
16 So we go and talk to the major players in
17 the marketplace. And as Judge Wertheim has indicated,
18 we didn't -- to the sellers, and I agree.
19 And I wish that you would view our results
20 as they are presented with an array of perspective,
21 such as you will hear from Mr. Gerbrandt, who has done
22 a very careful analysis of what the cable network
23 marketplace tells us. And you'll be hearing about
24 that soon.
25 MR. LANE: If I could just get a plug in,

1 Judge Wertheim. We actually a witness from TBS who
2 will be here and he'll be talking about all of these
3 issue.s It's Mr. Sieber.
4 We also have an econometric study which
5 addresses some of these issues.
6 ARBITRATOR FARMAKIDES: Well really, I was
7 focusing on your question with respect to historical
8 data.
9 MR. LANE: I appreciate that. And I just
10 wanted to get a little plug in for my case while I
11 could.
12 MR. GARRETT: Just to get a little plug in
13 for our case though, we also had a witness from TBS in
14 the 1989 proceeding. He was the former CEO of TBS.
15 BY MR. LANE:
16 Q Mr. Bortz, I would just like to get back
17 to some of the questions from the Panel. You said you
18 didn't talk to the sellers, and I understand that.
19 But I think the question was, you really
20 didn't talk to the buyers, did you? Aren't the buyers
21 the people at the cable networks and the people at
22 WTBS and WGN?
23 They're the ones that put the package
24 together, and the cable operators just buy that
25 package.

1 If we're talking about program categories,
2 aren't they the buyers?
3 A No, I don't agree with that. What we're
4 talking about here is a conscious decision made to
5 carry or not carry a distant signal. And that
6 decision then is -- if you decide to carry it, it's
7 accompanied by a payment.
8 And it seems to me quite clear that in the
9 context of this proceeding, that the buyer is the
10 cable system. The dollars come from the cable system.
11 The cable system is going to opt out totally.
12 Clearly, the active superstations are
13 trying to encourage buying most of the stations, are
14 not even encouraging that buying just up there and
15 system is -- the buyer here.
16 The buyer is the entity that pays the
17 money. And the entity that pays the money is the
18 system.
19 Q And the analogous market that you referred
20 to as the cable networks. Is that correct, in this
21 situation when you keep referring to Mr. Gerbrandt?
22 A Yes.
23 Q Isn't that what he looks at?
24 A Yes.
25 Q And the cable networks are the ones who

1 buy the programming. ESPN bought it from Major League
2 Baseball. It bought all the baseball games from them,
3 did it not?
4 A Yes.
5 Q And whatever else ESPN bought, they bought
6 it directly from the sellers, correct?
7 A That's correct.
8 Q And USA bought movies from us and CNN put
9 together their people in the various news bureaus and
10 put those costs together themselves, correct?
11 A The distant signals certainly purchase
12 programming as the cable networks purchase
13 programming.
14 The copyright royalties are generated by
15 the purchase of the cable system operator. And when
16 we're looking in the context of that, we have to look
17 at the buying decision with the cable system
18 operators.
19 It varies among cable networks as to what
20 percentage of their revenues comes from advertising
21 versus these license fees that we talk about.
22 But when they make a decision to bid for,
23 whether it's NFL Football, Major League Baseball, the
24 instances that you're citing, one of the things they
25 have to decide is are they going to have enough

1 carriage to generate license revenues?

2 Although not 100 percent of their revenue,

3 it is not going to be anywhere from 30 to 65 percent

4 of their revenues.

5 If they have to charge more, as ESPN and

6 TNT have done for NFL where they have a surcharge,

7 it's a very careful judgement that they have to make

8 as to whether the cable systems will be wiling to pay

9 that surcharge.

10 And I know that because I participated in

11 the discussions at ABC with their then Chief Executive

12 when he was debating whether or not to proceed with

13 bidding for the NFL.

14 And the biggest question is with Stan

15 Burke, who used to be the CEO, now retired. And his

16 direct question to me was, "We think we have to charge

17 this amount more if we're going to carry NFL

18 football." This was the first year they were going to

19 do it.

20 "Do you think that we can get that?" And

21 he was asking for a judgement. That's part of our

22 continuing work with them.

23 So I would have to say that in the cable

24 network world as well, the willingness of the buyer as

25 a cable system operator to carry a system is an

1 important element.

2 The superstation business where copyright

3 payments are made, the cable operators are the total

4 revenue stream of the pooled money that you're

5 distributing.

6 Q But the cable operators themselves don't

7 buy individual programming packages, do they? They're

8 not the ones who bought the NFL package or the NLB

9 package, nor are they the ones that buy the movie

10 package.

11 They buy a channel or a network or a

12 distant signal --

13 A That's true.

14 Q -- in its entirety.

15 A That's correct.

16 ARBITRATOR WERTHEIM: Excuse me, are the

17 costs to the satellite carriers substantial enough --

18 the charge of the satellite carriers substantial

19 enough to enter into this in any significant way?

20 THE WITNESS: No, those are regulated

21 common carrier rates, and they're low.

22 BY MR. LANE:

23 Q I'd like to turn page 18 of your

24 testimony, please. This is where you discuss the

25 cable system sampling for your 1989 to 1992 surveys,

1 correct?

2 A Yes.

3 Q And if we look at the table at the bottom

4 of the page, we see that you have divided the number

5 of systems into various royalties strata, correct?

6 A That's correct.

7 Q And why did you use royalties to divide

8 the strata?

9 A Because when you are looking at an

10 allocation of the dollars that have been paid in, then

11 we should properly give weight to decisions or

12 decision makers at a weight that reflects the amount

13 of dollars that they pay into the system.

14 As I indicated yesterday, you have many

15 more systems that pay in a small amount and relatively

16 fewer systems that pay in a large amount.

17 If we didn't divide it into the strata and

18 we just did a non-stratified sampling, you would be

19 over-representing the low royalty paying systems and

20 their opinions and under-representing the high royalty

21 paying ones.

22 Now in a way, you could argue it's moot,

23 although we feel this is the appropriate way to do it

24 because we have looked at, first of all, 1986 our

25 report which Mr. -- will discuss.

1 We did a non-stratifying sample. We did
2 it without weighing by royalty. And we got about the
3 same numbers.
4 And if you look across strata, the
5 responses we get, you still find virtually the same
6 results within each of the strata.
7 So we think this is the appropriate way to
8 do it. We think this gives the most precise
9 measurement. But if you didn't use royalty payments
10 and you just sampled the systems, you'd get about the
11 same number.
12 ARBITRATOR FARMAKIDES: When you say
13 "about the same numbers," --
14 THE WITNESS: Within a few percentage
15 points.
16 ARBITRATOR FARMAKIDES: A few?
17 THE WITNESS: Yes.
18 ARBITRATOR FARMAKIDES: Two or three?
19 THE WITNESS: Yes, plus or minus two or
20 three percentage points typically. I think the lowest
21 -- looking at 1992 by strata, I think the lowest
22 response of valuation of sports we got was about 36
23 percent, and the highest was 43 percent, and 38.8 is
24 what the weighted value was.
25 So it gives you the ball park within each

1 of the strata.

2 Movies, I think the average variation

3 among strata was a fraction of a percentage. I think

4 it was a low of about 24.9 percent and a high in the

5 upper 26's, very narrow across strata.

6 So there's not a lot of variation among

7 the strata. But we think still this is the

8 appropriate methodology.

9 BY MR. LANE:

10 Q But when you said there's not a lot of

11 variation, what do you consider to be not a lot of

12 variation? What do you consider to be important in

13 this case in terms of percentages?

14 A I think, given the inherent problems of

15 any kind of an estimate of what it is that you have to

16 do, that within a few percentage points: two, three,

17 four.

18 Q Do you know how much two or three

19 percentage points is worth in this case? Do you

20 realize it's over about $20 million. Do you think

21 that's important?

22 A That's right. And in looking at the task

23 that's been assigned, looking at the information and

24 data available, I feel that a very good estimate is an

25 estimate that is within a few percentage points.

1 Q How do you --

2 A I indicated yesterday, this is not -- you

3 know, it would be nice to come in here, as in some

4 things we can do, and give you a number with great

5 precision.

6 I don't think in this process there is that

7 precision. But I think that's it's pretty clear what

8 the reasonable range is.

9 And it may add up to a lot of money.

10 Unfortunately, that's your burden and not my burden.

11 But I don't know how you would refine -- I don't know

12 of any technique that would give you a better range.

13 Q How did you create the boundary for the

14 300,000 or more strata that you list here?

15 A Yes, this is -- the boundaries of the

16 strata were cum. square root of F rule, which is a

17 statistical term that essentially says okay, we want

18 to look at strata. There are formulas that are then

19 applied that Dr. Bardwell performed this for us.

20 And Dr. Bardwell is with us here today,

21 and certainly available to either assist me in

22 answering the questions or he can answer them

23 directly.

24 The principal behind it is where should

25 the boundaries be set so that we will have the least

1 amount of measurement error? So if you have way too
2 wide a boundary, the error you'll get for a given
3 sample size is going to be larger.
4 And if we get in the right boundaries,
5 you're going to come down to something where the error
6 will be relatively small.
7 It doesn't have to be precisely the
8 $300,000. If you shifted it to $290,000, or whatever,
9 that would be something else.
10 But he follows a formal process going
11 through the listing of systems. And following that
12 process, he then specifies these ideal boundaries.
13 Q And my question to you concerned the
14 $300,000 and over. And as I understood the second
15 line of the second -- excuse me, it's the third line
16 of the second paragraph under "2," the boundaries of
17 the remaining three strata were constructing using the
18 cum. square root of F rule.
19 At least in my mind, that means that that
20 fourth stratum was not picked that way. And I take
21 it, that was the largest strata.
22 And I ask you again, how did you select
23 that as $300,00 or over?
24 A Again, the -- and I could talk to Dr.
25 Bardwell in as far as you wanted more detail, but

1 basically, my understanding is he has a listing of the
2 systems and how many systems within each $500
3 increment of royalty payment has been paid. And he
4 applies this.
5 When you get up to the very large systems,
6 they're spread out over a very, very wide range of
7 royalty payments because when we go from $300,000-out,
8 we're talking about a very big -- if you apply some of
9 the statistics to that, it would suggest an extremely
10 large sample size.
11 And so that's why we went to the census.
12 What we're saying here is we have four strata. the
13 statistics require that all systems within that fourth
14 one, and that's just where things begin to really
15 stretch out.
16 It suggests then that that's got to be a
17 census and then you place it. But he essentially
18 builds up working down from the lowest strata forward.
19 And it's something of a judgement call as
20 to where you put that last boundary. But the fact is
21 that, as he describes it, the error, behavior; in
22 other words, how precise an estimate do you make
23 depending on where the boundary is, has something that
24 we call a flat bottom, which basically means that you
25 can shift that boundary some fair amount one way or

1 another.

2 And you don't depart very much from the

3 optimum level.

4 Q But did you -- I have a real simple

5 question. Did you decide that you should have 35

6 systems in the largest stratum and then just figure

7 out what number you had to pick to get 35 systems?

8 A No.

9 Q Is that how you did it?

10 A No.

11 Q So you're saying that you built it up from

12 the lower ones, and then kind of whatever was left

13 over went into that fourth strata?

14 A Well, you reach a point where they begin

15 to really stretch out in terms of where they occur.

16 As you can see, from $300,000 or more, there is only

17 35 systems.

18 And Dr. Bardwell made a judgement when he

19 was setting all of these boundaries and using the cum.

20 square root of F rule to set those boundaries to say

21 okay, from this point on, there is going to have to be

22 a census in the fourth strata.

23 As I say, there would be very little

24 difference in the results if you set that at $250,000

25 or $320,000, simply because of the statistical nature

1 of what we're doing.

2 Q Well, that sort of leads me to my next

3 question because if you turn over to page 19, you see

4 what happens if you change it to $250,000, don't you?

5 A Well, this is 1992 now that we're looking

6 at. And you have -- we have the boundaries that were

7 specified here.

8 In the 1989, you had a different mix of

9 systems and royalties that they were paying.

10 So that simply reflects the fact that we

11 have two different universes with two different

12 profiles.

13 But it's basically that he went through

14 the same process. And when he went through and

15 allocated and defined the boundaries using the

16 techniques that we described in the Appendix, he ended

17 up with 47.

18 We have, over the years, had a relatively

19 small number of systems there. And over the years, we

20 have had to do a census of those systems.

21 It's just the nature of it that it

22 requires us not to sample them. But by census -- I'm

23 sorry, I'm using jargon. Doing a census of the system

24 means try to reach everyone in that strata.

25 Whereas, let's say in the less than

1 $22,000 on the page -- top of page 19, 1,278 systems,
2 we are sampling essentially one out of every 20 of
3 those systems.
4 Q Now --
5 A You --
6 Q I'm sorry. I didn't really mean to cut
7 you off.
8 A That's fine.
9 Q I'm looking in the -- sort of the middle
10 two strata. And if you keep both pages in mind, I see
11 in the second strata -- when I say "the second," I'm
12 going down each of the charts.
13 And that would be in 1992, the $22,000 to
14 $59,999. I see there are 593 systems in that.
15 Then if you look at the second strata on
16 the 1989 survey, there were 528. Do you see that?
17 A Yes.
18 Q Okay. One -- in the one with only 528,
19 you have to pick 66 systems. In the other that had
20 more systems in it, you only picked 45. Why was that?
21 A Yes. That's the result of the Neymann
22 allocation, which is another statistical approach that
23 Dr. Bardwell uses to say for the -- for a sample size,
24 typically on the order of 250 or 240, how do you
25 allocate those 250 among the different strata, again

1 to get the most precise results?

2 And with differing numbers here, I can't

3 go through the mathematics for you. I'm sure that Dr.

4 Bardwell could. But basically, by applying the

5 Niemann allocation formula, this is what happened.

6 Why it varies year to year would be in the

7 mathematics of that. And we present that in our

8 Appendix.

9 Q And let's look at the third stratum. You

10 had 160 in 1989 and 325 in 1992. And yet, the change

11 was only 81 systems to 93 systems.

12 A That's right.

13 Q Why was that?

14 A Well first of all, let's point out that's

15 a very large sample of the systems. And it resulted

16 from the mathematics of the appropriate statistical

17 analysis.

18 Q And now --

19 A And ultimately --

20 Q Sorry.

21 A -- as you have seen in the confidence

22 intervals, using these samples within these strata,

23 you end up with the confidence intervals that we have,

24 which is typically plus or minus two percent or less.

25 Q Now what would happen if you used $1,000

1 increments with the cum. square root of F rule applied
2 to this?
3 A I think that you would see somewhat
4 different boundaries possibly, or somewhat different
5 sample sizes.
6 But as I indicated to you, Dr. Bardwell
7 has explained to me that these functions, mathematical
8 functions, have a flat bottom.
9 Let's say we're talking about the accuracy
10 of measurement and we want to have the least error
11 possible that we can get in the measurement. Let's
12 say that error turned out to be here.
13 And Dr. Bardwell applies the formula to
14 set the strata and to allocate the sample, two steps.
15 Where do we draw the lines? And then within those
16 lines, how many systems do we see?
17 This is what the mathematics is. As an
18 illustration, let's say this is for a particular
19 strata.
20 Let's say we didn't use that number. What
21 would it look like in terms of the error that the
22 statistical calculations would give us if we moved off
23 of it.
24 Well, it would look like -- something like
25 this, which would say if you move very far off of it,

1 you're going to have a less accurate measurement.

2 But within this range, you stay within

3 this range, it doesn't make much difference. So if we

4 start with the sample and we find out, as more forms

5 are submitted and the sample changes a bit, and if we

6 use the final sample instead of the one that was

7 available at the beginning, it doesn't change it so we

8 might not be exactly at the optimum, but we're very

9 close to it.

10 And the final confidence intervals that we

11 give you reflect that.

12 Q And what are you measuring at that point?

13 What is the measurement that you -- you're saying that

14 this formula applies to the accuracy of a measurement.

15 A That's correct.

16 Q What is that measurement?

17 A Really ultimately reflected in the -- what

18 is the likely error between what it is that we measure

19 and what --

20 Q That's what I want to know.

21 A -- and what the total universe is. The

22 mean value of a cable operator's allocation to

23 different program categories -- let me clarify

24 something because we have spent -- if I may, we spent

25 a lot of time and you're asking what we're measuring.

1 We're measuring the mean value. That's
2 what we're looking for, the mean count; you know, 38.8
3 percent.
4 We spent a lot of time this morning
5 discussing confidence errors. Let's say that the mean
6 value that we measure is up here.
7 And we know in survey research, and this
8 would have a normal distribution, that the value could
9 be -- depart from that mean. We should have this way
10 over here, but it would depart from that mean
11 somewhat.
12 ARBITRATOR FARMAKIDES: What's your other
13 axis?
14 THE WITNESS: This would be -- what we
15 have, this is the -- actually, this is the probability
16 of the it being certain value.
17 And we go out to the mean, and we go up
18 and beyond it. When we put 95 percent confidence
19 intervals on, we say that we think the real answer, if
20 we could talk to every system and get a precise
21 number, falls somewhere between here and here.
22 But -- and that's fine to say that there's
23 only a five percent chance that the real number will
24 fall down here.
25 And I just wanted to emphasize that the

1 best estimate that you can make statistically, the
2 best estimate that you can make is the mean. That's
3 Greek?
4 ARBITRATOR FARMAKIDES: Not Greek.
5 THE WITNESS: So just as a point of
6 clarification, that's what we're measuring. Now we
7 want to have -- in doing the sampling, we want to have
8 the least possible error. And applying these
9 statistical techniques provide us that.
10 Now I am speaking to you as someone who is
11 trained as a mathematician, who is not a statistician
12 by profession, but who has used, worked with
13 statisticians in my work at the University as well as
14 in my consulting practice for 25 years.
15 So I'm giving you a bit of a
16 practitioner's view, a survey research and market
17 research practitioner's view.
18 But Dr. Bardwell, if you would like to go
19 into more detail, could either inform me some or would
20 be happy to inform you.
21 CHAIRPERSON JIGANTI: Mr. Lane --
22 MR. LANE: I just have one more question.
23 CHAIRPERSON JIGANTI: Sure.
24 MR. LANE: Thank you. So let me get this
25 clear. Neymann's allocation formulas were used to

1 optimize the final results that you got that you
2 present, I think it's on page 31?
3 THE WITNESS: The Neymann's formulas were
4 used to have the best -- to properly allocate the
5 sample. Given that we're talking about certain sample
6 of size, 200 or so, because we know we start with what
7 kind of uncertainty do we want?
8 And we said, "George, you know, I really
9 don't want to have -- I would like to see errors that
10 are relatively small, in the order of one or two
11 percent, in terms of -- not errors, but confidence
12 errors."
13 That, to him, suggests, given a universe
14 of something like 2,000 systems, a sample size of 200
15 and some systems.
16 The question then presented is if we've
17 got four strata, do we question 50 systems in the
18 first strata and 50 in the second and 50 in the third?
19 That would be not allocated.
20 Or do we find a way -- what's the best mix
21 that we have? And what we found is that we don't have
22 to sample very many of the low revenue systems.
23 Notice on page 29 in the less than $22,00-
24 category, we sample one out of 20. In the $22,000 to
25 $59,000 -- and that's just -- 64 was the sample size;

1 1,278 was the number of systems.

2 Now I don't have a calculator here, so I

3 may be off just a little bit. But we can go to this

4 next one.

5 Between $22,000 and $60,000, $59,999, we

6 have 593 systems. You know, it's less than half, but

7 we sample 45 of those. I think that works out to

8 something like one in 13, one out of every 13 systems.

9 In the $60,000 to $249,999, $325,000, we

10 sample 93. That's one out of three roughly.

11 And -- excuse me, that's not one out of

12 three. It's two out of seven. Two out of seven was

13 the sampling ratio there.

14 And then in the $250,000 or more, we

15 wanted to interview as many as we could get. We would

16 like to get 47, so we put all 47 in the sample.

17 ARBITRATOR WERTHEIM: Mr. Bortz, am I

18 correct in guessing that the cum. square root of F

19 rule and the Neymann allocations had not yet been

20 invented 40 years ago?

21 THE WITNESS: Forty years ago? I would

22 have to defer to Dr. Bardwell on that. I'm not sure.

23 I know it didn't get --

24 ARBITRATOR WERTHEIM: It was that long ago

25 that I had a question in Economics/Statistics at the

1 working school, and I don't recall reading this.

2 THE WITNESS: I'll be happy to check with

3 --

4 MR. LANE: I'll be happy to start it after

5 the lunch break.

6 CHAIRPERSON JIGANTI: Okay.

7 MR. GOTTFRIED: -- another matter. We

8 have filed a --

9 CHAIRPERSON JIGANTI: Off the record.

10 This will be off the record.

11 (Whereupon, the proceedings went off the

12 record at 12:08 p.m. and resumed at 1:36 p.m.)

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1 A-F-T-E-R-N-O-O-N P-R-O-C-E-E-D-I-N-G-S

2 (1:36 p.m.)

3 CHAIRPERSON JIGANTI: Mr. Lane, you may

4 proceed when you're ready.

5 MR. LANE: Thank you. Mr. Garrett would

6 like to say something for the record.

7 CHAIRPERSON JIGANTI: Mr. Garrett.

8 MR. GARRETT: Judge Jiganti, it concerned

9 that the motion to strike Mr. Trautman's testimony

10 filed by MPAA the other day. We have over the lunch

11 hour provided Mr. Lane with the document. I think

12 it's fair to say that he needs to check with his

13 consultant to determine whether or not this document

14 will satisfy his needs.

15 If Mr. Trautman needs to testify before he

16 can check with his consultant, I think we've agreed

17 that Mr. Trautman can go ahead and testify concerning

18 the 1990 survey to which this document relates, and

19 Mr. Lane's motion would then be treated as a motion to

20 strike in the event that the document was not

21 sufficient for his consultant's purposes.

22 CHAIRPERSON JIGANTI: Mr. Lane, is that

23 agreeable?

24 MR. LANE: That's agreeabLe to me.

25 CHAIRPERSON JIGANTI: Very good. Thank

1 you, gentlemen.

2 **CROSS-EXAMINATION**

3 **(continued)**

4 BY MR. LANE:

5 Q Mr. Bortz, I just want to go back to the
6 end of your testimony before the lunch break. You
7 drew on the easel what's commonly known as a bell
8 curve. Is that right?

9 A I attempted to --

10 Q You attempted to. Right. As I understood
11 it, the mean that you put on the bell curve related --
12 It was an effort to represent one of the points, not
13 numerically but just an illustrative, of the
14 allocations that you have shown on page 31. Is that
15 accurate?

16 A Yes.

17 Q Could you explain how Neymann's allocation
18 formulas relate to those points on page 31?

19 A Well, the Neymann's allocation formula
20 relates to how you divide the sample among the
21 different strata so as to come up with the most
22 accurate estimate. So once you've established the
23 strata -- and as I indicated, you go through this
24 listing of the systems in terms of $500 increments of
25 royalties, and you establish the end of top of level

1 using the cum. square root of F, the top of level 2
2 using that, the top of level 3 using that, which gave
3 you then the 300 and the $250,000 number.
4 Then the question is, okay, now we've got
5 this strata with this mix of systems. What is the
6 best way to allocate it the sample, and you use the
7 Neymann's allocation formula to do that.
8 Q I guess I'm -- Neymann's formula -- Does
9 Neymann's formula do something to the tables, and does
10 it only apply to the tables on 18 and 19 or does it do
11 -- Is it directly related to the table on 31?
12 A Tables 18 and 19 being the stratifications
13 that --
14 Q Right.
15 A The Neymann's formula essentially provides
16 you the sample size, if you look to the far righthand
17 column -- this is, say, page 19 would be the
18 appropriate page, and the table at the top --
19 ARBITRATOR FARMAKIDES: You're not talking
20 about tables. You're talking about pages 18 and 19.
21 MR. LANE: Right.
22 THE WITNESS: Yes, excuse me, page 19,
23 Table 3, and the far righthand column is the sample
24 size, and that sample size was derived using the
25 Neymann's allocation.

1 BY MR. LANE:

2 Q And that somehow indirectly that has an

3 effect on the table shown on page 31?

4 A Well, what it does is that it improves the

5 accuracy of estimation, so that the numbers that

6 appear on Table 31 are a more precise estimate than we

7 could do if we hadn't done that allocation.

8 Q Does the Neymann's allocation apply to the

9 mean royalty and the royalty standard deviation on

10 Tables -- the tables that are shown on 18 and 19?

11 A No. The mean royalty is that drawing the

12 line at, say, 22,000 -- Let's look at the top of page

13 19 so we can -- we'll look at the '92 numbers. Having

14 drawn the line, using the cum. square root of F rule

15 which -- to answer your question, Judge Wertheim --

16 was derived sometime in the mid-1960s apparently --

17 ARBITRATOR WERTHEIM: That's a relief.

18 THE WITNESS: Yes. That line has been

19 drawn using that rule. Then we say, okay, how many

20 systems, Form 3 systems, are within that strata, and

21 that's 1278 Form 3 systems. For each of those 1278

22 systems, we have the amount of royalties that they

23 paid. So we calculate the mean royalty of the systems

24 from that, not use the Neymann's allocation at all.

25 So these are just straightforward

1 computations directly off of the copyright database
2 and, as you go across then, the first time that you
3 see something that is the result of the Neymann
4 allocation is the sample size.
5 BY MR. LANE:
6 Q Where did you get the royalty information?
7 A From the statements of account which were
8 received from the Copyright Office.
9 Q What period did you use for the Table 3 on
10 page 19?
11 A The 1992-1 submission.
12 Q What period did you use for the table on
13 page 18?
14 A At the time that was selected, we used the
15 1988-2, if I recall correctly.
16 Q So these were the actual royalties paid by
17 the systems -- Let's just stay on page 19, so I don't
18 have to ask this about two things -- the actual
19 royalties paid by the systems in the first six months
20 of 1992?
21 A That's correct.
22 Q Now at the bottom of the page on Footnote
23 5 you indicate that this represents in excess of 95
24 percent of Form 3 systems. Do you see that?
25 A That's correct.

1 Q Do you know how much less than 100 percent
2 it represented?
3 A No. That's really all that I would know,
4 is what's here, which is in excess of 95 percent.
5 Q What's five percent of 2200 systems? Is
6 that about another 100 systems or so?
7 A Roughly.
8 Q So it's possible that the universe
9 includes another 100 systems that you didn't know
10 about?
11 A That's correct.
12 Q And how did you take into account that
13 fact in setting your strata and your universe?
14 A The universe that we use is the 2243
15 systems. The fact that the other systems -- there
16 might have been some other systems not included means
17 that there was no statement of account on record at
18 the Copyright Office to make use of at that time.
19 Q So you knew that there were other Form 3
20 systems. They just hadn't filed their statements?
21 A Hadn't filed their statements and, in
22 order to do the survey in a timely fashion, we
23 proceeded with this, and 95 percent gives you,
24 certainly, almost the complete universe, and it's
25 something in excess of 95 percent, I should hasten to

1 add.

2 Q But those 100 systems could have all been,

3 for example, 250,000 or more, and what effect would

4 have that had on your study?

5 A Well, I think that's a hypothetical that

6 is most unlikely. There's no particular reason why a

7 certain level of royalties system would be the only

8 ones that were submitting later, and we have done this

9 study now over a period of years. This universe very

10 much represents the -- very similar to the universes

11 that we established in the past. So we would have no

12 reason to expect any concentration of nonsubmittals to

13 a certain type of system.

14 Q What if only even five or 10 more have

15 been 250,000 or more? Wouldn't that have changed the

16 statistics you showed up here on Table 3 on page 19 of

17 your testimony for the 250,000 or more line?

18 A No. I would say no. Having in excess of

19 95 percent of the systems is fully representative and,

20 although you would hypothetically posit something that

21 would change that, I think that is in the realm of the

22 very unlikely.

23 Q It indicates in Footnote 6, does it not,

24 on page 19 that you discarded 14 systems?

25 A That's correct.

1 Q So your sample size was 249 as being the
2 ideal sample, based on all these formulas and what-not
3 that you've discussed the last hour or so?
4 A That's correct.
5 Q But you really started out with -- Well,
6 actually, then you discarded yet another system. So
7 you discarded 15 before you even started. Right?
8 A Well, we didn't actually discard another
9 system. We had two records that covered the same
10 system.
11 Q So that one system was discarded, because
12 it carried no distant --
13 A Right. It was discarded. It carried no
14 distant signals. Therefore, it, obviously, was not
15 part of this proceeding.
16 Q But when you selected the sample of all
17 Form 3 systems as the random sample, stratified random
18 sample, that system was included in your selection
19 process.
20 A At that time, that's correct.
21 Q So what was the basis for discarding that
22 system and not replacing it with another system, if
23 249 was the correct number?
24 A Replacement, I think, is something that
25 you'll find most statisticians don't like to do in a

1 survey. You've made your selection. You live with
2 it. Now there's going to be a certain attrition,
3 first through problems like, gee, there are no
4 statement of accounts, just as you're going to get
5 some respondents that you're not able to contact. To
6 say we're going to hew to the 249 by replacing other
7 systems then, I think, would disturb rather
8 fundamentally the randomness of the process.
9 The obvious question then would be, if you
10 had 249 and you only ended up with 233, what does that
11 do to your sampling, and that does virtually nothing
12 to it, and it has to do with, as we've talked about
13 this morning, some of the flatness of this. A sample
14 of 233 and a sample of 249 are not much different.
15 Q Okay, but that's another five percent,
16 isn't it?
17 A No.
18 Q Seventeen of 249?
19 A Well, it's five percent of that sample.
20 It wouldn't be five percent, but whatever that number
21 is, of the sample but not of the universe; but, yes,
22 doing a sample of 239 or 233 or 249 is not a major
23 element.
24 Q That five percent here equates to tens of
25 millions of dollars, doesn't it?

1 A We're talking about the statistical effect
2 in the sample. I think it would be incorrect to use
3 five percentage points of an allocation. The effect
4 that you would expect -- possible deviations that you
5 might expect if you had those other 14 systems in, I
6 think I could reasonably tell you, would be in the
7 order of a hundredth of a percent in terms of the
8 results; and we only report them to the tenth of a
9 percent.
10 So it would be a minuscule difference that
11 would not change the table.
12 Q One thing that I'm a little bit confused
13 about: In Footnote 5 you -- One is that you have
14 remittance records, and the other is that you didn't
15 have the statements of account. Could you explain how
16 that could happen?
17 Q Yes. When the forms come in, and they're
18 accompanied by a check, a remittance record is made,
19 and this is a listing. Forms, obviously, are a very
20 bulky set of information. We do the initial selection
21 from the remittance records, which provides us an
22 appropriate format.
23 We then have to go back in to find the
24 forms. Now was a form lost in the office? We don't
25 know that, don't know the reasons for the fact that,

1 although a remittance was recorded by the Copyright
2 Office, the Copyright Office was not able to produce
3 for us the corresponding form.
4 Q Did you attempt to look, for example, in
5 the Cable Data Corporation data about statement of
6 account for those systems?
7 A The Cable Data Corporation at the time
8 that we select this sample and proceed with the survey
9 does not have that data up and available. There's a
10 lag time.
11 Q But did you check for those systems?
12 A No. We used a single base, which was the
13 statement of accounts that was filed with the
14 Copyright Office, and that is our database.
15 Q On the bottom of page 19 you talk about
16 the dates during which the survey were completed. Do
17 you see that?
18 A Yes.
19 Q How long did na individual interview take,
20 once you got started doing a survey with a respondent?
21 A Oh, I don't know what the variation is
22 there, but it's on the order of 10 to 15 minutes.
23 Q Now when we turn to page 20, Table 4,
24 when you're doing the response rate, were you using
25 237 in 1989 as the base and 233 in 1992 as the base?

1 A Yes.

2 Q So you weren't comparing this to the

3 entire sample size that was selected on the basis of

4 all the formulas that you --

5 A No. We had the initial selection, but the

6 sample that we then go forth with is the 233. That's

7 the sample.

8 Q That's the sample?

9 A The ideal size and the sample that was

10 selected was the 249. Because of the lack of data,

11 because of the two forms for one system and one not

12 carrying distant signals, we ended up with 233. So

13 the only questionnaires that we attempted to

14 administer were the 233.

15 Q And that became the sample size in your

16 mind?

17 A Yes.

18 Q On page 20 you say that the -- first, the

19 interviewer was asked to go to the person most

20 responsible for programming decisions made in 1992 or

21 most familiar with programming carried in 1989. Do

22 you see that?

23 A Yes.

24 Q What if the person most familiar was not

25 at the local system? Was the interviewer required to

1 do anything?

2 A Yes. If they said that the person most

3 familiar was, say, at a district office or whatever,

4 they were then -- the interviewer was to contact that

5 person.

6 Q I think you testified yesterday that that

7 only happened two or three times, to your knowledge?

8 Is that right?

9 A My recollection was it was a very few

10 times.

11 Q Would you turn to page 21, please? On

12 that page you've listed the titles that were grouped.

13 Who did the grouping into these job titles?

14 A Job title was entered on the

15 questionnaire, and then my staff reviewed the

16 completed questionnaires and, if there were any

17 questions, why they would then make a decision as to

18 where to group it; but most of these were pretty

19 explicit as down there. They were a Vice President,

20 Marketing or a Marketing Director and so forth.

21 Q Now if you could just turn to page 41,

22 Appendix B, was the respondent's name written on here

23 before the interview started?

24 A No. It's not my understanding that that's

25 the case.

1 Q So the system was called, and then they
2 wrote the respondent's name?
3 A I'm not sure of that. I would have to
4 check as to whether, first, a general manager's name
5 was entered and then changed if it was someone else or
6 whether there was no name there and they just asked to
7 speak with the system manager. I don't recall how
8 that was done.
9 Q Well, where in the interview do you ask
10 the respondent what his or her position is?
11 A I think that the interviewer is told to
12 identify who the respondent is and what their position
13 is, and it's not here as a question.
14 Q Show me where it is on the interview.
15 A I don't see that here, but I think that
16 these interviewers in their training have been told to
17 enter down -- They always do it in all their
18 interviews -- who it is they are talking to. It's
19 just a basic thing, as well as --
20 Q I'm not asking who they were talking to by
21 name. I understand that. Where is it -- Where were
22 they told to ask someone what their position is?
23 A They were instructed to do that.
24 Q But it's not written down here, and I
25 thought yesterday you told us how these people

1 followed exactly what you've written in the
2 questionnaire.
3 A That's right, but --
4 Q I just want you to show me where it is in
5 the questionnaire.
6 A It's not on the form.
7 Q So you don't know whether they asked or
8 didn't ask.
9 A Well, we do know that, because it was then
10 filled in.
11 Q Well, it could have been filled in in a
12 lot of ways, couldn't it?
13 A No. They were told to find out who it was
14 and what the position was of the person they're
15 talking to. It is not an instruction that's on here,
16 but it was in the briefing.
17 Q It was in the what?
18 A In the briefing to them before they went
19 out and started to do their interviews.
20 Q Okay. If I call up and I follow this
21 instruction, I get on the phone. I say, hello, can I
22 speak to the system manager. Right? Somebody gets on
23 the phone.
24 A Right.
25 Q Then I say, are you the person most

1 familiar with programming carried by your system
2 during 1989 or not, and they say yes. Do I have any
3 indication of why I shouldn't just put down system
4 manager?
5 A They were instructed to have the title of
6 the individual they were speaking to. That's why we
7 ended up with a sales manager or customer service
8 manager or a chief technician, operations manager, If
9 you take a look in 1989. Clearly, there were
10 individual entries made there.
11 Q You know, the interesting thing that I
12 find about Table 5 is you don't have the word system
13 manager listed there anywhere, do you?
14 A No. General manager is really a synonym
15 for that.
16 Q I see, but it's not. You don't have the
17 word system manager, which is the words that you use
18 on the questionnaire. Right?
19 A That's correct.
20 Q Now when I look at Table 5, the first
21 thing I see, Regional Manager. Right?
22 A Yes.
23 Q What is a Regional Manager for a local
24 cable system? What have they got, like a group of
25 streets in one part of the town, and then there's

1 another regional manager?

2 A No. Regional Manager would probably have

3 a few systems that they would be responsible for

4 within a region. So if you're in a metropolitan area,

5 there might be three suburbs where they have

6 franchises, and the person that we're talking to is

7 the Regional Manager over those three franchises.

8 Q Could there be a general manager that

9 would have the similar kind of responsibility?

10 A A general manager would typically refer to

11 a specific system. There could be variations from

12 company to company, but in general -- In general, the

13 General Manager is system-specific. A Regional

14 Manager is more than one system.

15 Q Is it fair to say that, as we move up that

16 first job title list, that gets higher and higher up

17 the chain? We go from the General Manager of a local

18 system to the Regional Manager of some systems in a

19 region to the President of -- What's the President?

20 Of what?

21 A Well, it could be the President of just a

22 system. It could be -- I can't really imagine any

23 President titles at the regional or district office,

24 but that's also a possibility. You would have to go

25 back to the specific questionnaires in order to

1 identify what each of those were.

2 This is an attempt in a table to give a

3 fairly brief summary of the kind of person that we're

4 talking to.

5 Q Well, how many were general managers just

6 of local systems, as opposed to regional managers or

7 Presidents or CEOs of, I'm assuming, multiple

8 systems?

9 A I couldn't provide you that breakdown

10 right now. We certainly could compile that.

11 Q If I look at the second listing for job

12 title, I see VP, Marketing. Is that likely to be

13 someone who is in a local system?

14 A It's likely to be.

15 Q Where is a marketing director likely to

16 be, in a local system?

17 A Yes.

18 Q And a marketing manager is likely to be in

19 a local system?

20 A Yes.

21 Q And the same with the Other, VP

22 Programming?

23 A That's correct. Now it's possible that

24 they could be at a regional level, and again you would

25 have to go back to the individual questionnaire to see

1 that.

2 Q And it's possible that the VP Marketing

3 could be at a regional level as well?

4 A It's possible.

5 Q Now do you know whether, in the situation

6 where, say, a regional manager was involved, that you

7 called two systems in the same region and you got the

8 same regional manager to answer for both systems?

9 A I'm not aware of anything like that.

10 Q Did you check on that?

11 A I would think it would have been brought

12 to my attention, and I'm not aware of anything like

13 that occurring.

14 Q Do local systems generally have a

15 government affairs person?

16 A Do they generally have it?

17 Q Yes.

18 A That will vary, depending on the system,

19 typically related to the size of the system.

20 Q Do you know how many of the eight in the

21 fourth category down were government affairs people?

22 A In the 1989 survey? We would have to

23 compile that from the questionnaires.

24 Q Well, in the 1992 survey we don't know if

25 it was an office manager or business manager, even

1 though there is just one person. Right?

2 A That's right. This is a category, meant

3 to be inclusive. So that we don't have a listing. We

4 could, you know, list 189 titles, and that certainly

5 is possible to do. It's on the records.

6 Q Going down to the category definition at

7 the bottom of this page -- Before we go to that, tell

8 me why you changed -- What is the definitional change

9 in the question as to -- you change it from "Are you

10 the person most familiar" to "the person most

11 responsible." What do you see as the value of that?

12 A Well, it was in response to concerns

13 expressed in the '89 proceeding that somebody might be

14 very familiar with the programming but had no

15 responsibility for making decisions and, therefore,

16 the relative value allocation would be maybe best not

17 made by that person. So what we decided to do was to

18 go to most responsible for program decisions.

19 I think that it was an improvement. If

20 you take a look at the mix of job titles, the 1992

21 survey seemed to -- did have a much stronger -- much

22 higher percentage of those in the upper categories and

23 very few in the lower -- Well, the lower two

24 categories had nobody, customer service and other, and

25 we had fewer in the other three categories that are

1 less of an executive nature. So I think changing the
2 question as suggested in the '89 proceeding was a good
3 idea, because we have a more senior, more management
4 responsible group.
5 Q Do you know whether you got a greater
6 level of regional or higher level people in the 1992
7 than you did in the 1989?
8 A I don't know at this point. Again, that
9 could be tabulated from our questionnaires. If the
10 panel is interested in that, we could certainly do
11 that.
12 Q Could you just turn back to page 20 for a
13 moment, please? Now the number of callbacks has been
14 an issue in prior proceedings, has it not?
15 A Yes, it has.
16 Q When you say up to 30 calls were made to
17 some systems, in which of the surveys was that?
18 A I think that probably occurred in both
19 years.
20 Q Do you know, were there a greater number
21 of callbacks than 30? Is that the high number or what
22 were you trying to say?
23 A My understanding is that's the high
24 number. Let's look at what this process is. When
25 they call the system, sometimes they might get a

1 system office. Sometimes it might be a general number
2 for the system. They could start with a customer
3 service rep. They could be put on hold.
4 We have call records that indicate the
5 nature of each of the calls. The key point is that no
6 respondent, none of those who gave us the answers in
7 the questionnaire, had ever been contacted more than
8 twice.
9 So the contact was made typically once or
10 twice. Often these other calls were stopped. Either
11 somebody didn't answer, they weren't available, they
12 were in a meeting. We got to the secretary. We
13 didn't get to the manager, but the contact with the
14 respondent did not exceed twice.
15 Q I would just like to introduce as an
16 exhibit -- I think we're up to 11-X. This is a copy
17 of -- Sorry.
18 ARBITRATOR WERTHEIM: What's the prefix?
19 Is this MPAA, Program Suppliers?
20 MR. LANE: Program Suppliers. All right.
21 I may withdraw that, because I think I have the wrong
22 group here. All right. I won't enter an exhibit here
23 right at the moment, but we'll get around to it.
24 BY MR. LANE:
25 Q Did you review the callbacks yourself?

1 A No.

2 Q And were the interviewers instructed to

3 write down the reason for each callback?

4 A That's correct.

5 Q Were you given a summary of the callbacks?

6 A For each respondent there is a contact

7 sheet that recorded each of the attempts to call.

8 It's a standard sheet that Burke uses in their

9 executive interviewing with certain codes as to what

10 happened with each call. So there's a call record, in

11 essence, for each of the interviews.

12 Q Well, I guess what I'd like to know is how

13 did you know that it required only one or two direct

14 contacts with the eventual respondent?

15 A We -- My staff reviewed that, reviewed the

16 call records.

17 Q Let's turn to page 21, please. Did the

18 respondents to the survey know this was about royalty

19 distribution?

20 A No.

21 Q Did they know the program category

22 definitions that are used in royalty distribution

23 cases?

24 A I would have no knowledge of whether they

25 would know, but I would doubt it.

1 ARBITRATOR WERTHEIM: I didn't hear the
2 answer to the previous question, whether they knew
3 this related to royal distribution.
4 THE WITNESS: To the best of my knowledge,
5 certainly, somebody might try and infer that from the
6 sequence of questions, and I have no way of making
7 that judgment.
8 BY MR. LANE:
9 Q But you certainly didn't alert them to the
10 fact this was about royalty distribution?
11 A No, not at all. In fact, we took special
12 pains not to.
13 Q At the bottom of the page, you indicate
14 that the categories must be defined as concisely as
15 possible. It's about five lines up from the bottom of
16 the page. Do you see that?
17 A Yes.
18 Q Why is that?
19 A Our experience in survey research is that,
20 if you have long, involved categories, and you've got
21 a number of them -- we have anywhere from five to
22 seven -- that the respondent is going to get confused
23 as to what that means, and there have been in prior
24 surveys, as Mr. Trautman will testify to, some other
25 surveys where longer response descriptions were used.

1 The results are, again, remarkably similar, but we
2 just don't think that's an appropriate survey
3 methodology.
4 Q You referred to that -- right above that,
5 to certain fringe programming. What do you mean by
6 fringe programming?
7 A Well, there is programming where the
8 question comes up as to whether the programming is
9 syndicated programming or locally originated
10 programming. So there are certain instances where a
11 respondent might be uncertain as to where to put it in
12 these categories, but I have to say that years of
13 doing this survey -- If you'll recall, we started with
14 some unaided questions about types of programming
15 where we don't read the list, and we find
16 overwhelmingly that the responses that we get fit
17 quite comfortably into the list.
18 So maybe the categories we use would not
19 be 100 percent inclusive, but they are overwhelmingly
20 inclusive and, in fact, are consistent with the terms
21 and terminology that executives in the industry use.
22 Q What do you mean by overwhelmingly, 99,
23 98, 97 percent?
24 A Very high percentage. I think we can go -
25 - Let me go back to -- I want to refer you to a table.

1 We could go to page 24, and you can see there in a
2 totally unaided question that almost 95 percent of the
3 answers in '89 and '90, 92 percent in '92 were easily
4 categorized into the categories we have.
5 Q And who did that categorization?
6 A The interviewer was told to do the
7 categorization. If they had any uncertainty at all,
8 they were to put it into "Other," and then Mr.
9 Trautman reviewed those "Others" and, in some cases,
10 would allocate them to a category.
11 Q But when you say that they had no trouble
12 putting them in, those categories that are listed on
13 page 24 are exactly the same, are they not, as what
14 you gave the interviewer, for example, on page 42 as
15 what to circle?
16 A That's right. When they hear the answer,
17 they will then circle that category. If there is any
18 uncertainty as to whether that's the appropriate
19 category, then they were told to write it down in
20 "Other." Then we look at "Other."
21 Q But how many of the people do you think
22 said "live professional and college sports" in exactly
23 those words when they were asked?
24 A Precisely those words? I would have no
25 idea, but I think you hear about professional sports,

1 college sports, and it is reasonable to assume that
2 virtually all the sports that is popular is live, not
3 recorded.
4 Q But those words were not the ones that
5 were used by the respondents. Right? You could have
6 just said here, just write down whatever they say.
7 A Yes. You have -- What you have here are
8 categories such as movies or series that people are
9 going to typically respond, in that they might use
10 examples.
11 Q But they're not responding in this. This
12 is the unaided portion, is it not?
13 A This is the unaided.
14 Q The interviewer has just the person on the
15 phone and said, look, you carry these stations.
16 Thinking back, what types of programming were most
17 popular? They don't read this list, do they?
18 A They don't read the list, no.
19 Q So all your interviewer is hearing
20 something and translating it into one of these
21 categories, unless the interviewer thinks that he or
22 she can't translate it. Right?
23 A That's correct.
24 Q And they could have just written down what
25 was ever said, and someone else could have translated

1 that. Right?

2 A That would be a way of doing it. We think

3 that the categorization here was not a difficult one.

4 We have monitored the interviews over a period of

5 time, and we find that the responses fit, by and

6 large, very comfortably in there.

7 Q And the responses fit to what you have

8 listed as the program types. Right?

9 A No. These didn't come from nowhere. This

10 list of categories is the list that is used by the

11 Copyright Office and was used by the Tribunal. We did

12 not create --

13 Q What does the Copyright Office use this

14 list for? In what purpose?

15 A In the proceedings of the Tribunal, there

16 was -- and I couldn't refer you to the exact source,

17 but there was a review of programming definitions.

18 It's been, obviously, a subject of discussion in the

19 past hearings. In fact, what we did in 1992 was to

20 lengthen our description beyond what we had to fit

21 very closely with what was specified by the Tribunal

22 as the appropriate categories.

23 Q Would you look on page 22? That's where

24 you have the programming categories. Right?

25 A That's correct.

1 Q Has there ever been a movie category in
2 the history of the Tribunal?
3 A I don't recall how that was worded in the
4 reference that I would like to give you.
5 Q Has there ever been a separate movie
6 category in the history of the Tribunal?
7 A I don't know. I'm not that familiar with
8 it to answer your question.
9 Q Well, you helped write these definitions,
10 and you just told us you did it based on the CRT?
11 A Yes, and I read the Tribunal's findings
12 and where they talked about category definitions. Now
13 whether they had movies and syndicated together or
14 movies alone, I don't recall at this time, but these
15 definitions that are here for 1992 reflect what the
16 Tribunal feels would be the appropriate definitions.
17 Q It reflects what the Tribunal thinks would
18 be the appropriate definitions?
19 A It was a listing there. As I say, I'll be
20 happy to provide the panel with a reference, the
21 reference that we used when we decided to use this
22 wording, but it goes directly to a Tribunal document.
23 I just can't recall what that document was.
24 MR. LANE: Mr. Chairman, I would be very
25 desirous of seeing that document.

1 CHAIRPERSON JIGANTI: The document being
2 the --
3 MR. LANE: Whatever document to which he
4 is referring.
5 CHAIRPERSON JIGANTI: What are you
6 referring to?
7 THE WITNESS: It is a document of the
8 Tribunal, but I can't recall the exact reference.
9 ARBITRATOR WERTHEIM: You had available
10 the '89 determination by the time this survey was
11 done?
12 THE WITNESS: Yes, I did.
13 CHAIRPERSON JIGANTI: Is that the document
14 you're referring to?
15 THE WITNESS: I would have to check on
16 that. I really don't recall.
17 ARBITRATOR WERTHEIM: My recollection is
18 there's some reference to the subject in that document
19 CHAIRPERSON JIGANTI: Do you want to show
20 him your copy or a copy of it?
21 MR. LANE: Sure. I'd like the record to
22 reflect that I'm handing the witness a copy of the
23 1989 Cable Royalty Distribution Proceeding that
24 appears at 57 Federal Register 15286.
25 BY MR. LANE:

1 Q My specific question is, Mr. Bortz, where
2 in that decision or anywhere else is there a separate
3 category entitled movies?
4 A Well, as I indicated to you, I'll be happy
5 to provide the reference that we used in coming up
6 with these categories. I can't do that at this time.
7 CHAIRPERSON JIGANTI: Is that the
8 reference you are talking about?
9 THE WITNESS: I don't know.
10 ARBITRATOR WERTHEIM: I think we should
11 give him time to study this. It's an awful lot of
12 fine print over a great many pages to pick out some
13 one specific thing.
14 THE WITNESS: Yes.
15 MR. LANE: That's fine with me. I'm
16 perfectly willing to wait.
17 CHAIRPERSON JIGANTI: Is it not the one
18 you were referring to?
19 THE WITNESS: Rather than take a guess at
20 that and then have to retract it, I would like to
21 refer to it. It is a Tribunal document, and I will
22 provide the record.
23 CHAIRPERSON JIGANTI: All right. The
24 suggestion of my colleague here is that we take a
25 recess at the present time to give you an opportunity

1 to examine that and see if that's the document that
2 you were referring to. Is that satisfactory, Mr.
3 Lane?
4 MR. LANE: Certainly.
5 CHAIRPERSON JIGANTI: We will take a ten
6 minute recess.
7 (WHEREUPON, the proceeding recessed
8 briefly at 2:23 p.m. and reconvened at 2:42 p.m.)
9 CHAIRPERSON JIGANTI: Mr. Lane, you may
10 proceed.
11 BY MR. LANE:
12 Q Did you have a chance over the break to
13 look for the references to which you alluded in your
14 earlier answer?
15 A Yes, and the reference -- We had to send
16 someone over to the office to get it. It's a Tribunal
17 document. My understanding, it's related to 1984, and
18 it should be here in a matter of minutes, I would
19 assume. We just didn't have it. My understanding
20 also is that it's a document that we had produced for
21 you. So we'll have that reference here.
22 In addition to that, I had a chance to
23 review the document that you gave me just prior to the
24 break, which is the CRT 1989 royalty distribution
25 proceeding. The question that you had asked me was

1 did the -- Has the Tribunal ever considered movies and
2 syndicated separately?
3 I would refer you, if you have that, to
4 page 15302 in the Federal Register. On that page in
5 the first column, if we go down to -- There are two
6 paragraphs that I would like to refer to. This is
7 when they are making their awards.
8 The first one would be the second
9 paragraph under the heading "Program Suppliers," and
10 this is after noting that Dr. Besen had expressed
11 concern about our splitting the suppliers into two
12 categories, movies and syndicated series, and claiming
13 that adversely affected their total.
14 If we go on to that for clues as to why
15 this might be, and I quote, "We note first the Bortz
16 survey gave almost twice as much value to movies, 31.2
17 percent preadjustment, than to syndicated series, 16.9
18 percent preadjustment. This indicates that, although
19 syndicated series had high totals in viewing, cable
20 operators do not expect to have to pay that much for
21 them. This was corroborated by Mr. Wussler, a former
22 President of WTBS, who testified that the broadcast
23 license fees for such shows as the Beverly Hillbillies
24 and Petticoat Junction were relatively cheap."
25 They go on to say, "Program Suppliers

1 successfully showed high prices for movies. Movies do
2 well in the Nielsen and Bortz surveys and in
3 individual testimony, but we believe that syndicated
4 series has been rated higher than it should have been
5 by the Tribunal. Given the new weight that we accord
6 the Bortz survey and the fact that it has been
7 corroborated by other testimony, the Tribunal then
8 makes a downward adjustment."
9 So the Tribunal specifically in the 1989
10 proceeding did consider movies as separated from
11 syndicated in trying to come to the total award.
12 Q And the total award for the series was
13 part of a category that included movies and series.
14 Right?
15 A That's correct.
16 Q It didn't have a separate category series,
17 did it?
18 A That's correct.
19 Q And is there a category called "News and
20 Public Affairs," as you've listed on page 22 of --
21 A Well, as I say, the document that I am
22 referring to that the Tribunal -- where they set forth
23 what they thought was a reasonable definition of
24 categories will be here in a matter of minutes. Mr.
25 Neiman is obtaining that, and we can discuss it.

1 Q Now when you were talking about fringe
2 programming on page 21, what is fringe programming?
3 A It's where it might not be real clear to
4 the -- as to which category you would throw it into.
5 Let's say we have a -- The typical example would be a
6 staged, staged or not, wrestling match, professional
7 wrestling match of some odd nature. Now is that
8 sports or is that syndicated? It's wrestling. We
9 have treated that as syndicated, not as sports.
10 Q What did the respondents to your survey
11 treat it as?
12 A Well, when things like that came up, such
13 as -- I think one was French/foreign -- We even had a
14 respondent -- You know, MTV clearly was not
15 understanding what it was we were talking about. That
16 was written down by the interviewer, looked at by us,
17 and we in certain cases reclassified that.
18 I should point out that the MPAA has been
19 provided with copies of all of the questionnaires. So
20 wherever an "Other" was recategorized, was written
21 down and we recategorized it, that would appear
22 explicitly on the documents that were produced to
23 them.
24 Q I'd like to know how the fringe
25 programming was treated by the respondents in response

1 to question 4, not question 2, question 4 which
2 appears on page 44, for example, and page 48,
3 depending on which study you want to look at.
4 A Well, this is the allocation made by the
5 respondent as to the relative value among these
6 categories. Now if, in their mind, they had taken
7 something that we called "Other" and put it into a
8 certain category, we wouldn't know that. Unlike the
9 unaided responses, the responses here are focused on
10 these, and the instances of such fringe responses are
11 small; but I couldn't tell you what their perception
12 was when they answered.
13 I think I can tell you with great
14 confidence that it would have an insignificant effect
15 on the results.
16 Q When you say that the instances were
17 small, what do you base that on?
18 A On a tabulation of other responses that
19 show up in the questionnaires and what was
20 reallocated, and again you have that data.
21 Q Well, if they didn't indicate that they
22 had any problem, does that necessarily mean that they
23 didn't? Is that what your assumption is?
24 A As I said, we can't know what was in the
25 mind of the respondent. We do know that these are

1 categories that have been used for years, are
2 typically used in the broadcasting and cable industry,
3 that we have not found problems with. They are
4 categories consistent with the past findings of the
5 Tribunal, and we asked them to allocate among these
6 categories and these categories only.
7 Is there some imprecision in that?
8 There's some degree of imprecision in that. Is it
9 enough to affect the kinds of numbers that we have up
10 here to any meaningful extent? I would have to assert
11 that that is not the case.
12 Q Have you done any studies that say that's
13 not the case?
14 A No. We would somehow have to get into the
15 minds of the respondents, and I'm not aware of any
16 survey research that successfully does that.
17 Q What degree of imprecision do you think
18 might be involved here?
19 A Very slight.
20 Q What's very slight?
21 A Not a meaningful change in those numbers
22 there. I don't think we would see it at the tenth of
23 a percentage point level.
24 Q Why would the respondents express any
25 confusion if they don't know what the purpose of the

1 study is, and they're just hearing you ask them about
2 different types of programs?
3 A I'm not sure I understand that question.
4 Q You said that -- You say that the
5 respondents did not express any confusion, did you
6 not?
7 A That's right.
8 Q Why would they?
9 A If you go out with a survey where a
10 question confuses respondents, you're going to hear
11 about it pretty quickly. Remember that we have done
12 these surveys over a number of years. We've used
13 these categories. We've listened in to telephone
14 interviews.
15 We have the survey company forward to us
16 questionnaires after completing every 25, so that we
17 monitor it very closely. They are told to call us
18 immediately if there is confusion, if their
19 interviewers are having problems. We hired a highly
20 competent, nationally recognized firm to do it.
21 So it's just a whole series of checks and
22 balances that allows me to assert that there was not
23 confusion in the completion of this survey. That
24 would have turned up quite clearly from one or the
25 other of the sources I just referred to.

1 Q Now turning to page 23, Respondent
2 Recall," how do you know that the respondents were
3 aware of the types of programs and the amounts of
4 programs on the stations that were carried?
5 A Well, a cable executive at a system is
6 going to be very aware of the programming. If it's
7 the cable executive most responsible for program
8 decisions, he's going to be quite aware. The
9 questions that we ask are asked right in the period of
10 carriage and immediately following their period of
11 carriage, and they are going to have a good idea of
12 what the content is on those distant signals.
13 Q Did you do any analysis to see if their
14 perceptions were realistic?
15 A I would have to say that there -- first of
16 all, that it is -- The cable executives, when they
17 decide what to carry and how much to carry, are acting
18 on their perceptions. I can also tell you that they
19 don't do a program by program analysis or even program
20 specific category analysis.
21 They will get a reading from subscribers
22 on things like we want more movies or we want more
23 sports. So we're dealing with the integrated
24 perception of experienced cable management, and the
25 integrated expert perception done in a carefully

1 couched and executed survey, I think, provides us a
2 very good measure of their perception of relative
3 value.
4 Q Could you just them a question about how
5 much programming of each of these types was on those
6 stations?
7 A Well, we're trying to get at value, not
8 how much. We're back to tonnage. We know that, for
9 example, on a regional sports channel, as I indicated,
10 I can put on a few hundred hours a year of good
11 programming, high demand programming. I'll generate
12 almost all the value from that, and I can put on an
13 awful lot of other programming from all over, junk
14 sports, various types, and auto racing.
15 I don't know if you ever watched an auto
16 race on TV, but I guess some people like it, but
17 there's not much happening there, just cars going
18 round and round. So, no, we didn't ask them about
19 amount, because we don't think that amount relates to
20 value.
21 We asked instead the direct question,
22 which is the relative value.
23 Q But it would have told you what their --
24 whether their perception was realistic for what was
25 being carried on those stations, wouldn't it?

1 A I think -- No. I think it's the judgment
2 of how they would allocate the budget of the relative
3 value that is crucial. Whether their perception was
4 accurate or not as to what is carried, I think that if
5 you ask a lot of people about what's on a regional
6 sports network, I don't know that they could tell you,
7 you know, what an overwhelming bulk of programming is
8 that they have very little interest in and what a
9 relatively small percentage say the Orioles, Caps and
10 Bullets constitute.
11 The ultimate judgment is value, and the
12 cable operators on both distant signals and sports --
13 excuse me, on cable networks go to value. So, no, we
14 didn't have a tonnage question.
15 Q You've referred to the dominant impression
16 on page 23. Do you see that? It's in the second
17 paragraph under 5?
18 A Yes, I do.
19 Q What is a dominant impression?
20 A It is -- I've been using the term
21 perception. It is the impression of the cable
22 operator as to what's on that service and why they
23 carry it and how they value it, and that's -- As I
24 say, that's an integrated, expert opinion solicited
25 from a number of operators in a carefully controlled

1 manner.

2 CHAIRPERSON JIGANTI: What page did you

3 say, Mr. Lane?

4 MR. LANE: Twenty-three.

5 THE WITNESS: Twenty-three would be the

6 second full paragraph, and second to last sentence

7 starting with "Rather, in those marketplace

8 dealings..."

9 BY MR. LANE:

10 Q You refer to, in that same sentence, an

11 ongoing decision making process regarding programming.

12 Do you see that?

13 A Yes.

14 Q How often do systems change distant

15 signals?

16 A I'm trying to see where it is that you are

17 referring to.

18 Q The next line under "dominant impression."

19 A Under "dominant impression"? I'm trying

20 to find the "ongoing" word.

21 Q Immediately -- The word immediately under

22 "dominant."

23 ARBITRATOR WERTHEIM: Same sentence.

24 BY MR. LANE:

25 Q Same sentence.

1 A I'm wondering if dominant occurs two
2 places, because I don't see "ongoing" under
3 "dominant."
4 MR. GERSCH: I don't see it.
5 THE WITNESS: Mr. Lane is looking at a
6 different paragraph than I'm looking at. Both have
7 the term "dominant impression." The paragraph he is
8 referring to is under 5, not under 4. It will be the
9 second paragraph under 5, and it says, "As noted
10 before," which I guess we have just reemphasized that
11 we noted it before.
12 "I believe responses to our survey reflect
13 dominant impressions of programming value formed by
14 respondents in their ongoing decision making
15 processes." You know, a program -- Believe me,
16 program cable operators, cable systems, have people
17 with responsibilities for cable programming decisions,
18 and overwhelmingly they already have a channel line-
19 up.
20 Now I assume those people are doing
21 something, and what they are doing is an ongoing
22 process of evaluating what it is they want to carry
23 and what it is they want to promote, a variety of
24 things like that. So it is an ongoing -- as we say
25 here, an ongoing process that they make regarding

1 programming, and occasionally then they will make
2 changes in that programming.
3 Now they might decide that they want less
4 of one type of programming and more of another.
5 ARBITRATOR FARMAKIDES: Does that happen
6 very frequently?
7 THE WITNESS: I think that you'll see
8 program line-up changes, certainly, in an urban system
9 such as I'm a subscriber to. It certainly happens
10 yearly and sometimes more frequently than that.
11 ARBITRATOR FARMAKIDES: Yesterday we were
12 told -- Well, Mr. Stewart said the same thing, and so
13 did you, that it generally occurs either in a six-
14 month interval or at a yearly interval. You say
15 that's generally correct, but it could happen more
16 frequently.
17 THE WITNESS: It could happen more
18 frequently, depending on what's there. For example,
19 a channel -- A cable network that launches might say,
20 if you make a deal to carry us, we've got to get out
21 there, got to get carried, and you put us on by such
22 and such a date, May of 1996, we're going to give you
23 20 percent off the license fee, and we're going to
24 give you an extra $10,000 in marketing money to help
25 our launch, and they might very well decide to do it.

1 BY MR. LANE:

2 Q How often do they change distant signals?

3 How frequently?

4 A I think that that's fairly stable at this

5 point in terms of the -- certainly, with WTBS which is

6 almost universally carried. So that doesn't change

7 much. WGN -- Growth has come at the expense of other

8 superstations. So as their growth occurred, I'm sure

9 that we would see changes.

10 We watched a rather strong growth over the

11 past few years of WGN. There was some reference to

12 superstations losing subscribership, I believe,

13 yesterday, and in hearing your questions, Mr. Lane,

14 there was some reference about it, too -- the overall

15 carriage going up and, but gee, look at these stations

16 with sports that are losing.

17 I would just say that I think that's a

18 market share battle that WGN seems to be winning right

19 now, and probably to avoid paying -- in certain cases,

20 to avoid paying the 375, if they decide to carry the

21 Bulls, the Cubs, the White Sox, therefore, WGN's movie

22 package is syndicated, that they will add it and drop

23 another.

24 ARBITRATOR WERTHEIM: You said this is

25 true the last few years. Are you or are you not

1 including years '90 through '92

2 THE WITNESS: I am, because a lot of the

3 WGN growth, in my opinion, was fueled by the Bulls

4 going onto that station. Prior to that -- I don't

5 remember the exact year that they moved, but they were

6 on WGN in this period. Prior to that, they were on

7 WFLD, I believe. You might recall.

8 BY MR. LANE:

9 Q So you don't know how often they change

10 distant signals?

11 A No.

12 Q Now what was the task that was assigned

13 the respondents in question 4, part of this portion of

14 your testimony that's entitled "Budget Allocation

15 Process"?

16 A Yes. The task, as explicitly set forth in

17 the survey instrument -- I refer you to page 47 --

18 Excuse me, that's the wrong page -- 48 -- in question

19 4(a) was pretty explicit. It wants you to estimate

20 the relative value to your cable system of each type

21 of programming broadcast by these superstations --

22 I'll abbreviate here -- and specifically excluding the

23 national network programming. That was the task.

24 Q The task wasn't to assume you had a fixed

25 dollar amount to spend in order to acquire all of

1 that?

2 A And the way to accomplish that task was to

3 assume that you had a fixed budget, fixed dollar

4 amount that you would then spend. That's the way that

5 we want you to allocate it. So I think that the two

6 ways of phrasing it are quite similar.

7 The allocation of the fixed dollar amount

8 is the specific method used in order to determine the

9 relative value.

10 Q What fixed dollar amount would these

11 people have in mind when they're doing this?

12 A Well, I don't know what they would have in

13 mind. I couldn't testify as to what they had in mind.

14 We certainly have been talking about distant signals,

15 but I could not tell you what each individual did.

16 Q Would they have their royalties in mind?

17 A I don't know what was in their minds.

18 They do know specifically that they are allocating

19 value among a well defined universe of programming.

20 Q Well, I guess my question is: What did

21 this add to your question to say fixed dollar amount?

22 A Well, this was again in response to prior

23 proceedings in the -- I think we go back to the 1983

24 proceeding where we had them allocate 100 points,

25 essentially percentages, and there was a feeling that

1 that didn't smack of spending money and that we should
2 use something that clearly suggested that, when you
3 allocated value, it was a budget. It was a budget
4 making -- an expenditure process.
5 So we changed from 100 points -- I don't
6 know if that was the exact phrasing in '83, but it was
7 something like that -- to a fixed dollar amount.
8 Q Why don't you just say to them, you spent
9 X amount in royalties in the first half of 1992;
10 allocate that among the programming?
11 A Well, I think that we -- I was asked that
12 yesterday, and I answered. I'll be happy to go back
13 over it again, but --
14 Q Well, I'm asking a slightly different
15 question. The question was yesterday, why didn't you
16 do for their royalties for 1992 ? You said, because
17 we had to do the survey in a certain time period.
18 I'm asking you, why didn't you use the
19 royalties for the first half of 1992, which was
20 precisely the numbers that you used on page 19 to get
21 your stratification statistics?
22 A Yes, and you're correct in the first part
23 that that was what I was first asked, and then what I
24 later addressed in my comments yesterday was why we
25 didn't use the 92-2. The reason --

1 Q I'm asking about 92-1.

2 A Excuse me, 92-1. I misspoke, and I did

3 address that yesterday. I'm happy to repeat it. It

4 was our feeling --

5 Q Well, I'm happy to hear it.

6 A Good. It was our feeling that we did not

7 -- There really were two concerns, if you recall my

8 answer. The first one was that we didn't want to wave

9 a flag in saying this has something to do with

10 copyright payments. Immediately, we're into a

11 situation where, I think, they are going to be on

12 guard. Gee, this isn't just survey research to see

13 how we allocate relative value. They may be wanting

14 to see if I'm willing to pay more for copyright than

15 I would. Maybe they are going to raise the rate.

16 They want to see what the response is. I can't --

17 That's just an example of what it would be to put them

18 on alert.

19 So we wanted to make sure that we didn't

20 tie this directly to what their rates might be,

21 instead to get the relative value. This is again

22 often done in survey research. You don't want to --

23 Q Why don't you just round the royalties to

24 like the nearest 10,000, so they wouldn't know?

25 A It's something you could possibly do, but

1 we feel that using the stratified random sample and
2 weighting by royalties allows us to, in essence, do
3 the same process. In other words, if we ask someone
4 who had a $100,000 budget and we asked them to
5 allocate 100,000, and then they would think 100,000 --
6 let's see, I'll give 30 percent here and 50 percent
7 here; because they would have to allocate.
8 So they're still going to think
9 percentages, because it's got to add up to 100,000.
10 So it's not like you're just going to throw out
11 numbers. They're going to have to think in
12 percentages in order to get to 100,000.
13 Another system has 10,000 in royalties,
14 and they're going to have to allocate that on a
15 percentage basis to give me it in dollars. So rather
16 than waving a red flag in front of them, what we said
17 is, you know, give us the relative value.
18 Now when we do the calculation, guess
19 what. We plug in their royalties. So, in essence, we
20 have simulated that process of doing it without waving
21 a red flag at them.
22 Q What if the guy that has 250,000 or more
23 is thinking 100,000 in royalties or 100,000 in this
24 fixed budget? Doesn't that kind of defeat the
25 purpose? I mean, you have a direct way of saying,

1 look, you're -- They say to you, why are you telling
2 me 250,000? Why didn't you say, we want to weight it
3 by this amount? What if he's thinking 100,000 when he
4 gives you the answer, and his weight is 250?
5 A I don't believe that would change his
6 relative value.
7 Q Why is that?
8 A Because he's thinking about a well defined
9 universe of programming at this point. We've gone
10 through it with him carefully, and as to the station
11 line-up, he knows precisely what that is. They've got
12 time to think about that, and we're talking here not
13 at the margin. We're talking about the total payment.
14 Okay?
15 You can argue marginal analysis with the
16 economists but, frankly, what we're talking about here
17 is the total payment made, and they are allocating a
18 budget. I have no reason to think that they would
19 vary their estimate based upon those different
20 numbers, and I think that what we did in the design
21 gave us the most objective measurement.
22 Q Is that because they're allocating 100
23 percent and just moving percentages around?
24 A No. They're allocating a fixed program
25 budget. In any case --

1 Q I guess I come back to my question: What
2 does the fixed program budget add to your question
3 other than responding to a criticism that the tribunal
4 had? Respondent doesn't know anything about the
5 tribunal's criticism; right?
6 A That's right.
7 Q So what does it add to the question?
8 A It gets them in the frame of thinking that
9 they're talking here now about spending money. It's
10 a fixed program budget. We're talking about spending
11 money. That's what that does, which I think was a
12 meaningful improvement in the survey design.
13 Q And when you're spending money, do you
14 have to think about costs of these programming types?
15 A They're buying. That's what they're asked
16 to allocate. How much would they be paying out of
17 their program budget to obtain those signals? So
18 that's the cost.
19 Q The cost is what they would be paying?
20 A The cost to them --
21 Q Is what they would be paying?
22 A Sure. That's their cost for those
23 signals, just like a license fee is what costs, when
24 they pay 15 cents a month.
25 Q What's a percentage, the cost? I don't

1 understand. What are the costs?

2 A They have a budget of dollars. They can

3 go out and buy program categories, which is not the

4 marketplace, but that's the process it would go to.

5 They're not going to buy a signal. They're going to

6 buy program categories.

7 They have a fixed budget. They were going

8 to spend it. It's a cost. I'm not sure why we have

9 any problem with the fact that that's a cost. It

10 shows up in their --

11 Q What's the cost of the sports program that

12 they're going to spend on? That's the part I don't

13 understand. I understand that they have some pot of

14 money that they can spend. Is that what you're saying

15 is the cost?

16 A Yes.

17 Q Okay. Well, how do they know how to

18 allocate that fixed pot among these different items

19 unless they know what each of those different items

20 cost?

21 A Well, those items in this case are

22 provided when they get the distant signals. And what

23 you're saying is: Where is the negotiation between

24 buyer and seller? And, as we have talked about

25 before, this process is not able to get into the

1 negotiation between buyer and seller.

2 It is my opinion that if it did get into

3 that negotiation, that when you're talking about live

4 college and professional sports and how tough a seller

5 would that sports be and how much could they do in

6 terms of getting dollars, that we have ample, ample

7 record in terms of what's been paid by different

8 entities for sports ratings, that they would do very

9 well in that process.

10 In other words, I think what we get from

11 the cable operators in the sense of our not being able

12 to talk, to put into that process the seller of the

13 programming probably results in a number that is

14 conservative for sports and probably overstated for

15 movies and series simply because that's older program.

16 That's rerun. That's not new.

17 Q Now, you're aware, are you not, that some

18 of the operators assigned 100 percent to sports in

19 your --

20 A I recalled only one, but when -- I'd have

21 to go back to the surveys. I think there might have

22 been one that did.

23 Q Now, what is that respondent doing with

24 the fixed budget there? Is that a realistic way to

25 fill up several channels, to spend everything on

1 sports?

2 A My recollection is that was one out of 189

3 responses. So it is typically not the way that they

4 do, but it was what that respondent --

5 Q But you didn't discard that respondent,

6 did you?

7 A We didn't discard it based on the results

8 that they completed in the survey. They were

9 included. And in any survey you're going to find very

10 outlying values.

11 Almost any survey you do measuring almost

12 anything will have some responses that will be way out

13 and away from other responses. You include those.

14 You have to count those.

15 Q And my question to you is: What is that

16 respondent? Is that respondent thinking of relative

17 value or is that respondent thinking of allocating a

18 fixed budget or several --

19 A He's allocating a fixed budget. And he's

20 doing that -- in allocating it, what he's saying is if

21 I just had a -- if I had a pot of money and I had

22 program categories devised at distant signals, guess

23 what?

24 I'd take the sports from WTBS and the

25 sports from WGN and the sports from whatever other

1 distant stations that I have. And I wouldn't want
2 their news or their movies or their series because
3 I've got that on other channels.
4 I don't know what's in his mind, but you
5 want to say: What could he be thinking? We asked him
6 to do a process of thinking by program categories.
7 And that operator would make that allocation.
8 It was -- it's an unusual one. I don't
9 even recall which year, if it was '92 or another year.
10 And, again, we could refer to the questionnaires to
11 get that.
12 But that happens. You're going to have
13 some outlay. You're going to have no reason why
14 somebody couldn't say 100 percent movies.
15 Q And in the case of 100 percent sports or
16 100 percent anything, this is about programming that's
17 already been broadcast, that they've already sent out
18 to their subscribers; right?
19 A They're being asked how would they
20 allocate a budget to that. And it's been sent out.
21 And what they would say is if they had to pay for what
22 they got in terms of what they saw as the value,
23 they'd give all the money to the sports copyright
24 holders and they wouldn't give that. But I think that
25 to concentrate on one out of 190 responses is a real

1 distortion.

2 What we find is when you see it from the

3 very tight confidence levels that we have here, that

4 although there are outlying responses, overwhelmingly

5 the respondents gave us numbers that were pretty much

6 in a reasonable range. It was a mix across different

7 program categories.

8 And, you know, although I can understand

9 your hypothetical, that's not what we're looking at

10 here. What we're looking at is the collected response

11 across the sample. And overwhelmingly they made

12 allocations.

13 They had relative values there. And they

14 weren't extreme. They valued movies. They valued

15 syndicated series. They valued sports. And they

16 valued it in -- when we properly weight it, they

17 valued it in this manner, which is -- I think shows

18 the validity of the process.

19 Now, is that volatile? Are they making

20 this up? I think Mr. Trautman will address that quite

21 effectively when he looks across essentially 12

22 surveys done over a 10-year period and with somewhat

23 different methodologies. So I don't think that we're

24 talking about a volatile measurement here at all.

25 CHAIRPERSON JIGANTI: Can you conclude

1 anything other than that that person misread the
2 question?
3 THE WITNESS: No. Again, you don't know
4 what's in their mind, but given the 1990 --
5 CHAIRPERSON JIGANTI: Well, this was based
6 on programming that had already been completed.
7 THE WITNESS: Yes.
8 CHAIRPERSON JIGANTI: So obviously he
9 couldn't spend everything on sports, could he?
10 THE WITNESS: Well, he was asked how would
11 he allocate, he or she, the fixed programming budget
12 to the programming that was delivered. Now, I'll give
13 you an example.
14 Let's think about ESPN. ESPN -- and some
15 of the regional sports networks do the same thing --
16 carried programming on their channels for which they
17 pay nothing.
18 And, in fact, sometimes the producer of
19 the programming has to bear all of the costs of the
20 production in that programming. So it's possible to
21 have programming on a channel that is valued at zero
22 by the entity that's going to be putting out the money
23 for program budget. And so ESPN will carry some hours
24 of programming and not pay anything for it.
25 I happen to be working with a client in

1 that situation right now. We've got a long way to go.
2 They're -- you know, for a whole bunch of events, a
3 number of events over a year, they're going to pay
4 maybe $100,000, almost nothing. But to my clients,
5 sports client, we want the television. They want the
6 television exposure.
7 So, again, that was I think an odd
8 response, but you can't get in the position in doing
9 survey research of saying, "Well, he must have been
10 confused."
11 Remember our process here. They were
12 asked to write it down, "Here are the categories.
13 Write it down. Assign a number. Think about it. Do
14 you want to change it?"
15 So if it was a '92 survey that you're
16 referring to, clearly they had plenty of time to think
17 about it. I don't think there was confusion. It was
18 just a judgment made by an individual, quite unusual
19 judgment. And that's why we talked to 189
20 individuals, whatever that number is in terms of the
21 executed surveys, rather than 3 or 4.
22 BY MR. LANE:
23 Q But isn't it the case that in the
24 situation you're just talking about with your client,
25 that that's a future expectation and I can say, "Fine.

1 In the future I'm going to spend 100 percent on this.
2 Then I'll have to go get some free programming
3 someplace"?
4 That's quite different, isn't it, from
5 looking at the past for a station like WTBS that has
6 a lot of movies and series that I can tell you they
7 didn't get for free and wouldn't get for free? Isn't
8 that right?
9 A I think what you're suggesting is that
10 you'd like to have us go back to that individual and
11 say, "Now, what were you thinking about when you did
12 this?"
13 That's not the nature of survey research.
14 You take the results that you get. You carefully
15 design a questionnaire. You carefully design a
16 sample. You carefully execute that. And then you
17 can't get selective on what you want to count and what
18 you don't.
19 I'm not sure that you would be asking me
20 this question if the outlier had put down 100 percent
21 movies. I just for some reason don't think that would
22 have come up.
23 ARBITRATOR WERTHEIM: You wouldn't be a
24 witness here, then.
25 THE WITNESS: Yes. That was one response.

1 The weight of one response is --

2 BY MR. LANE:

3 Q Let's talk about 100 percent movies,

4 though. Let's talk about 100. What if the respondent

5 had said 100 percent movies? Are you saying that's a

6 realistic budget allocation for WTBS in 1989 or 1992

7 for how much they -- would they get any of the sports

8 on WTBS?

9 A I'll take each respondent's -- they're

10 qualified. They properly addressed the question.

11 They're given the appropriate background information.

12 I take the answer as they give it. And it's not my

13 position or any survey researcher's position to make

14 a judgment as to whether that's a nutty decision or

15 not. It's in there. It's in the data.

16 Q But it's your responsibility, is it not,

17 to figure out whether that shows that the respondents

18 were thinking of something different from what you

19 intended by the survey?

20 A No. The fact that we --

21 Q That's not your responsibility?

22 A The fact that we have surveys in which the

23 range of responses are so relatively narrow that we're

24 able to give you confidence intervals on the plus or

25 minus two percent level is the statistical way of

1 saying, you know, "Is this a reasonable set of
2 questions you ask? Is there a confusion out there?"
3 because if there was a lot of confusion out there,
4 you'd have answers that were all over the mat. And,
5 as a result of that, you'd have to have a broader
6 confidence interval. And that's just not the case.
7 So we know through conducting this over
8 many years in hundreds and hundreds of surveys that
9 the overwhelming number of respondents give an
10 allocation across the different categories.
11 And they don't vary wildly. They do vary.
12 I mean, there may be a respondent who finds devotional
13 is five, you know, three, four, five times what the
14 mean response is.
15 Should I then say, "Well, gosh. Maybe
16 we've got a system, you know, in the Bible Belt where
17 the manager is so involved in devotional programming
18 that" -- I mean, because that doesn't seem to me like
19 a reasonable answer. Well, if you get into that, you
20 can't do survey research.
21 CHAIRPERSON JIGANTI: Could you draw
22 another conclusion that the respondent didn't
23 understand the question?
24 THE WITNESS: No, I don't think so. If
25 you go through the process that we have here and the

1 deliberation that is given to it, the time that is
2 taken as we go through it, and have them write it
3 down, the fact that these are television professionals
4 -- let's keep in mind this is not a household. This
5 is an executive at a cable system. These are no
6 unfamiliar concepts to him. I see that confusion is
7 just not going to be the case.
8 CHAIRPERSON JIGANTI: Or perhaps the
9 person is just so casual that he doesn't care?
10 THE WITNESS: Unfortunately, in survey
11 research you could have somebody like that. Again,
12 we're -- if you're going to have any survey research,
13 you -- the surveys are done with human beings and --
14 CHAIRPERSON JIGANTI: There's no question
15 that that can happen to one. I guess the question Mr.
16 Lane broached or from some of the questions he asked,
17 what I have in my mind is: Is it symptomatic --
18 THE WITNESS: No.
19 CHAIRPERSON JIGANTI: -- or something like
20 that?
21 THE WITNESS: No. And that's why I say
22 that if you look at the responses overwhelming among
23 189, you find, you know, a distribution that is not
24 terribly like that. In some cases movies may be
25 higher than sports. In some cases syndicated may get

1 a higher number.

2 But the range is a reasonable range. And

3 we could provide you statistical information that

4 would detail it. But the tightness of the confidence

5 interval is itself an indicator of the fact that they

6 understood the questions.

7 Overwhelmingly the respondents understood

8 it and were able to give answers. And they weren't --

9 you know, first questionnaire was 100 percent. Second

10 questionnaire was zero percent for that category.

11 Third one was 10. The next one was 90 and on through

12 the sample.

13 Then you say, "Well, people don't know

14 what we're asking." They had the questionnaires. You

15 can look at each of the years. And you can see that

16 there isn't that kind of variation.

17 ARBITRATOR FARMAKIDES: Let me ask another

18 question.

19 CHAIRPERSON JIGANTI: Go ahead.

20 ARBITRATOR FARMAKIDES: Couldn't you have

21 a bell curve that's relatively a very gentle slope

22 that crossed the two extremes with just a little blip

23 in the center? If that, what would that tell you?

24 THE WITNESS: Well, if you had a wide

25 range, it would --

1 ARBITRATOR FARMAKIDES: Wide range.

2 THE WITNESS: -- say that there's a lot of
3 disagreement as to that. Now, you know, I in this
4 drawing didn't do a very good job of drawing it
5 because the kind of curve we're talking about -- let's
6 say that we're talking about a value here of 38.8. It
7 looks much more like this as to where the likely value
8 is.

9 ARBITRATOR FARMAKIDES: What if you
10 translate that and make it a whole new graph with a
11 very shallow curve to it? What would that tell you?

12 THE WITNESS: It would say there's a real
13 wide range of opinion.

14 ARBITRATOR FARMAKIDES: Could it show you
15 confusion?

16 THE WITNESS: I'd want to look at that
17 more if I saw that. And you'd want to look at other
18 things. But, you know, we pretested. We listened in.
19 We've done a number of these. And we get a very tight
20 distribution.

21 ARBITRATOR FARMAKIDES: In that kind of
22 curve, the one that I'm postulating, if you get an
23 extreme response, would that suggest something to you?

24 THE WITNESS: If you have a lot of them
25 out at different extremes, then --

1 ARBITRATOR FARMAKIDES: No. Just one.
2 Just one way out.
3 THE WITNESS: That happens. It just
4 happens.
5 ARBITRATOR FARMAKIDES: It happens?
6 THE WITNESS: It happens in consumer
7 research. It happens in physics. You know, I was
8 trained in applied mathematics. And it was actually
9 plasma physics. And you have an equation, and it
10 describes the measure, say, of gases.
11 You could have something that happens
12 quite differently. It's best described by something
13 that you may have heard of that's a little trendy
14 maybe called chaos theory outline, very strange. One
15 little thing happens. Guess what? Totally, totally
16 unexpected.
17 BY MR. LANE:
18 Q Would this suggest that the respondents
19 heard the question as "Tell me the relative value" and
20 didn't hear anything about the fixed budget, in
21 effect?
22 A No. I'm sorry, Mr. Lane. I think that
23 question has been asked and answered a number of
24 times. And that is that we've found that the
25 overwhelming majority of respondents gave answers that

1 fell within a certain area.

2 And I'm not going to make an inference

3 that because somebody gave me too much allocation or

4 more allocation, a very large allocation, much more

5 than I see with others, that that person doesn't know

6 what they're saying.

7 And you're asking us to sit down -- you

8 wouldn't if we did, I assure you -- to sit down, go

9 through the questionnaires and any that really had

10 different answers, "Well, we won't count those."

11 That's inappropriate. And I think we've covered that

12 pretty solidly.

13 Q I'm not asking you not to count them. I'm

14 asking you: What did it show about what the

15 respondents thought they were doing when they answered

16 Question 4?

17 A I think the respondents knew --

18 MR. GERSCH: I object to that. It's not

19 only repetitive. It's just asking Mr. Bortz to

20 speculate about what the respondents were thinking.

21 CHAIRPERSON JIGANTI: You may inquire.

22 BY MR. LANE:

23 Q I think what I'm asking you about is:

24 What did you do as a responsible surveyor to assure

25 yourself that the respondents were answering the

1 question that you thought you were asking them?

2 A Through careful design, through consulting

3 experts in survey research as the questionnaire

4 designed, through using techniques that are accepted,

5 widely accepted, in the industry.

6 There's ample supporting testimony in the

7 Joint Sports Claimants' case to show that these are

8 techniques that are commonly used, are appropriate,

9 and what was appropriately implemented and executed.

10 And that's what we do to assure it.

11 What we don't do is to make value

12 judgments about the responses of individuals.

13 Q So you don't know whether these people

14 just heard "relative value" -- which, by the way, why

15 is that word the only word that's underlined in

16 Question 4 on Page 48?

17 A The word "relative." Just a matter of

18 emphasis when the question is read, that we're asking

19 for relative value, not an absolute number. But if

20 you read the Question 4(a), I don't know how you could

21 have anything that was more deliberate and clearer

22 than that.

23 Q Is it your testimony that the smaller

24 confidence intervals show -- I'm not quite sure. What

25 was your testimony about the relationship between the

1 confidence interval and the range of the answers?

2 A What I'm saying is that the tight

3 confidence interval says that we don't have a broad

4 range of responses because if we had a very broad

5 range of responses, then to assert something with a 95

6 percent confidence level, we'd have to put a much

7 broader range on that if they were distributed not in

8 a normal distribution, but in some other form of

9 distribution across a wide range of numbers, then we

10 couldn't assert with 95 percent confidence interval,

11 with 95 percent confidence, that the best estimate,

12 you know, was within plus or minus a couple of

13 percent.

14 Q Would you look at Page 24 of your

15 testimony, please? And then if you'd just put your

16 finger in Page 31, please? We'll refer to both of

17 those. As I understand Page 24, you just said to

18 them, "What's the most popular; right?"

19 A Yes.

20 Q That's just like: How many possible

21 responses could you have to that?

22 A Whatever they told us they viewed as most

23 popular and --

24 Q I mean, that's not a real wide range of

25 responses, is it? You either say "Yes, live

1 professional and college sports is most popular" or
2 you don't say that; right? Is there any other choice
3 in that?
4 A I'm trying to understand your question.
5 They either --
6 Q They either mention --
7 A -- mention it or they don't.
8 Q -- it or they don't; right?
9 A We don't ask them about a category.
10 Q Right. But if I look on the table on Page
11 31, --
12 A Yes.
13 Q -- I could have given an answer for live
14 professional sports from one to 100 or from zero to
15 100; correct?
16 A Correct.
17 Q So that's a really wide range compared to
18 the either/or choice still most popular?
19 A No. This is a different kind of a
20 question because what we did here --
21 Q Okay. Well, let me just ask my question
22 first. Okay? Why is the confidence interval on the
23 either/or question much, much higher than the
24 confidence intervals on the broad range of questions?
25 A Because the sample design, the use of the

1 allocation formulas, the use of the ubiquitous cum.
2 root rule, cum. square root rule, was all designed to
3 have a narrow confidence; in other words, type of high
4 confidence to Question 4.
5 These other questions which are more by
6 way of background and supporting information, we
7 didn't design the sample in order to minimize that
8 confidence interval. We designed the samples to
9 minimize the confidence interval in Q.4.
10 So the wider confidence interval that you
11 see here reflects the fact that this was a sample that
12 was not optimized to minimize that error. A sample
13 could be developed, a different sample. If we wanted
14 to tighten that error, we could do our sampling a
15 different way, have less error here, but could very
16 well, very likely, have more error in Q.4.
17 Q Was a different sample used to get the
18 answers in Table 7 on Page 24 from the one that was on
19 --
20 A Same sample.
21 Q Same sample?
22 A And here we don't do weighting. Okay?
23 We're not weighting these responses by royalty. This
24 is a percent that was most popular. And we've added
25 that up. And the weighting there is simply weighting

1 by the number in the strata but not by the royalty
2 substrata.
3 Q The weighting is what really drives the
4 confidence intervals on Page 31?
5 A It's the combination of setting the
6 boundaries, deciding the sample size within the
7 strata, the appropriate weighting to the strata, and
8 the appropriate weighting to the royalties.
9 Q Now, I want to ask you a question. When
10 you ask the people most popular, they could answer.
11 They could give you all these categories; right?
12 A Theoretically.
13 Q I mean, how is that the most popular?
14 A You say what's most popular with your
15 subscribers. It's reasonable I think to expect
16 somebody might say "Well, movies and sports are most
17 popular." And if you add this up, I know I can't do
18 that here, but you'll see -- I don't know -- something
19 --
20 Q I don't know that it adds up to more than
21 100 percent, but most usually means one, doesn't it?
22 A No. We're not -- we get to that in
23 another question when we get them to give us a single
24 response. Most in a vernacular, it's not -- would not
25 be difficult for me to imagine a response that says

1 "Movies and sports are most popular."

2 We didn't say "the single most popular."

3 If we wanted to have a single response, we would have

4 asked it that way. We would not have allowed multiple

5 responses. But we didn't want to in this question do

6 that. We wanted to say "most popular" and "multiple."

7 And we do that explicitly and in the questionnaire, if

8 you go to that.

9 And, by the way, if you add that up, it

10 says that: What did people answer? Well, on the

11 average, about one and a half categories. So I don't

12 want you to get the impression that -- from the

13 question, it seems to suggest they gave us, you know,

14 big, long lists.

15 On the average, it was about one and a

16 half. In other words, you could probably say -- and

17 this isn't the exact distribution -- maybe half of the

18 respondents gave us one category. And half the

19 respondents gave us two categories. And that would

20 average out to one and a half.

21 And if you refer to Question 2(b), Page

22 46, on 2(b), Page 46, in all capital letters on 2(b),

23 46, we say, "Record all the programming types

24 mentioned." We expected answers to be more than one.

25 And on the average we got about one and a half

1 categories. That's not at all unusual.

2 Q What does "most popular" mean?

3 A Whatever was -- the respondent thought it

4 meant, but what is most popular with your subscribers.

5 What did they like the best?

6 Q Did it meant the most watched?

7 A Most popular. What do they like the best,

8 not most watched? That's tonnage again. We don't --

9 Q Does that mean what they're willing to pay

10 for?

11 A I think that watching, paying, willingness

12 to pay, the personal satisfaction. You know, there's

13 studies done in media called gratification and usage

14 studies. And it gets to: Why did people watch

15 things? We did a survey that addressed sort of people

16 watching things. You know, how intense is their

17 interest in it?

18 So all of those come together. We're

19 dealing here again with the general view of the

20 operator as to what he perceives is popular. That's

21 going to motivate him.

22 Q Is popularity among subscribers an

23 important consideration to an operator?

24 A Yes.

25 Q Now, on this chart that you have on Page

1 24, you term it the "absolute confidence interval."
2 Do you see that?
3 A Yes.
4 Q And isn't it true that in a lot of survey
5 research you could have a 99 percent confidence
6 interval, rather than what you've used here, a 95
7 percent confidence interval?
8 A It can be used, yes.
9 Q That would be more absolute than what
10 you've used, wouldn't it?
11 A It would say that there would be an even
12 less error of -- chance of making an error of
13 asserting that the population was within that band.
14 Q And would the numbers in the absolute
15 confidence interval column be greater or smaller if
16 you had a 99 percent confidence interval?
17 A It would be greater.
18 Q What does the confidence interval mean for
19 survey research?
20 A Typically it is a measure of the band
21 within which you have a high confidence. Let me point
22 out a couple of things here now that I've drawn this
23 correctly. What I have up here is probability of the
24 real number; in other words, if we were able to get
25 the real number by surveying all of the systems.

1 The probability of the real number is this
2 one. And it drops off very sharply when you're
3 talking about the narrow band we had of 95 percent,
4 drops off very sharply. So, yeah, we have been
5 talking about, "Gee, it could be all the way out
6 here."
7 Remember when the Devotional -- the
8 questions from the Devotional representative and he
9 was talking about "Well, here's the lowest it could
10 be" and I would say to him, "Well, yeah, it could be
11 there, but the probability of it being out here is
12 tiny compared to the probability of it being up in
13 this range"?
14 And, as I indicated before the break, the
15 best estimation that we could make is right here at
16 the top, which is what we give you in the survey
17 results right here. That's the best one.
18 Yes, it could be there, but the chances
19 are very slightly.
20 ARBITRATOR FARMAKIDES: How would that
21 curve change if you had a 99 percent?
22 THE WITNESS: Ninety-nine percent.
23 Especially your boundary would -- well, this is the
24 distribution, say, of the population. That's what you
25 have.

1 If you want a 99 percent confidence level,
2 then you're going to go out to a larger percentage, as
3 Mr. Lane indicated. But in the survey research that
4 we do, survey research, asking people's perceptions,
5 95 percent is plenty.
6 When I was in the aerospace industry and
7 we were working on reliability, say, of a missile
8 system that was going to be launched, we might have
9 worked to 99.9 percent. But in survey research, it
10 would be silly, I think, to apply 99.9 or 99.
11 And 95 percent is -- I think if you talk
12 to others in the survey research business, they would
13 say that's what's used. Ninety-five is the common
14 standard in survey research.
15 BY MR. LANE:
16 Q In survey research, what are the sources
17 of possible error?
18 A It's a broad question. If you carefully
19 draw the survey, the sample, you know, identify the
20 universe, draw the sample, apply the appropriate
21 sampling approach, have well-trained interviewers
22 audit the interview process, do proper pretest, do
23 careful questionnaire design, then I think you are
24 developing information that can be relied upon and is
25 relied upon using -- if we're using essentially the

1 accepted techniques as relied upon for decision-making
2 by corporations and government entities totally.
3 So it's a question -- it's what we've been
4 spending the last day and a half on. And that is if
5 you do it right, you're talking about something which
6 indeed can be relied on.
7 Q And I just ask you my question again.
8 What are the sources of possible error in survey
9 research?
10 A If you didn't -- just the converse of
11 everything I answered. If you didn't do a proper
12 sample design, if you didn't -- if you had real
13 problems in your questionnaire design, if the
14 interviewers didn't do their job on a consistent
15 basis, basically the converse of what I just ran
16 through.
17 Q What are the potential effects of each
18 types of those errors?
19 A I don't understand the question. What are
20 you getting at?
21 Q What are the potential effects on the
22 results of those errors, of any of those types of
23 errors?
24 A It could affect the results.
25 Q And are these sources of errors covered by

1 the confidence interval?

2 A Confidence interval assumes that the

3 question is properly answered, the interviewers were

4 properly trained, and so forth.

5 Q And if they're not, is that covered by the

6 confidence interval?

7 A Confidence interval is a statistical

8 analysis of the numerical results of the survey. And

9 the confidence interval, therefore, is applied to the

10 results assuming that the data was derived in an

11 appropriate manner.

12 Q If it wasn't derived in an appropriate

13 manner, would the confidence intervals make up for

14 that?

15 A Confidence intervals -- I will answer it

16 again -- do not address that. The confidence

17 intervals take that data as presented and: Is that a

18 mathematical computation?

19 Q Do you know what relative error is?

20 A In a general way. I don't know what

21 you're getting at.

22 Q As a statistical term, do you know what

23 relative error is?

24 A I couldn't define that for you.

25 Q Do you know how it's calculated?

1 A No, but I could ask Dr. Bardwell to inform
2 me. I'd be happy to explain it.
3 Q You're the witness, sir. And I'd like to
4 know what you know, not what someone else knows.
5 A As I say, that is something that I would
6 have deferred to Dr. Bardwell in the statistical
7 design.
8 Q Turn to Page 26 of your testimony, please.
9 MR. LANE: Do you want to take a break?
10 CHAIRPERSON JIGANTI: Okay.
11 MR. LANE: Okay.
12 CHAIRPERSON JIGANTI: Yes. Ten minutes.
13 (Whereupon, the foregoing matter went off
14 the record at 3:48 p.m. and went back on
15 the record at 4:05 p.m.)
16 MR. GERSCH: I was going to say before we
17 go back to the questioning, we were able to obtain the
18 document Mr. Bortz remembered that was indeed asked
19 for in discovery. And it was identified in discovery
20 specifically in response to a question from Mr. Lane
21 about what Mr. Bortz relied on for preparing the
22 category definitions for the 1992 Bortz survey.
23 And we identified at the time in a letter
24 of September 18th, 1995 to Mr. Lane CRT's advisory
25 opinion of May 16, 1986, among other things. And we

1 have that here if Mr. Lane wants to question on it.

2 CHAIRPERSON JIGANTI: Mr. Lane, would you

3 like that?

4 MR. LANE: Sure. Thank you.

5 CHAIRPERSON JIGANTI: Thank you, Mr.

6 Gersch.

7 BY MR. LANE:

8 Q Mr. Bortz, I'd like to show you an

9 advisory opinion of the Copyright Royalty Tribunal

10 that's dated May 16th, 1986 in the 1984 cable royalty

11 distribution proceeding, Docket Number CRT 85-484CD

12 and ask you if this isn't on what you've relied.

13 A Yes.

14 MR. GERSCH: Can you make a copy, Dennis?

15 MR. LANE: Thank you.

16 ARBITRATOR WERTHEIM: That was to provide

17 one for the 1992 category?

18 THE WITNESS: For the 1992 category

19 definitions. We didn't use these totally, but we used

20 these as the primary basis and comparison of our

21 categories to these definitions, which showed they're

22 quite similar.

23 BY MR. LANE:

24 Q Mr. Bortz, I'd like to go back to Page 26,

25 which I think is where we left off. Do you have that?

1 A Yes, I do.

2 Q And this is the page that talks about the

3 advertising/promotional use question; right?

4 A Yes.

5 Q Now, just to be clear, the answers in

6 Table 9 on that page refer, do they not, to percent of

7 only those people who answered yes in a question?

8 A That's right. It's only in 1992 31 and a

9 half percent of the total. It's the answers from that

10 31 and a half percent that are totalled in Table 9.

11 Q So, for example, in looking at 1989 the

12 percent using live professional and college sports of

13 90 percent, that's 90 percent of the 34.9 percent;

14 right?

15 A That's correct.

16 Q It's not 90 percent of all the

17 respondents?

18 A That's correct.

19 Q And the same with all the other numbers

20 there?

21 A Yes.

22 Q Now, I think you mentioned this morning

23 that the movies was statistically -- I forget the

24 terminology, but they're different from one another

25 between '89 and '90. Is that an accurate statement?

1 A Yes. I can't cite the specifics. Are you
2 referring to Table 9?
3 Q Exactly.
4 A It would look to me like that would be
5 definitely different, yes.
6 Q But are they --
7 MR. LANE: I'm blanking on the word, Your
8 Honor.
9 THE WITNESS: Is the different
10 statistically significant?
11 MR. LANE: Yes. There you go.
12 THE WITNESS: I don't recall that we had
13 run a significance test on that, but, as you can see,
14 the means fall outside of the -- if you put the
15 confidence interval on the movies and -- what we have
16 here is an absolute confidence interval.
17 So that means you can apply it directly of
18 73 percent plus or minus the 15.3. It would take you
19 down not to 50.3. So that kind of difference suggests
20 to me that it is a meaningful difference among this
21 sample.
22 Q You wouldn't have to take the confidence
23 interval for both years?
24 A You'd have to run -- I think what you'd
25 have to do is to run an appropriate statistical test.

1 I've not done that. If you wanted to say, "Okay.
2 With -- you know, with what certainty can I assert
3 that those numbers are difference?"
4 But it is my -- based upon looking at
5 these confidence intervals, I would make the judgment
6 that they would be different. We could certainly run
7 such a test.
8 Q And this table is not weighted by
9 royalties, is it?
10 A No.
11 Q So the first two questions were not
12 weighted by royalties in calculating them?
13 A That's correct.
14 Q And could you turn to Page 50 for a
15 second, please? In the second paragraph on that page
16 in the second sentence, would you just explain to us
17 what the second sentence means in the second
18 paragraph?
19 A Well, here what we were measuring was:
20 Did you use it or not use it? What we're saying is
21 that this is a pole. And we were just asking a number
22 of cable systems whether they used it or not.
23 We didn't modify it with a supplemental
24 variable. And the variable that we did modify
25 Question 4 was was to say that the answers would, in

1 fact, be weighted by the royalties that they paid in.
2 That's all, that there was no other
3 variable that we felt would be appropriate to weight
4 the first two questions relating to popularity and use
5 in advertising and promotion.
6 Q The popularity and use, it doesn't matter
7 to you whether it's a large system or small system?
8 A We're presenting this. I think it is
9 useful information for the panel to consider, but
10 we're not --
11 Q Did you give them an honest answer?
12 A We're not talking here about allocating
13 dollars that were paid in. So for these questions we
14 said, you know, every cable system is created equally
15 within the stratum.
16 Q Well, is every cable system created
17 equally in Questions 2 or 3 or did you separate them
18 by --
19 A No. I say within the stratum. So what we
20 wanted to try and do is to weight it to be fair across
21 all of the systems, as opposed to the -- to just
22 adding up the responses. Okay? We did weight -- we
23 did apply a weighting, but it's a weighting relative
24 to the stratum only, not to the --
25 Q For 2 and 3?

1 A Yes.

2 Q And the weighting there is just how many

3 systems are in the stratum; right?

4 A It's relative to the number of systems.

5 That's correct.

6 Q Now, just on Page 50, under "Statistical

7 Estimation Procedures" for Question 4, in the third

8 identified component, you refer to total revenue.

9 What revenue number did you use for that?

10 A It's the revenue that is submitted on the

11 Form 3.

12 Q So that's the gross, what's called the

13 gross --

14 A Gross revenues.

15 Q -- receipts number?

16 A I believe that's it. I'd have to look at

17 the form to see if there was some --

18 Q Well, assuming that I have the terminology

19 right, that's the number, the gross receipts?

20 A Yes.

21 Q And how and where did you get those

22 numbers?

23 A That comes off of the Form 3. Excuse me.

24 You know, I -- let me take a look at this here. I

25 have to say that there -- it looks to me like this is

1 an error stating total revenue. It's the total
2 royalty of the sample system, I in Stratum H. You see
3 this at the bottom of Page 50? It's small t, Sub IH.
4 We say "total revenue." It's total royalty.
5 Q So we should cross out the word "revenue"
6 and write the word "royalty" there?
7 A That's correct.
8 Q How do you take the different tables? Do
9 they have some relationship to each other? And the
10 different tables to which I'm referring are the
11 responses to the Questions 2, 3, and 4.
12 A Well, we're addressing a similar issue in
13 different ways. One is the cable system operator's
14 perception of the popularity of program types. And
15 that gives us some insights and some information as to
16 what they view as popular.
17 The second is in a sense a measure of
18 behavior, rather than perception. Do you think it's
19 popular enough that you go ahead and use it in
20 advertising and promotion?
21 ARBITRATOR FARMAKIDES: Can I ask, please:
22 What tables are you referring to?
23 THE WITNESS: Yes.
24 MR. LANE: Pages 24, 26, and 31.
25 ARBITRATOR FARMAKIDES: All right.

1 BY MR. LANE:

2 Q Tables 7, 9, and 11; right, Mr. Bortz?

3 A That's right. Why don't I just quickly

4 step there. Page 24, Table 7 is a measure. It's

5 their cable operator's perception of the popularity,

6 what's most popular among their subscribers. That

7 tells us something as to their view of their market.

8 It doesn't tell us how they would divide

9 up a program budget, but it tells us that sports is

10 most frequently mentioned as most popular, then

11 followed by movies and syndicated and then news and

12 public affairs.

13 If we go to Table 9 on Page 26, it's a

14 sort of "Okay. Now I want to get another handle on

15 how you think about these categories. So let's look

16 at your behavior. Do you use it in advertising and

17 promotion?"

18 And we see in Table 9 again that sports is

19 almost universally used and the other categories are

20 used with some real frequency. What we have here, you

21 -- and then we go on to Table 11, which is the

22 allocation table.

23 And your question to me was: Are these

24 related? They're related. They give us, I think,

25 some confidence that the measurement in Question 4 is

1 consistent.

2 They gave the highest weight in terms of

3 allocating the relative value of the programming to

4 guess what the programming that they felt was most

5 popular with their subscribers and the programming

6 that they most often used in advertising and promotion

7 to their subscribers. So there's an internal

8 consistency there.

9 Q I'd like to turn to Page 34 of your

10 testimony, please. What do you mean that sports has

11 demonstrated national appeal, as you state in the

12 second paragraph, first line of the text under A?

13 A Well, this is based upon my experience and

14 what we see in the industry. And that is that there

15 is a substantial demand and interest for sports.

16 We're talking about national appeal.

17 If we're talking about the Atlanta Braves

18 contending for the World Series, Michael Jordan coming

19 back, Chris Webber not wanting to play at Golden

20 State, these are not events that are confined to in

21 Webber's case San Francisco or in the Braves' case

22 Atlanta.

23 This is national. And there is a national

24 involvement of sports fans in activities that you

25 might -- without being familiar with that in this

1 country might think was confined to a local area. So
2 it's a demonstrated national appeal that's a kind of
3 a collective consciousness that exists, whether it's
4 a mystique of baseball or the involvement in an NFL
5 football league.
6 Q Are you talking about baseball in general
7 or are you talking about individual teams that are
8 broadcast at distant signals?
9 A I'm talking about sports programming. And
10 baseball is Major League baseball. Different teams
11 have different levels of popularity depending on how
12 they're doing or the personality of the team.
13 But the team exists as part of a whole.
14 The total enterprise is the league, whether it's
15 basketball or baseball or hockey, it's the total
16 enterprise. And, you know, they've got points through
17 the individual franchises. They've got points to
18 stimulate that interest in a number of regions and a
19 lot of people outside of those regions.
20 That's why it's popular national
21 programming that the broadcast networks seek and seek
22 aggressively is because it's not just popular in the,
23 say, 26 or 27 franchise cities, 26 I guess in hockey,
24 29 in -- now in basketball, 27 in the U.S., not just
25 in those cities it's popular. It's popular

1 nationally.

2 Q Is each particular team popular

3 nationally? Are Washington Bullets popular around the

4 country?

5 A At this point not a lot.

6 Q And outside Chicago Bulls, is every team

7 in the NBA exactly as popular as they are?

8 A It varies. And owners ought to keep that

9 in mind. They're going to be popular at one time and

10 not at another time. There is always a level of

11 national interest for all teams because they are,

12 first of all, contesting against another NBA team.

13 So when you say "Are the Bullets popular?"

14 somebody might want to watch the contest, even though

15 the Bullets might not be their favorite team. It

16 might be the opposing team. It might be that they're

17 interested in what the race is in the Eastern

18 Conference. And it might be that they're interested

19 in the performance of a particular player and they

20 love to see a single player, not a team.

21 So there are lots of different ways that

22 this interest comes about. And it's certainly not

23 tied to, you know, the fortunes or the misfortunes of

24 the specific franchise.

25 Q Turning to Page 35, you indicate that

1 distant signal movies faced increased competition
2 between 1989 and 1992; right?
3 CHAIRPERSON JIGANTI: Where are you on the
4 -- yes, I see it.
5 THE WITNESS: That would be --
6 MR. LANE: B, the third paragraph.
7 THE WITNESS: -- B, the third paragraph.
8 Yes.
9 BY MR. LANE:
10 Q And didn't sports face increasing
11 competition in the same period?
12 A There was a limited expansion in the
13 amount of sports available. It was not major. And
14 you didn't have fundamental shifts of things like
15 American Movie Classics suddenly going to all of the
16 homes.
17 In the period between '89 and '92 -- and
18 I can't give you at this point the exact numbers. I'm
19 not sure that I have them. But we tracked the total
20 number of telecasts that are made at sports. And if
21 I look at professional sports, there may have been
22 some increase, but I can't give you the specific
23 number.
24 MR. LANE: At this time, Mr. Chairman, I'd
25 like to introduce as Program Suppliers Exhibit 11-X a

1 copy of a July 2nd, 1993 letter from Arnold and Porter
2 to the FCC in the inquiry into sports programming
3 migration, PP Docket Number 93-21.
4 I think also attached to this and as part
5 of the exhibit is the comments of the Office of the
6 Commissioner of Baseball filed on March 29th, 1993 in
7 that docket; -- and we've only included selected pages
8 of that to keep down the bulk, but, of course, we'll
9 be happy to provide the entire document -- and then a
10 May 4th, 1993 letter from Mr. Garrett to Mr. Levy of
11 the FCC on FCC study of sports migration with a chart
12 in the back of it.
13 I could put them all in as separate
14 exhibits, but I would ask your indulgence just to put
15 the package in as a single exhibit.
16 CHAIRPERSON JIGANTI: You're asking for it
17 to be --
18 MR. LANE: Marked as 11-X.
19 CHAIRPERSON JIGANTI: Marked as an
20 exhibit? You're not asking for it to be admitted now?
21 MR. LANE: I'll ask for it to be admitted
22 to solve that.
23 (Whereupon, the aforementioned
24 document was marked for
25 identification as Program

1 Suppliers Exhibit Number PS
2 11-X.)
3 CHAIRPERSON JIGANTI: Are there objections
4 to it?
5 MR. GERSCH: I guess I would object at
6 this time at least until its relevance becomes clear.
7 There may be a point where I'll withdraw the
8 objection.
9 CHAIRPERSON JIGANTI: Your objection is to
10 relevance?
11 MR. GERSCH: Relevance, completeness. I
12 haven't had time to read through it yet. Just until
13 I understand what it's about. I don't think there are
14 any challenges on the authenticity of the document.
15 It appears to be our letterhead.
16 As far as the sponsoring witness, I guess
17 the question is: What is the witness going to be able
18 to say as the sponsor of this?
19 CHAIRPERSON JIGANTI: You haven't had an
20 opportunity to read it. I reserve my ruling on it.
21 You may inquire, Mr. Lane.
22 MR. LANE: Thank you.
23 BY MR. LANE:
24 Q Mr. Bortz, if you'd turn to the third page
25 of Program Suppliers Exhibit 11-X, which is the chart

1 of the telecast of Major League baseball games that
2 are shown on flagship stations? Do you know what a
3 flagship station is, sir?
4 A Yes, I do.
5 Q And do you know what an RSN is?
6 A That's a regional sports network.
7 Q And if you look on the right-hand column,
8 do you see that the number of telecasts is increasing
9 each year?
10 A In 1989 it was 2,543. In 1992 it was
11 2,704. So we're talking about an increase of
12 something less than 10 percent. I see that.
13 Q And the number of regional sports network
14 telecasts were also increasing according to this
15 chart; correct?
16 A This -- yes. Of course, that's included
17 in this total, I assume. So that's consistent with my
18 impression when we wrote this, a 10 percent increase
19 in telecasts. This is what, for baseball?
20 Q Yes, sir. And the number of flagship
21 broadcasts are, for all practical purposes, the same,
22 are they not?
23 A Yes.
24 Q And if we turn to the second page that's
25 been included in the comments of the Office of the

1 Commissioner of Baseball, that's Page 12 of the
2 comments. Is that your understanding of how many
3 telecasts are broadcast by the superstations in 1993
4 of baseball?
5 A Well, it's comments of the Office of the
6 Commissioner. You know, I can't verify those numbers.
7 Nothing looks unusual. I would assume it's a pretty
8 good source.
9 Q And the last page of the exhibit has that
10 broken down by years. Is that?
11 A Last page.
12 Q Last page.
13 A The last piece of paper that we had there?
14 Q Yes.
15 A It shows superstation telecasts in 1989 of
16 621, in 1992 of 626.
17 Q Is that consistent with your knowledge of
18 how much baseball is carried by superstations?
19 A Yes. I see that, in addition to the seven
20 that seemed to be discussed in this proceeding, I
21 guess in '93 you've added our Denver station. So I
22 guess that's consistent. For those years, I assume
23 for those stations, yes. There are certainly games on
24 other stations.
25 Q You referred in your testimony on Page 35

1 to an increase in the home movie classic service by
2 the end of 1992 in the same paragraph we were just
3 discussing. Do you see that?
4 A You mean American Movie Classics?
5 Q Yes.
6 A Yes.
7 Q Do you know, do you have any idea of how
8 much regional sports networks and sports networks
9 increased during that same period?
10 A I don't have a number on that, no.
11 Q Are you familiar with the magazine
12 CableVision, sir?
13 A Yes, I am.
14 Q And could you tell us what CableVision
15 magazine is?
16 A It's -- I don't know if they're now
17 monthly or bimonthly. Maybe they're weekly. It's one
18 of the trade press, one of the cable trade press.
19 MR. LANE: At this time, Mr. Chairman, I'd
20 like to introduce as Program Suppliers Exhibit 12-X
21 copies of pages -- and I'm going to hand the witness
22 the CableVision magazines from which these were taken.
23 This is a feature of CableVision magazine
24 called Database in which they list subscriber accounts
25 for satellite national services, bonus matrix

1 services, pay services, audio services, tech services,
2 non-network, non-satellite national services,
3 interactive services, and regional services.
4 (Whereupon, the aforementioned
5 document was marked for
6 identification as Program
7 Suppliers Exhibit Number PS
8 12-X.)
9 BY MR. LANE:
10 Q Is this a table that -- do you read
11 CableVision magazine?
12 A Yes, I do.
13 Q Is this a table you've seen in there
14 before?
15 A No, I don't recall this particular table,
16 but they do -- I do know the Database section.
17 MR. LANE: In this, I might point out,
18 Your Honor, the first page is from the February 12th
19 issue. And since it was the only one that didn't have
20 the date on the page itself, that's why you get a copy
21 of the cover immediately following the second one.
22 And then each page after that is from --
23 we tried to do it as close as we could on a yearly
24 basis. They don't represent that. They don't come
25 out with this particular database profile in each

1 issue. So you can't quite match it up year to year.

2 I have given you the page, Page 41 of the

3 December 17th, 1990 issue; Page 98 of the November

4 18th, 1991 issue, 98 and 99; -- excuse me -- 102 and

5 103 of the May 4th, 1992 issue; and Pages 38 and 39 of

6 the July 5th, 1993 issue.

7 BY MR. LANE:

8 Q And do you have those complete magazines

9 in front of you?

10 A Yes.

11 Q Have I accurately copied these from those

12 magazines, sir?

13 A You want me to check through the magazines

14 to see? I'm willing to believe that you had copied

15 them from the magazines.

16 Q And let's just look through this. Just

17 start on the first page. Could you identify the

18 sports channels that are in the basic service section

19 of this?

20 A You're talking about sports networks?

21 Q Yes.

22 A FNN Sports, which no longer exists.

23 Q Are you going down the list?

24 A Yes.

25 Q You didn't want to mention ESPN?

1 A ESPN; Sports Channel America, which -- you
2 have to be careful. There can be double counting
3 between that and some of the sports channel --
4 regional sports channels. It's something carried on
5 regional sports channels. So there's a double
6 counting to the degree that sports channels appear
7 elsewhere.
8 Q Are there any others in the basic?
9 A In the basic services, that's the only
10 ones I've seen in this scan.
11 Q And are there any in the pay services, the
12 rest of that column, that you see?
13 A No.
14 Q If we look in the regional services, do
15 you see any sports channels there?
16 A Yes.
17 Q Could you identify which of those you see?
18 A A large number of them. Do you want me to
19 read them all?
20 Q Yes.
21 A The Arizona Sports Programming Network,
22 which is the Phoenix area, really; Madison Square
23 Garden Network; Meadows Racing Network, which I'm not
24 acquainted with; Midwest Sports Channel, which I
25 believe has gone out of business; Niagara Frontier

1 Sports Network; -- my recollection is that is
2 primarily Buffalo hockey out of Buffalo -- Northwest
3 Cable Sports Network; Pacific Sports Network, no
4 numbers supine.
5 I'm not sure what this Prime Cable is.
6 Prime Sports Network is a sports network. Prime
7 Ticket is a sports network in the Southern California
8 arab. Sports Channel Chicago, Sports Channel Ohio.
9 The Sunshine Network is a sports network in Florida.
10 Q What about in the pay services?
11 A Home Sports Entertainment is a sports
12 network in the Texas, primarily the Texas, area. Home
13 Team Sports is here in the Washington area. New
14 England Sports Network is based in the Boston area.
15 Prism is kind of an oddball. It's sports
16 and movies in the Philadelphia area. So it's not
17 purely either. It's a combination of sports and
18 movies.
19 Pro-Am Sports is in the Detroit area and
20 then the collection of sports channels in Florida.
21 Los Angeles no longer exists. New England, again
22 through a Boston-based, and New York.
23 Q And if you turn to the page from the
24 December 17th, 1990 issue, are there any changes in
25 the basic service sports channels?

1 A I see a Mizlov Sports News Network. I
2 don't think that's sports programming in terms of live
3 sports. I believe that's probably a news network
4 which happens to be sports news. So that probably
5 does not count.
6 No, I don't see. Maybe your highlighter
7 can pick up things that I don't.
8 Q And just with regard to Sports Channel
9 America, do you see that it has a footnote in there?
10 A Yes.
11 Q Could you just read the footnote into the
12 record?
13 A "Count represents stand-alone affiliates
14 and subscribers. Portions are carried on various
15 regional sports networks."
16 Q And just to perhaps speed this a little
17 bit, in the regional services, are there several new,
18 particularly in the prime sports and the sports
19 channels, that did not appear in the earlier --
20 A Yes, but that -- you know, we don't rely
21 on CableVision for data. And the reason is that it's
22 good, it's descriptive, but it's not thorough. Some
23 of these prime networks appear here and certainly
24 should have appeared -- what's the date of this? -- in
25 February of 1990.

1 I mean, for example, Prime Sports Network,
2 Rocky Mountain started long before that, as with
3 Inter-Mountain West. I'm not quite of the date of the
4 start of Upper Midwest, but I think it predated that.
5 So the fact that there are -- and the Cincinnati
6 Sports Channel would be another example.
7 The fact that there are additional sports
8 networks here, some of these may be new, but a number
9 of these are simply beginning to improve their lists.
10 Q And were there any new basic -- stick with
11 the basic services. Were there any new basic services
12 in the -- I'll just quickly ask you to look through
13 these.
14 A Are you talking about basic regional
15 services?
16 Q No. Just the basic services, the
17 ESPN-like services.
18 A Oh, what are you looking at?
19 Q We're looking at the next. I'd just like
20 you to do it all at once, if you could, the November
21 '91 and the May '92 and July 5th, '93, to speed this
22 process a little bit.
23 A The way to speed the process is for me to
24 look at the highlighted one. I can't speed it if I've
25 got to look through this.

1 Q Fine. Here. I'm not trying to keep that
2 from you. I'm afraid I haven't highlighted all the
3 ones. You have more knowledge than I do.
4 A I don't see any additions. That's in '91.
5 '92 I'll kind of make a jump, use your highlighters,
6 and suggest that there weren't any new ones there. I
7 don't see any new ones among these.
8 MR. LANE: Mr. Chairman, I'd like to
9 introduce as Program Suppliers Exhibit 13-X a one-page
10 document which is a summary of the subscriber counts
11 for each of those. I didn't even get all of the ones
12 that Mr. Bortz mentioned.
13 (Whereupon, the aforementioned
14 document was marked for
15 identification as Program
16 Suppliers Exhibit Number PS
17 13-X.)
18 BY MR. LANE:
19 Q Mr. Bortz, I'd ask if you'd take, subject
20 to check, that I have copied the subscriber counts
21 directly in each of the years and --
22 A From what source?
23 Q From the source that we've just gone
24 through in Exhibit 12-X.
25 A Okay. As I indicated, that's not a data

1 source that we would rely upon.

2 MR. GERSCH: Dennis?

3 MR. LANE: Yes?

4 MR. GERSCH: I didn't hear you. Is this

5 also from CableVision?

6 MR. LANE: Yes. It's exactly from the

7 pages that we've read.

8 BY MR. LANE:

9 Q Isn't it true, Mr. Bortz, that there's a

10 subscriber count for each of the services on the

11 CableVision pages that you've looked through?

12 A There is a subscriber count. I would not

13 rely upon that subscriber count. As I pointed out,

14 the appearance or nonappearance of a channel is not

15 necessarily an indication of its existence. And we

16 have found that, although CableVision is a very nice

17 trade magazine, it is not a data source.

18 Q But if I've accurately put these numbers

19 on this, would you take that, subject to check, that

20 I've accurately transposed the numbers from

21 CableVision onto this piece of paper?

22 A Yes.

23 MR. LANE: I've no further questions at

24 this time.

25 CHAIRPERSON JIGANTI: Counsel, do you wish

1 to inquire? While we're at it, Mr. Lane, did you move
2 to have these exhibits admitted?
3 MR. LANE: I move to admit Exhibits 12-X
4 through --
5 CHAIRPERSON JIGANTI: Eleven?
6 MR. LANE: That was already moved into
7 evidence.
8 CHAIRPERSON JIGANTI: Eleven you had
9 previously moved. The ruling was --
10 MR. LANE: Eleven was --
11 CHAIRPERSON JIGANTI: You had previously
12 moved. Yes, you had. The ruling was reserved. Any
13 response to the admission of 11, 12, and 13?
14 MR. GERSCH: Your Honor, I have no
15 objection to being admitted subject to our right under
16 the rule -- I think it's Subsection B -- to be able to
17 supplement. I think that, in particular, the pages
18 taken from the Commissioner's comments I think is
19 material that should be supplemented to that.
20 CHAIRPERSON JIGANTI: Which exhibit are
21 you talking about?
22 MR. GERSCH: I'm talking about Exhibits --
23 CHAIRPERSON JIGANTI: Eleven?
24 MR. GERSCH: It's Exhibit 11. It's a
25 collection of different documents. I'm referring to

1 the fourth, fifth, and sixth pages in that are
2 selections of the comments of the Office of the
3 Commissioner of Baseball. And it's just three pages
4 selected. And as long as we can exercise our right to
5 supplement with some of the pages that haven't been
6 included, we have no objection to this coming in.
7 CHAIRPERSON JIGANTI: Mr. Lane, any --
8 MR. LANE: I have no objection to that.
9 CHAIRPERSON JIGANTI: Mr. Stewart, did you
10 have some comment or objection?
11 MR. STEWART: Your Honor, do I take it
12 that we have only discussed as far as Exhibit 11 now?
13 CHAIRPERSON JIGANTI: No.
14 MR. STEWART: Well, then, I do have an
15 objection if Sports does not to the admission of
16 Exhibits 12-X and 13-X. It's not entirely clear to me
17 at this point for what purpose they would be admitted,
18 but clearly -- and although this is not my witness, I
19 am concerned to allow this procedure to pass without
20 comment because my witnesses come next.
21 I think that it's inappropriate to put in
22 selected pages from a magazine which is clearly
23 hearsay and then transpose data from it, correctly or
24 not, -- I'm assuming that they're correct -- and then
25 have this piece of paper in the record that could

1 presumably be cited as substantive evidence.

2 It seems to me that the witness' comments

3 were not sufficient for the witness to be considered

4 the sponsor of this exhibit. And unless Mr. Lane

5 proposes to bring a witness later who can be

6 cross-examined about the figures in 13-X, I would

7 oppose the admission of these two exhibits for that

8 reason.

9 CHAIRPERSON JIGANTI: Let's take these

10 things in order, then. The first one we have is

11 Exhibit Number 11. Mr. Lane, the suggestion is made

12 that they reserve the right to add the three extra

13 pages. Do you have any objection to that?

14 ARBITRATOR WERTHEIM: Is it clear that

15 it's only three additional pages? Is it only three

16 additional pages you'd like to have added or --

17 MR. GERSCH: No. I'm sorry. No. I

18 didn't mean to convey that. The selection that Mr.

19 Lane has included contains only three pages of --

20 ARBITRATOR WERTHEIM: Well, if you select

21 the whole document, how many pages will that be?

22 MR. GERSCH: This is a document two years

23 old. I'd have to go back and see what the whole

24 length is. I just think there are other pages that

25 ought to be included in volume recollection.

1 MR. LANE: Mr. Chairman, if you'd like, I
2 think I can shorten this process. I believe that I've
3 given the entire documents of the July 2nd, 1993
4 letter, May 4th, 1993 letter. And I'll withdraw the
5 comments of the Office of Commissioner of Baseball.
6 That will solve the problem, for the record.
7 CHAIRPERSON JIGANTI: Was there anything
8 in the testimony concerning the exhibit that you're --
9 MR. LANE: There was --
10 CHAIRPERSON JIGANTI: -- portion of
11 Exhibit 11.
12 MR. LANE: -- no reason not to have that
13 stricken on the record. As far as I know, these are
14 complete. The two letters are the complete documents.
15 CHAIRPERSON JIGANTI: All right. Any
16 comments on that procedure?
17 MR. GERSCH: That's acceptable to us. We
18 have no objection to this, to the two letters being an
19 exhibit.
20 CHAIRPERSON JIGANTI: Noting no other
21 objection, then what has been tendered as Exhibit
22 Number 11, which originally consisted of three stapled
23 groups, has been now reduced to two. The one stapled
24 group is entitled "In the Matter of Implementation of
25 Section 26," et cetera. That is, comments of the

1 Office of the Commissioner of Baseball is withdrawn.
2 There were certain comments to that in the
3 testimony of Mr. Bortz. And the comments concerning
4 that are withdrawn also.
5 All right. So that will be admitted.
6 (Whereupon, the aforementioned
7 document, having previously
8 been marked for identification
9 as Program Suppliers Exhibit
10 Number PS 11-X, was received in
11 evidence.)
12 CHAIRPERSON JIGANTI: All right. Now
13 let's get to first Exhibit Number 12. And your
14 objection to it is on a couple of different bases, I
15 guess, Mr. Stewart. And I'm not quite certain where
16 we stand. One basis was that it was hearsay?
17 MR. STEWART: Yes.
18 CHAIRPERSON JIGANTI: And the next
19 objection, and the second objection, to it was --
20 MR. STEWART: Perhaps related, that it had
21 no proper sponsoring witness.
22 CHAIRPERSON JIGANTI: All right. Any
23 response to that, Mr. Lane?
24 MR. LANE: Well, Mr. Chairman, this is
25 offered as an exhibit based on CableVision being a

1 trade press publication that regularly publishes this
2 information.
3 If there is some indication that the
4 information is not valid, I have not seen that yet.
5 The only thing that I recall Mr. Bortz stating at the
6 beginning was, aside from the fact that he personally
7 doesn't rely on it, was that there were some problems
8 with Sports Channel. I believe those were solved by
9 the footnote, but if they're not, we'll have to make
10 some adjustments for that.
11 He indicated that Sports Channel might be
12 doubled counted because there's some Sports Channel
13 America and then there's some regional sports networks
14 that also have the title Sports Channel in some of the
15 titles. Some of the program may be overlapping, but
16 I believe that the subscriber counts and system counts
17 and these other counts are not overlapping.
18 So I would offer this as a trade press
19 indication of what services were available and leave
20 it at that.
21 CHAIRPERSON JIGANTI: Since the majority
22 of the panel concludes that Mr. Bortz is not a
23 sponsoring witness, the exhibit will not be admitted
24 into evidence at this time. And that encompasses 13
25 also.

1 Now, what else do we have, counsel?

2 MR. SATTERFIELD: Mr. Bortz, my name is

3 Kendall Satterfield. I'm an attorney for the Canadian

4 Claimants group here.

5 THE WITNESS: Good afternoon.

6 CROSS-EXAMINATION

7 BY MR. SATTERFIELD:

8 Q I want to go back to something you

9 testified about earlier today and that you reference

10 at Page 23 in your report. That's this notion of

11 dominant impressions.

12 A Yes. That showed up twice on that page,

13 if I recall.

14 CHAIRPERSON JIGANTI: That's the second

15 paragraph and the fourth full paragraph?

16 MR. SATTERFIELD: Yes.

17 BY MR. SATTERFIELD:

18 Q In Section 4 and in Section 5 on that

19 page? And in that Subheading 5, the next to last

20 paragraph on the page, you say, "I believe responses

21 to our survey reflect dominant impressions of

22 programming value formed by the respondents in their

23 ongoing decision-making processes"?

24 A Yes. I see that.

25 Q And is it your opinion that the royalties

1 should be distributed amongst the claimant groups on
2 the basis of this dominant impression response?
3 A Yes. I believe that that is the best
4 method of allocating that that I can either conceive
5 of or that I have seen.
6 Q Under Heading 4 above on the page, when
7 you refer to dominant impression, you indicate that
8 operators make decisions based on a dominant
9 impression of what is included in the service in its
10 corresponding value. Does that mean that they use
11 their dominant impression in making decisions of
12 whether to carry or not to carry a service?
13 A Absolutely. When they look at cable
14 networks, for example, the operators don't go through
15 and watch all of the programming on a cable network
16 and make their decision based upon that.
17 They look at promotional material sent out
18 by the network. They have a general feel for the
19 network. And they make a managerial judgment. And
20 that managerial judgment is based upon a dominant
21 impression of what that network is.
22 Q Now, with the cable network, the cable
23 operator would then pay some sort of fee to the cable
24 network for the carriage of the cable network. Is
25 that correct?

1 A Typically.

2 Q And then that cable network would take

3 that fee and use it to purchase all of the programming

4 on the cable network?

5 A Well, typically the network has a mix of

6 subscriber fees and advertising revenues. And it uses

7 the -- both of those revenue streams.

8 Q But the purchaser of the programming, the

9 cable network, is taking its revenue streams. And it

10 is making a decision how to allocate those across

11 various programming types?

12 A Right. That's further back in the

13 distribution chain. You would have the same thing in,

14 say, a manufacturing process, where an automotive

15 manufacturer would decide, you know, he would purchase

16 his windshields or seat belts from, but the consumer

17 is deciding whether he's going to purchase the car.

18 So you can purchase components as a

19 network, but ultimately it's the consumer. In this

20 case the consumer is the cable operator who purchases

21 the product, which is the channel.

22 Q But isn't it true also that the cable

23 operators' dominant impression of that network may not

24 fully represent the way the network then allocates the

25 money across all the programming sources that comprise

1 the network?

2 A That's right. Sometimes business people

3 spend a lot of money on certain things, which turns

4 out they didn't need to and they needed to spend more

5 on others.

6 So it's the -- again, it's the purchaser

7 who makes a decision based upon their dominant

8 impression of the product, rather than going back to

9 what the different streams are that comprise the

10 product.

11 Q Now, I want to go back and ask you some

12 questions about how the survey was put together. Now,

13 the results that you published on Page 31, 11, for

14 Canadian programming represent a small sample of cable

15 systems that actually carry Canadian programming?

16 A That's right. And that's why you see

17 there; for example, if you look at 1992, we have an

18 allocation of .3, but we have an absolute confidence

19 interval of .3, which says we say .3 but it could be

20 twice that or it could be nothing.

21 And, although .3 may look to you like a

22 small confidence interval, the relative error -- we

23 give here the absolute confidence interval, but the

24 relative error is huge and, in fact, is the largest.

25 If you divide, let's say, the confidence

1 interval by the percent allocation, you get the number
2 one. It's 100 percent relative error. And so you're
3 correct in saying that because our sample is so small,
4 we don't have as high a confidence on a relative basis
5 as we do on any of the other measurements, PBS being
6 next where the relative error is 50 percent of the
7 mean value. And then as we get to the five categories
8 that are more broadly carried, the relative error
9 shrinks down substantially.
10 I would also point out that on the
11 Canadian programming that like with -- as we did with
12 Public Broadcasting, if -- you know, if the station
13 didn't carry it, it got zero value.
14 And most -- if a cable system didn't carry
15 it, Canadian programming got no value. And most cable
16 systems in the U.S. don't carry Canadian programming.
17 So it's a lot of zeros. Those that carry it could
18 give a value much higher than .3.
19 Q In fact, I believe, I think information
20 that you supplied us through discovery indicated that
21 you surveyed seven systems that carried Canadian
22 programming in 1992?
23 A That sounds about right.
24 Q Now, the Canadian Claimants did not
25 participate in the 1989 proceeding, but the tribunal

1 approved certain types of adjustments with respect to
2 PBS television programming, one of which is that
3 because PBS programming was not carried on all the
4 systems, whenever it was carried and you asked about
5 PBS, PBS had to compete against more categories --
6 A That's correct.
7 Q -- than the other five categories when
8 there was no PBS or Canadian -- would you agree that
9 the same type of adjustment would have to be made to
10 the result of the Canadian --
11 A I would say the situation for Canadian
12 programming is analogous to the situation for PBS.
13 Q And in 1989 there was also evidence that
14 the PBS sample size was not representative and that
15 adjustments had to be made to reflect the under
16 sampling. I'm not going to go into that with you.
17 A Mercifully.
18 Q Neither of us I think really want to get
19 bogged down in that right now this late in the day.
20 Now, your study attempts to determine
21 relative value of programming on distant signals,
22 distant television signals. And to do this you ask
23 the cable operators to make allocations across the
24 signals?
25 A Yes.

1 Q But the first five categories of
2 programming are all categories of programming that one
3 would find on U.S. commercial stations?
4 A On U.S. commercial stations. Yes, that's
5 correct.
6 Q And PBS and Canadian programming are
7 treated differently because, in effect, you're talking
8 about the programming on a particular signal. Is that
9 correct?
10 A That's correct.
11 Q Now, I'll let PBS speak for itself, but
12 Canadian television programming encompasses most, if
13 not all, of the same categories of programming on U.S.
14 commercial stations. So why did you not increase the
15 number of categories from, say, five to eight or nine
16 and ask to make allocations for movies on U.S.
17 stations and movies on Canadian stations and,
18 similarly, for all the other categories of programming
19 for whenever there was a Canadian session hearing?
20 A Well, we wanted to not have any confusion
21 with regard to Canadian programming. And I think a
22 mention of Canadian programming to the vast majority
23 of the cable systems would be confusing.
24 And we thought that it was -- the best
25 thing to do is you ask a system about Canadian

1 programming if they carried a Canadian station because
2 then they would be able to answer, same thing with
3 Public Broadcasting. If they don't carry a distant
4 signal Public Broadcasting station or they don't carry
5 a distant signal Canadian station, I think it's
6 inappropriate to ask them about that programming.
7 Q I'm sorry. I didn't mean to imply that
8 you should have asked the question to all systems.
9 A That was my understanding.
10 Q Yes. I meant to frame it solely to those
11 systems that carry Canadian programming to fully
12 explore the value of all the Canadian programming on
13 the distant signal.
14 A I think it was -- this was done to assist
15 in the process that you're charged with, which is
16 since the Canadian stations are separate claimants,
17 separate from movies, that if we lumped, say, movies
18 on U.S. and Canadian stations, syndicated shows,
19 series, and specials on Canadian stations, -- I think
20 that's what you're asking --
21 Q Right.
22 A -- on U.S. and Canadian stations, then the
23 panel would be left with the problem of saying, "Okay.
24 Well, that's great, but how do we allocate something
25 to the Canadian Claimants? And since the Canadian

1 stations are separate claimants, we indicated or
2 included them here as a separate category."
3 Q I'm going to have to apologize once again.
4 What I meant to say was categories that would say
5 Canadian professional and college team sports, --
6 A I see.
7 Q -- Canadian movies, Canadian syndicated
8 shows, series, and specials, Canadian news and public
9 affairs programming, Canadian religious programming.
10 So the --
11 ARBITRATOR WERTHEIM: Do the Canadian
12 stations show only Canadian movies, no U.S. movies?
13 MR. SATTERFIELD: No, sir. They do have
14 some U.S. programming.
15 ARBITRATOR WERTHEIM: So how would you
16 break that out? Canadian movies on Canadian
17 television distinct from U.S. movies on Canadian
18 television?
19 MR. SATTERFIELD: Well, when we put on our
20 case, we'll put on a study that attempts to do that,
21 to segregate out a value for U.S. programming.
22 ARBITRATOR WERTHEIM: I'm just trying to
23 clarify the question here I think you're putting to
24 the witness.
25 THE WITNESS: In answer to your question,

1 if we did that, they actually expanded the number of
2 categories, it would be in my view -- and I've not
3 considered this before, I'll have to say. But it
4 would be my view that it would be inappropriate to,
5 say, have four or five categories -- specifically
6 let's say the carriage was one Canadian station and
7 they had two superstations -- four or five categories
8 that represented a single claimant in these areas.
9 And I think that the Judge's comments are
10 appropriate in that: How do you separate it? So we
11 felt we couldn't address that, and we felt that the
12 instances were so few that we would simply say
13 programming on Canadian stations and because that
14 would be clearly in the mind of a cable operator who
15 was carrying a Canadian station to do that, it means
16 that they're probably near the border, they're
17 probably sensitive to Canadian relationships, and
18 they're carrying it because there's an interest in
19 their system.
20 And to just say -- ask them, then, to
21 assign a value to that I view as appropriate.
22 ARBITRATOR FARMAKIDES: Well, had you
23 considered it and discarded it or are we saying that
24 you did not consider it?
25 THE WITNESS: We did not consider having

1 separate categories that we would read for each of the
2 Canadian -- for a single Canadian station to read four
3 or five categories.
4 ARBITRATOR FARMAKIDES: Thank you.
5 I assume, counsel, you're going to make
6 that case in your direct. Is that what you were
7 saying?
8 MR. SATTERFIELD: Yes.
9 ARBITRATOR FARMKIDES: All right.
10 MR. SATTERFIELD: I don't think I'm going
11 to have any more questions.
12 CHAIRPERSON JIGANTI: Mr. Bortz, before
13 turning you over to Mr. Gersch, I have a couple of
14 questions.
15 How long would a typical survey take?
16 THE WITNESS: In terms of executing it
17 once someone is on the phone, I believe that it's in
18 the range of 10 to 15 minutes.
19 CHAIRPERSON JIGANTI: All right. And the
20 person they were speaking to was speaking just by
21 picking up the phone without any background or -- in
22 responding to these questions?
23 THE WITNESS: Yes. I mean, what is on the
24 questionnaire is read to them, and that's all that
25 they know about the survey.

1 CHAIRPERSON JIGANTI: Now, that's -- in
2 your experience, would a programmer make decisions how
3 they would buy or obtain programming, your impression
4 again in --
5 THE WITNESS: Well, the impression is an
6 impression that they formed over years of being in the
7 business, and their impression of the 1992 program had
8 been informed over the past -- programming had been
9 informed over the past 12 months. So that when we
10 asked them to make an allocation, in our view it is
11 something that they have been considering dealing
12 with, both at the system level and with their
13 colleagues in the industry throughout the full year.
14 So I don't believe that this is the first
15 time that they have been asked to assign -- the first
16 time that they have considered what the value is of
17 carrying the distant signals. They have a reason for
18 carrying it, and they made a decision to carry it, or
19 a conscious decision to continue to carry it, or not.
20 And they have been through this process, and I think
21 we're just eliciting from them the perception that is
22 already there.
23 CHAIRPERSON JIGANTI: In an interview of
24 that length of time, could those parties distinguish
25 and calculate a program plan considering both the

1 distant signals and the cable networks?

2 THE WITNESS: No, we take -- we take as a

3 given here that the universe that we're talking about,

4 where they have to allocate the value, is the distant

5 signals. I would agree with you that if we said,

6 "Now, think about what you're spending on cable

7 networks and distant signals and decide how much

8 you're going to spend," that's something else.

9 But what we're doing now is measuring

10 right at the end of the year something that we know

11 that they purchased because they carried the signals,

12 and we're confining their thinking just to those

13 dollars, so that we don't want them to allocate value

14 across the cable networks. We want them to think, and

15 that's why we repeat it and repeat it in the

16 questionnaire, to think only of the distant signal,

17 non-network programming.

18 CHAIRPERSON JIGANTI: Can question 4(a) be

19 answered in that vacuum?

20 THE WITNESS: I believe it can. We have

21 not had -- there have been a handful of respondents

22 who have said, "You know, I can't answer that." If we

23 had gotten a reasonable percentage of respondents who

24 said that, then -- then we would have real evidence to

25 say they can't do it. But over the years, typically

1 in a given year, it is a handful -- and by that, you
2 know, I mean just -- just a few, less than 10, out of
3 almost 200 surveyed, who give us those responses.
4 And if they do say, "I can't do that, what
5 you're asking me to do," that's written down on the
6 questionnaire and we have records of that. And I
7 think we have referred to it in past testimonies. It
8 has happened with so few that I don't think they find
9 that a difficult process.
10 CHAIRPERSON JIGANTI: Mr. Gersch, any
11 further questions?
12 MR. GERSCH: Very brief redirect.
13 REDIRECT EXAMINATION
14 BY MR. GERSCH:
15 Q Just let me see if I can follow up on
16 Judge Jiganti's questions to you. Do you recall when
17 you were asked by Counsel for the Devotional Claimants
18 about how cable operators -- the cable operators want
19 to assemble a bouquet --
20 A Yes.
21 Q -- of programming? And I believe you said
22 that was the notion of having something for everyone,
23 something to appeal to different groups of people, is
24 that right?
25 A Yes.

1 Q And is that a process that the cable
2 operators go through every year?
3 A Yes.
4 Q So every year the cable operators have to
5 think about, do I want to add this new network or that
6 new network, bring in some devotional programming to
7 appeal to those type of viewers, or more sports
8 programs to appeal to a different set of viewers,
9 that's something they do all the time, isn't that
10 right?
11 A Absolutely, and -- and there are channels
12 that feel the brunt of that. I was here in Washington
13 10 days ago, a week -- yeah, 10 days ago I guess it
14 was and met with the -- the major owner of a cable
15 channel, which is primarily older movies and
16 syndicated. I really don't think, you know, that's
17 particularly relevant. But they haven't -- they
18 haven't created a strong, dominant impression, and
19 their subscriber numbers are going down, not up.
20 The reason we were here was that they were
21 talking to -- to me about whether our firm could help
22 them change their approach in order to get -- to get
23 carried. So in some cases, they have been carried on
24 systems for a number of years. That didn't mean that
25 that program decisionmaker was going to continue to do

1 that the next year, and they -- and they felt the
2 brunt. And so there are some that go down, others
3 that go up rapidly, others that go up slowly. That
4 decisionmaking is done all the time.
5 ARBITRATOR WERTHEIM: By "taken care of,"
6 do you mean a cable network --
7 THE WITNESS: This -- I'm sorry. It is a
8 cable network, not a distant signal, yes.
9 BY MR. GERSCH:
10 Q But in selecting that cable network, if I
11 understood the reference that one of my fellow counsel
12 made to bouquet, what they're thinking about is is
13 what niche can I appeal to, is that right?
14 A I want to have a bouquet. This flower
15 here looks a little faded. I'm going to take it out
16 and put something else in the bouquet.
17 MR. GERSCH: Okay. Let me introduce at
18 this time and mark for identification JS Exhibit 6.
19 I've handed copies to the Chairman and other members
20 of the panel, and to the other counsel.
21 (Whereupon, the above-referred
22 to document was marked as JSC
23 Exhibit No. 6-X for
24 identification.)
25 BY MR. GERSCH:

1 Q I'd ask if you can identify that document.

2 A Yes, I can. This was a table that was

3 prepared at -- at my direction, which looked at the

4 results within each of the strata. What we -- what we

5 gave you was a -- combining all of the strata, we

6 ended up with the chart that has been posted up here.

7 This just says, "Well, let's take a look" --

8 MR. LANE: Mr. Chairman, before we go on,

9 I'm going to object to this introduction. This

10 clearly was something that could have been put in in

11 the direct case. It wasn't. We've never seen it

12 before. This is after all of the cross has been done.

13 It relates to some questions that I had and could have

14 raised and easily exchanged at the time. There's no

15 reason to put this in at 11:59.

16 CHAIRPERSON JIGANTI: This is redirect

17 examination. It's appropriate redirect examination.

18 This is an exhibit relating to the redirect

19 examination. You may present it.

20 MR. GERSCH: Thank you, Your Honor. I'd

21 like to offer it into evidence at this time.

22 CHAIRPERSON JIGANTI: I'm sorry?

23 MR. GERSCH: I'd like to offer JS 6 into

24 evidence at this time.

25 MR. LANE: And I'll object to it. Among

1 other things, in addition to what I just said, this
2 witness did not present any evidence about 1990, 1991,
3 and 1993. All of those years are on here. There are
4 a lot of problems with this exhibit, Your Honor, and
5 it's highly prejudicial to the parties to introduce
6 this on redirect, what clearly was something that was
7 done -- could have been done, should have been done,
8 and introduced as part of his direct case when we had
9 a chance to discover and go through this.
10 CHAIRPERSON JIGANTI: All right. I'm not
11 certain of the foundation of this exhibit -- you know,
12 what it is, and it -- have all parties been presented
13 with it? Does everyone have this exhibit?
14 MR. GERSCH: Everyone has it now.
15 MR. LANE: I just got it this -- I mean --
16 CHAIRPERSON JIGANTI: You've never had it
17 before?
18 MR. GERSCH: That's correct. This is the
19 first time they have it. I believe Mr. Lane
20 questioned him about what the effect was, all this
21 weighting and the stratification, and this is simply
22 a response to that. Sure, you can read -- there are
23 lots of analyses one can perform on the data that
24 Mr. Bortz has compiled.
25 And I think the -- and Mr. Lane has been

1 given copies of the entire questionnaire, so he can
2 perform any analysis he wants on those questionnaires.
3 He can come up with these figures. He can not come up
4 with these figures.
5 With respect to the other years, I could
6 cure that problem just by having the witness read in
7 the '89 and '92 numbers into the record, and then we
8 won't have these other years. We won't have that
9 issue.
10 ARBITRATOR WERTHEIM: If you offer the
11 exhibit, we will have the other years.
12 MR. GERSCH: Well, I --
13 ARBITRATOR WERTHEIM: If you want to cure
14 that, you could just delete those years.
15 MR. LANE: There's no explanation of how
16 these numbers were created. You know, these numbers
17 didn't just magically appear by air. There is an
18 explanation behind it. These are just a bunch of
19 percentages.
20 CHAIRPERSON JIGANTI: At present -- what
21 is your motion at the present time?
22 MR. GERSCH: I offered this into evidence
23 following Mr. Bortz's identification of this as their
24 data showing --
25 CHAIRPERSON JIGANTI: But he hasn't done

1 that yet.

2 MR. LANE: He hasn't done that, because

3 I am --

4 MR. GERSCH: I think he had already

5 identified what it was before I --

6 THE WITNESS: This was a table prepared at

7 my request for --

8 MR. LANE: I have asked you not to answer

9 the question until the motion is ruled on.

10 CHAIRPERSON JIGANTI: Just a moment.

11 Mr. Gersch, tell me what this is and what this witness

12 said about it.

13 MR. GERSCH: Well, maybe I should just

14 withdraw my request to have it offered into evidence

15 and ask the witness again to identify it, and then

16 we'll all be clear as to what the witness -- let me

17 lay a foundation.

18 BY MR. GERSCH:

19 Q Mr. Bortz, can you identify what JS 6 is?

20 A Yes, I can. This was a table that was

21 prepared at my request. It is, quite simply, taking

22 the data that was used -- let's focus on, say, 1992 --

23 and -- and just a -- in essence, a computer printout

24 that we have typed up here of what the results were

25 within each individual stratum.

1 ARBITRATOR WERTHEIM: For each of the
2 years shown.
3 THE WITNESS: For each of those years
4 shown. It is nothing more than recasting of the data
5 that has been provided and a recasting of what we
6 show. We just break it down by stratum in order to
7 answer questions that were raised about stratification
8 and the discussions that I had before about it not
9 varying much by strata.
10 CHAIRPERSON JIGANTI: All right. And
11 those are questions concerning foundation. Are there
12 any questions concerning foundation? That's all I'm
13 interested in now is foundation. Do you have -- were
14 any of your objections directed towards foundation?
15 MR. LANE: Yes, I have no idea how this
16 was created. This is the result of the computer run
17 that we don't -- we haven't seen, we don't know how it
18 was done. It obviously had to have some bases. We've
19 seen none of that, Your Honor.
20 CHAIRPERSON JIGANTI: All right. I
21 reserve the ruling on the admission of this until
22 after your redirect examination. You may use the
23 exhibit for purposes of redirect examination.
24 MR. GERSCH: Thank you, Your Honor.
25 BY MR. GERSCH:

1 Q Let's just focus on 1992. Do you recall
2 being asked about the effect of --
3 CHAIRPERSON JIGANTI: Excuse me. I think
4 that there is no question that this should be only
5 limited to '89 and '92, and that's the only years we
6 spoke about. And that's my understanding of the
7 foundation. Tell me if I'm in error.
8 MR. GERSCH: Those are the only years that
9 Mr. Bortz has testified to, and I'm happy to restrict
10 my questioning to 1989 and 1992.
11 ARBITRATOR WERTHEIM: So if the document
12 is admitted, you'll replace it with a version that
13 will nix the other years?
14 MR. GERSCH: Yes, I will.
15 BY MR. GERSCH:
16 Q Mr. Bortz, well, I understood you to
17 testify in response to questions from Mr. Lane -- and
18 correct me if I'm wrong -- that even when you don't
19 look at the -- even if you don't stratify the sample,
20 even if you don't weight, which is what you did in
21 answer to -- in dealing with your constant sum
22 question, and compiling your results which we've shown
23 up here, that you still get -- if you look within the
24 individual strata, you still get numbers which are
25 very close to the 38.8 percent that you got by

1 stratifying your sample and weighting the different
2 strata to come up with this number. Is that correct?
3 A That's correct.
4 Q Okay. And the sole purpose of this
5 document is this document supports that testimony,
6 correct?
7 A Yes. In fact, I -- I referred in the
8 cross examination to both the sports and the movie
9 numbers. It's been a long day, but --
10 Q Okay.
11 A -- but the 43 percent, the 36 percent, the
12 very minor variation in movies I testified to earlier
13 this afternoon. This simply provides you the numbers
14 that back that up.
15 Q Maybe we can just make it clear by going
16 through this real quickly. 38.8 percent was your
17 number that you projected for your whole survey. The
18 first strata --
19 ARBITRATOR WERTHEIM: For which year?
20 MR. GERSCH: 1992 only now.
21 BY MR. GERSCH:
22 Q 1992 -- if you just looked at strata one,
23 your figure would have been 38.1 percent, correct?
24 A That's correct.
25 Q And if you just looked at strata two,

1 you'd get a number of 37 percent.

2 A Yes.

3 Q And if you just looked at strata three,

4 you'd get a number of 36 percent.

5 A That's correct.

6 Q And if you just looked at strata four,

7 you'd get 43.3 percent.

8 A That's correct.

9 Q Okay. And likewise, for movies, there is

10 even a narrower band of differentiation.

11 A That's correct.

12 Q Okay. And you can do the same thing for

13 1989.

14 A Yes.

15 Q Okay. We don't have to do that.

16 MR. GERSCH: At this time, I'd offer the

17 exhibit into evidence, subject to my redacting out all

18 of the years except 1989 and 1992.

19 CHAIRPERSON JIGANTI: Do you have any

20 further questions of this witness?

21 MR. GERSCH: I will.

22 CHAIRPERSON JIGANTI: Well --

23 MR. GERSCH: Do you want me to reserve

24 that until --

25 CHAIRPERSON JIGANTI: Well, I just -- if

1 you move for admission into evidence, certainly, Mr.
2 Lane, has the opportunity, and anybody else has an
3 opportunity, to cross examine him on this document.
4 And the question of timing -- it's now
5 5:30. It has been a long session. It has been about
6 an hour and 20 minutes I think since we've had a
7 break, and I don't want to restrict Mr. Lane as -- and
8 anybody else has the right to cross examine. I want
9 to know how long you're going to be, and --
10 MR. GERSCH: Can I have a moment to just
11 consult with my colleague? Just a few more questions.
12 I think we'll take another three minutes or so, five
13 minutes.
14 CHAIRPERSON JIGANTI: Is that all?
15 Mr. Lane, do you -- do you expect that you
16 will want to cross examine on this?
17 MR. LANE: I don't want to. I'd like you
18 just to strike it.
19 CHAIRPERSON JIGANTI: Do you want to cross
20 examine him on this, Mr. Lane?
21 MR. LANE: I will have to if you --
22 CHAIRPERSON JIGANTI: The question is, do
23 we proceed with it this afternoon, or do we ask
24 Mr. Bortz to come back tomorrow?
25 MR. GERSCH: Since I just have several

1 more minutes of questioning, I would propose that we
2 just continue and finish it up, so Mr. Bortz, then, is
3 not --
4 ARBITRATOR WERTHEIM: Well, he's -- Mr.
5 Lane and anyone else who wishes to cross examine him
6 about this exhibit has to have an opportunity to do
7 that.
8 MR. GERSCH: Sure. I understand that. At
9 this point, then, I would conclude my questioning
10 then. I won't ask him the other three minutes, and I
11 tender him for cross.
12 CHAIRPERSON JIGANTI: All right. We'll
13 proceed this afternoon.
14 MR. HESTER: For the record -- Timothy
15 Hester -- I do have a few questions on this exhibit.
16 Did you want to take a brief break?
17 CHAIRPERSON JIGANTI: The question is --
18 what I'm trying to avoid is Mr. Bortz coming back
19 tomorrow, but I'm not going to inhibit your
20 examination, and Mr. Lane's examination, and anybody
21 else who wants to examine Mr. Bortz.
22 Now, the question is of practicality. We
23 can take a short break now, and we can proceed with
24 it. We can do it tomorrow. That way, Mr. Bortz would
25 have to stay another night. I don't know what his

1 arrangements are. It's probably inconvenient.

2 I might consult with my colleagues before

3 I -- we have a --

4 MR. GERSCH: Your Honor?

5 CHAIRPERSON JIGANTI: The result was, of

6 our conference, if I get the sense of it, is that we

7 leave it to your sensibility. Do you have a

8 suggestion as to how we should proceed here? I can

9 tell you, you know, if you don't want to do it, I can

10 tell you exactly what we're going to do. But the

11 question is it involves you a great deal, and we'll

12 give you the option.

13 MR. HESTER: Well, Your Honor, I don't

14 have many questions, but I may have a little bit of

15 questioning for Mr. Bortz. I don't know what his

16 travel plans are, if he's on a plane back to Denver

17 tonight or not.

18 CHAIRPERSON JIGANTI: I don't want to

19 limit you, Mr. Hester.

20 Mr. Lane, do you have a projection of how

21 long you'd be?

22 MR. LANE: Every projection of what I

23 thought would be is so off that I -- I think I would

24 have half a dozen questions.

25 CHAIRPERSON JIGANTI: Under those

1 circumstances, it sounds to me as though we should
2 adjourn for the day, and we should resume again with
3 Mr. Bortz tomorrow. I hate to do that to Mr. Bortz,
4 but, Mr. Bortz, I'm sorry, but I cannot limit these
5 gentlemen in their cross examination of you.
6 MR. LANE: Mine could be over, if I get
7 the right answers, fairly quickly.
8 MR. HESTER: Mine could be, too, Your
9 Honor. I really wasn't envisioning mine would be
10 long.
11 CHAIRPERSON JIGANTI: Let's give it a try.
12 Mr. Bortz, do you mind sitting there for
13 a little while longer?
14 THE WITNESS: Let's see if I can give the
15 right answers.
16 (Laughter.)
17 CHAIRPERSON JIGANTI: I'm sure that the
18 fact that you want to leave will make you give the
19 right answers.
20 (Laughter.)
21 Mr. Hester?
22 VOIR DIRE EXAMINATION
23 BY MR. HESTER:
24 Q All right. Mr. Bortz, why don't I dive
25 in. Could you explain what is meant by the heading at

1 the top, "Q.4 Allocation"?

2 A It's just the fourth question, the key

3 question that we've asked in the -- in the survey that

4 we've spent so much time on, question 4(a).

5 Q Okay. Let me ask if you could focus on

6 the PBS results for the 1992 column. Am I right,

7 first of all, that these results aggregate to the 3.0

8 figure that we had discussed previously?

9 A They aggregate to the 3.0 figure. We

10 weight them, including the -- essentially the relevant

11 royalties of the different strata, yes.

12 Q Okay. And do you know what the confidence

13 intervals are for these results shown for PBS for the

14 individual strata?

15 A No, I have not computed those.

16 Q And I guess same question for 1989. Do

17 you know what the confidence intervals are for the PBS

18 results for the individual strata?

19 A No.

20 Q Do you know how many cable operators are

21 reflected for the PBS results within any given strata?

22 A I don't at this point. I would have to

23 develop that. It's in the database. I don't have

24 those numbers at this point.

25 Q And am I right that as with the aggregated

1 3.0 figure that we've discussed previously, these
2 figures for PBS reflect the amalgamation of cable
3 operators that gave a non-zero response for PBS, plus
4 a number of cable operators to whom a zero value was
5 assigned if they did not carry PBS?
6 A Yes, that's correct.
7 Q So that within any given strata here, the
8 figure could reflect a larger value for PBS by cable
9 operators that, in fact, carried PBS averaged together
10 with other cable operators to whom a zero value was
11 assigned?
12 A That's right.
13 Q Okay. Thank you. Those are all the
14 questions I have.
15 VOIR DIRE EXAMINATION
16 BY MR. LANE:
17 Q Mr. Bortz, do you have confidence
18 intervals for any of the strata, any of the numbers
19 that appear on this page?
20 A No, we -- I don't -- haven't computed
21 those. That could be done, but the --
22 Q You don't have them here, do you?
23 A I -- no, I do not.
24 Q And what was the formula that you used to
25 calculate these numbers on this page?

1 A This is a computation we have within the
2 database, each of the systems that reply. There is a
3 label that indicates in the computer base whether --
4 which stratum it's in, and this simply selects out
5 those in strata one, two, three, and four, breaks
6 apart -- breaks, essentially, apart this computation
7 into some pieces before we weight it by the revenue.
8 So the exact same data that underlies those numbers is
9 reflected here.
10 The confidence interval was not looked at
11 here because we're looking at the confidence interval
12 across the whole calculation.
13 Q But we're looking at these results now,
14 aren't we?
15 A We're just --
16 Q You're offering these results into
17 evidence, or you're attempting to, are you not?
18 MR. GERSCH: I object. I offered them
19 into evidence, not Mr. Bortz.
20 THE WITNESS: Well, it was being offered
21 in answer to your question as to how things varied
22 across strata. I should point out that in 1989 the
23 breakout across strata was included in -- in our -- in
24 my testimony and as a matter of record. And this is
25 no more than what we have done in the past.

1 We did not include the breakout by strata
2 of -- in this report, but we have in past reports. So
3 this is --
4 BY MR. LANE:
5 Q So you made a choice not to do it this
6 year, right, when you presented your direct case?
7 A Yes, because --
8 Q And now you've decided --
9 ARBITRATOR WERTHEIM: Let him finish his
10 answer before you go on.
11 THE WITNESS: Could you ask the question
12 again?
13 BY MR. LANE:
14 Q You decided not to include that in this
15 year's report that you offered as evidence as your
16 testimony in this case, right?
17 A Yes, and it was because of your
18 questioning about the stratification that we decided,
19 or I decided that I wanted to have this run, so that
20 we could show you this.
21 Q Now -- sorry.
22 A It was in response to your questioning.
23 Q Is this based on any of the formulas that
24 are contained in Appendix D of your testimony?
25 A Is that the statistical appendix?

1 Q Yes.

2 A Yes.

3 Q Which formula?

4 A Well, the statistical explanation of
5 procedures are there, and for the non-mathematicians
6 here, essentially -- let me see if I can point you to
7 the right one. If you see at the top of page 51 -- I
8 hate at this time of day to burden you with this
9 notation, do you see at the top of page 51 there is a
10 formula that starts T sub X, which is the estimated
11 total value of a program type X. Let's say that's
12 movies, the value of movies. And you see there is a
13 Greek symbol there which stands for summation, from H
14 equals one to four. And those -- that's stratum one,
15 stratum two, stratum three, stratum four.

16 If you were, then, to look at the numbers
17 that went in that computation, there would be four
18 numbers that would be added together. And what we're
19 taking here is essentially the number that relates to
20 stratum one program -- program type X. That's all.
21 It's just the components of the calculation. It's no
22 more than that.

23 Q Now, looking at the results, how many of
24 these are within the confidence intervals of the
25 results that you show on page 31?

1 A I'm afraid that's an apples and oranges
2 look. The confidence interval that we show is the
3 confidence interval across the universe of systems,
4 and -- and would not be applied to individual strata.
5 Q So this an apples and orange with page 31,
6 is that what you're telling us?
7 A It's apples and oranges to apply the
8 confidence intervals on page 31 to the individual
9 strata.
10 Q But it's not apples and oranges to compare
11 the mean on page 31 to these numbers?
12 A No. I think in answer to your question
13 about variation across strata that this illustrates
14 what, in fact, was the variation across strata -- not
15 much.
16 Q Well, how can we know that, if it's
17 statistically significant, if we don't know what the
18 confidence intervals are for any of these numbers?
19 A We'd be happy to provide those.
20 MR. LANE: I have no further questions.
21 I would continue with my objection. I would also note
22 that this page does not meet the standards of
23 Section 251.48, in that it does not have the standard
24 error for each component. I'll accept the point that
25 it has the formula, although I'd like to test that.

1 I've only had this for 10 minutes. I'm unable to do
2 that.
3 So in addition to the reasons that I've
4 already noted for my objection to introducing this,
5 I'd note that it doesn't comply with the rules.
6 MR. IVINS: And you're -- 251.48(f), is
7 that it?
8 MR. LANE: Yes, sir. Well, it's (f) -- in
9 particular (f)(4).
10 MR. GERSCH: May we respond to that point,
11 Your Honor?
12 CHAIRPERSON JIGANTI: What is up there,
13 (f)(4) what?
14 MR. LANE: Well, the standard error for
15 each component. The test is -- well, 2, 3, and 4.
16 CHAIRPERSON JIGANTI: The testimony is
17 concluded. The only question is the admissibility of
18 the exhibit that is being tendered by counsel. I see
19 no reason why we can't take that up tomorrow morning.
20 MR. GERSCH: You would hear further
21 argument in the morning, or may I respond to Mr.
22 Lane's --
23 CHAIRPERSON JIGANTI: No. I'll hear
24 further argument in the morning. It's been a very
25 long session here right now, so we will break for the

1 day.

2 Mr. Bortz, I --

3 ARBITRATOR WERTHEIM: I had a question, as

4 to whether the witness has stated that -- that he'd be

5 happy to provide confidence intervals. Are you

6 intending to add that as part of this exhibit, or are

7 you offering the exhibit now without the included --

8 MR. GERSCH: I was offering it without it.

9 The sole purpose -- I think maybe the purpose of this

10 is getting lost. We don't believe that this is the

11 right way to do the study. The right way to do the

12 study is what is in his report. This was simply to

13 support his oral --

14 CHAIRPERSON JIGANTI: Don't go into

15 argument now. The arguments will continue tomorrow

16 morning concerning Exhibit Number 6, and I suggest you

17 bring in a redacted copy if you want to have it

18 admitted.

19 Mr. Bortz, you are excused as a witness.

20 Thank you very much.

21 THE WITNESS: Thank you very much.

22 (Whereupon, the witness was excused.)

23 CHAIRPERSON JIGANTI: We're adjourned.

24 (Whereupon, at 5:48 p.m., the proceedings

25 were adjourned.)

CERTIFICATE

This is to certify that the foregoing transcript in

the matter of: Hearing: Distribution of 1990, 1991 and 1992 Cable Royalty Funds

Before: Library of Congress
Copyright Arbitration Royalty Panel

Date: December 7, 1995

Place: Washington, DC

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

Charles Pigott

PBS Exhibit 1-X

Admitted 12/5/95

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NAB 1990-1992 Exhibit 1 -X

12/3/95

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(C) CABLE DATA CORPORATION

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WTBS	17	I	ATLANTA	GA	2,11844,749,45838,126,751	2,09044,063,66438,126,751		2,09044,063,66438,126,751			34	685,794				
WGN	09	I	CHICAGO	IL	1,29524,881,74020,485,244	1,23723,422,93020,482,144		1,23723,422,93020,482,144			68	1,458,810	3,100			
WWOR	09	I	NEW YORK	NY	55216,307,94110,320,301	46712,026,32110,314,631		46712,026,32110,314,631			98	4,281,620	5,670			
WPIX	11	I	NEW YORK	NY	226 7,204,257 1,767,904	133 2,857,127 1,763,083		133 2,857,127 1,763,083			98	4,347,130	4,821			
WSBK	38	I	BOSTON	MA	154 3,910,963 1,343,401	84 2,141,017 1,343,401		84 2,141,017 1,343,401			79	1,769,946	---			
WVIA	44	E	SCRANTON	PA	46 1,219,395 206,129	15 773,379 206,129		15 773,379 206,129			32	446,016				
CBUT	02	I	VANCOUVER	BC	21 742,290 612,480	12 673,846 610,930		12 673,846 610,930			9	68,444	1,550			
KTLA	05	I	LOS ANGELES	CA	120 3,545,680 459,765	32 627,899 451,628		32 627,899 451,628			88	2,917,781	8,137			
WTXF	29	I	PHILADELPHIA	PA	90 2,609,633 418,001	39 609,878 418,001		39 609,878 418,001			62	1,999,755	---			
WUAB	43	I	LORAIN	OH	57 1,332,484 512,904	32 578,874 512,904		32 578,874 512,904			32	753,610				
WPHL	17	I	PHILADELPHIA	PA	89 2,563,780 360,338	35 535,610 360,338		35 535,610 360,338			63	2,028,170				
WTTW	11	E	CHICAGO	IL	77 1,826,426 102,757	34 515,340 102,757		34 515,340 102,757			46	1,311,086				
WBFF	45	I	BALTIMORE	MD	34 1,304,754 362,706	20 487,753 361,973		20 487,753 361,973			18	817,001	733			
WKBD	50	I	DETROIT	MI	64 1,476,136 272,662	30 466,621 272,662		30 466,621 272,662			39	1,009,515				
KTVU	02	I	OAKLAND	CA	88 2,001,025 366,809	27 420,734 366,809		27 420,734 366,809			64	1,580,291				
KTTV	11	I	LOS ANGELES	CA	105 2,913,909 339,482	19 414,970 331,345		19 414,970 331,345			86	2,498,939	8,137			
WXIA	11	N	ATLANTA	GA	60 1,123,562 59,919	23 382,370 59,919		23 382,370 59,919			39	741,192	---			
KCET	28	E	LOS ANGELES	CA	96 2,708,997 136,682	20 374,650 128,545		20 374,650 128,545			77	2,334,347	8,137			
KPIX	05	N	SAN FRANCISCO	CA	75 1,828,665 81,980	20 373,310 81,980		20 373,310 81,980			55	1,455,355				
WABC	07	N	NEW YORK	NY	105 4,581,503 76,093	16 362,967 70,423		16 362,967 70,423			94	4,218,536	5,670			
KTSF	26	I	SAN FRANCISCO	CA	45 1,570,016 142,925	5 362,084 142,925		5 362,084 142,925			41	1,207,932	---			
WNYW	05	I	NEW YORK	NY	124 4,824,029 190,695	25 351,989 185,025		25 351,989 185,025			105	4,472,040	5,670			
KTVT	11	I	FT WORTH	TX	71 1,131,943 440,484	27 351,604 440,484		27 351,604 440,484			44	780,339				
WNET	13	E	NYC-NEWARK	NY	89 3,894,625 92,913	20 339,388 89,050		20 339,388 89,050			73	3,555,237	3,863			
KFCB	42	I	CONCORD	CA	23 768,707 141,389	5 321,789 141,389		5 321,789 141,389			19	446,918	---			
CKSH	09	I	SHERBROOKE	QU	20 380,923 241,574	20 320,157 241,574		20 320,157 241,574			2	60,766				
KGO	07	N	SAN FRANCISCO	CA	69 1,751,147 55,269	15 301,307 55,269		15 301,307 55,269			54	1,449,840				
KCAL	09	I	LOS ANGELES	CA	102 2,775,858 209,775	16 274,590 201,638		16 274,590 201,638			86	2,501,268	8,137			
WXIX	19	I	CINCINNATI	OH	23 631,225 119,031	10 273,935 119,031		10 273,935 119,031			17	357,290	---			
WFLD	32	I	CHICAGO	IL	65 1,555,299 441,733	26 268,436 441,733		26 268,436 441,733			45	1,286,863				
WNJU	47	I	NYC-NEWARK	NY	51 3,121,145 188,247	11 264,982 188,247		11 264,982 188,247			43	2,856,163				
CBET	09	I	WINDSOR	ON	39 1,043,581 135,430	7 263,289 135,430		7 263,289 135,430			33	780,292				
WJZ	13	N	BALTIMORE	MD	43 1,295,672 128,393	18 256,744 127,660		18 256,744 127,660			32	1,038,928	733			
KTXL	40	I	SACRAMENTO	CA	50 1,025,360 197,810	18 253,204 197,810		18 253,204 197,810			36	772,156				
WTWS	26	I	NEW LONDON	CT	13 489,238 172,194	3 252,704 172,194		3 252,704 172,194			11	236,534				
KERA	13	E	DALLAS	TX	56 901,074 51,505	24 250,862 51,505		24 250,862 51,505			33	650,212				
KBHK	44	I	SAN FRANCISCO	CA	59 1,564,561 197,526	13 249,300 197,526		13 249,300 197,526			47	1,315,261	---			
KSTW	11	I	TACOMA	WA	43 1,046,588 195,069	15 248,688 193,519		15 248,688 193,519			29	797,900	1,550			
WPBT	02	E	MIAMI	FL	31 1,058,953 47,165	8 238,817 47,165		8 238,817 47,165			25	820,136				
KICU	36	I	SAN JOSE	CA	60 1,630,415 106,432	12 236,998 106,432		12 236,998 106,432			49	1,393,417				
KRON	04	N	SAN FRANCISCO	CA	67 1,690,445 44,483	11 234,911 44,483		11 234,911 44,483			56	1,455,534	---			
WLPB	27	E	BATON ROUGE	LA	13 407,065 29,288	3 232,718 29,288		3 232,718 29,288			11	174,347				
WCAU	10	N	PHILADELPHIA	PA	81 2,566,736 44,618	13 228,342 44,618		13 228,342 44,618			75	2,338,394				
WDCA	20	I	WASHINGTON	DC	46 1,550,343 193,446	20 224,924 192,713		20 224,924 192,713			29	1,325,419	733			
WPVI	06	N	PHILADELPHIA	PA	81 2,527,431 39,306	13 224,074 39,306		13 224,074 39,306			74	2,303,357	---			
KWGN	02	I	DENVER	CO	47 725,514 180,030	18 221,905 180,030		18 221,905 180,030			29	503,609				
KCOP	13	I	LOS ANGELES	CA	101 3,349,367 155,945	8 208,730 147,808		8 208,730 147,808			94	3,140,637	8,137			
WBAL	11	N	BALTIMORE	MD	36 1,191,416 119,294	13 203,290 118,561		13 203,290 118,561			28	988,126	733			
WGNX	46	I	ATLANTA	GA	44 851,879 192,798	19 202,913 192,798		19 202,913 192,798			29	648,966	---			
KQED	09	E	SAN FRANCISCO	CA	65 1,699,923 37,816	11 201,417 37,816		11 201,417 37,816			55	1,498,506				
WCBS	02	N	NEW YORK	NY	102 4,485,445 42,372	9 196,998 36,702		9 196,998 36,702			97	4,288,447	5,670			
KUSA	09	N	DENVER	CO	44 687,360 43,079	15 194,392 43,079		15 194,392 43,079			29	492,968				

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WHA	21	E	MADISON	WI	20	357,324	36,369	11	192,538	36,369	11	192,538	36,369	11	164,786	
KPTV	12	I	PORTLAND	OR	42	647,507	147,592	17	189,951	147,592	17	189,951	147,592	28	457,556	
KCNC	04	N	DENVER	CO	44	704,487	42,535	14	189,541	42,535	14	189,541	42,535	30	514,946	
WLVI	56	I	CAMBRIDGE	MA	85	2,015,463	175,514	17	188,965	175,514	17	188,965	175,514	74	1,826,498	
WSB	02	N	ATLANTA	GA	60	1,004,659	54,201	18	185,589	54,201	18	185,589	54,201	45	819,070	
KABC	07	N	LOS ANGELES	CA	95	2,708,020	42,038	8	185,506	33,901	8	185,506	33,901	87	2,522,514	8,137
WNBC	04	N	NEW YORK	NY	101	4,502,383	46,398	7	183,336	40,728	7	183,336	40,728	98	4,319,047	5,670
KOFY	20	I	SAN FRANSISCO	CA	51	1,471,855	70,097	7	183,021	70,097	7	183,021	70,097	45	1,288,834	
WGBS	57	I	PHILADELPHIA	PA	50	1,816,445	222,517	8	182,477	222,517	8	182,477	222,517	48	1,633,968	
CFTO	09	I	TORONTO	ON	9	320,317	88,246	6	181,850	88,246	6	181,850	88,246	4	138,467	
KYW	03	N	PHILADELPHIA	PA	80	2,479,148	37,108	14	181,487	37,108	14	181,487	37,108	75	2,297,661	
KCTS	09	E	SEATTLE	WA	37	957,149	33,719	11	180,540	32,169	11	180,540	32,169	27	776,609	1,550
KSHB	41	I	KANSAS CITY	MO	29	559,145	176,271	21	180,099	176,271	21	180,099	176,271	8	379,046	
WBNS	10	N	COLUMBUS	OH	38	751,459	32,982	16	178,033	32,982	16	178,033	32,982	25	573,426	
KSBW	08	N	SALINAS	CA	8	326,625	48,712	2	177,689	48,712	2	177,689	48,712	6	148,936	
WKEF	22	N	DAYTON	OH	18	554,158	24,914	6	175,918	24,914	6	175,918	24,914	14	378,240	
KCRA	03	N	SACRAMENTO	CA	46	942,119	32,624	11	174,990	32,624	11	174,990	32,624	37	767,129	
WRAL	05	N	RALEIGH	NC	29	582,900	32,977	10	174,635	32,977	10	174,635	32,977	19	408,265	
CBLT	05	I	TORONTO	ON	7	312,745	84,365	4	174,278	84,365	4	174,278	84,365	4	138,467	
WFAA	08	N	DALLAS	TX	54	870,515	27,784	14	173,074	27,784	14	173,074	27,784	40	697,441	
WLIW	21	E	GARDEN CITY	NY	37	2,844,632	42,110	7	172,728	42,110	7	172,728	42,110	34	2,671,904	
WTTG	05	I	WASHINGTON	DC	58	1,753,444	123,317	10	171,694	123,317	10	171,694	123,317	51	1,581,750	
WDTN	02	N	DAYTON	OH	22	584,524	94,909	4	166,740	94,909	4	166,740	94,909	21	417,784	
KCBS	02	N	LOS ANGELES	CA	93	2,682,788	39,530	6	160,274	31,393	6	160,274	31,393	87	2,522,514	8,137
WMAR	02	N	BALTIMORE	MD	41	1,273,843	102,353	11	160,198	102,353	11	160,198	102,353	35	1,113,645	
KMGH	07	N	DENVER	CO	39	661,270	31,589	12	157,488	31,589	12	157,488	31,589	27	503,782	
WTRF	07	N	WHEELING	WV	24	363,567	33,626	8	157,117	33,626	8	157,117	33,626	19	206,450	
WAGA	05	N	ATLANTA	GA	52	926,514	22,813	12	155,076	22,813	12	155,076	22,813	43	771,438	
WFXT	25	I	BOSTON	MA	76	1,728,677	238,430	15	153,714	238,430	15	153,714	238,430	67	1,574,963	
KCCN	46	N	MONTEREY	CA	6	297,661	43,924	1	152,733	43,924	1	152,733	43,924	5	144,928	
WGBH	02	E	BOSTON	MA	83	1,961,462	29,348	14	152,705	29,348	14	152,705	29,348	75	1,808,757	
KNSD	39	N	SAN DIEGO	CA	11	765,447	29,057	4	150,797	28,638	4	150,797	28,638	7	614,650	419
KRMA	06	E	DENVER	CO	46	695,101	31,666	21	148,417	31,666	21	148,417	31,666	27	546,684	
WHIO	07	N	DAYTON	OH	24	600,780	91,477	4	148,172	91,477	4	148,172	91,477	22	452,608	
WFMJ	21	N	YOUNGSTOWN	OH	23	662,308	33,209	8	147,743	33,209	8	147,743	33,209	19	514,565	
KFMB	08	N	SAN DIEGO	CA	11	759,956	33,442	4	145,306	33,023	4	145,306	33,023	7	614,650	419
WKBN	27	N	YOUNGSTOWN	OH	26	677,031	32,441	9	143,226	32,441	9	143,226	32,441	20	533,805	
KUHT	08	E	HOUSTON	TX	32	674,119	24,420	8	141,726	24,420	8	141,726	24,420	24	532,393	
KXTX	39	I	DALLAS	TX	40	714,304	78,216	12	140,230	78,216	12	140,230	78,216	28	574,074	
KMSP	09	I	MINNEAPOLIS	MN	48	661,271	146,425	21	139,988	146,425	21	139,988	146,425	28	521,283	
WACX	55	I	LEESBURG	FL	20	489,853	83,348	10	137,495	83,348	10	137,495	83,348	14	352,358	
WDIV	04	N	DETROIT	MI	40	1,034,626	17,919	3	136,790	17,919	3	136,790	17,919	37	897,836	
WSTX	06	N	COLUMBUS	OH	30	669,897	23,889	11	136,473	23,889	11	136,473	23,889	23	533,424	
WPGH	53	I	PITTSBURGH	PA	51	932,885	75,882	20	136,082	75,882	20	136,082	75,882	34	796,803	
KNBC	04	N	LOS ANGELES	CA	97	3,121,861	32,599	6	135,377	24,462	6	135,377	24,462	91	2,986,484	8,137
WPXI	11	N	PITTSBURGH	PA	54	991,529	26,281	18	128,025	26,281	18	128,025	26,281	41	863,504	
WCFC	38	I	CHICAGO	IL	35	1,070,517	78,512	11	124,657	78,512	11	124,657	78,512	29	945,860	
WBRE	28	N	WILKES-BARRE	PA	34	458,240	30,842	11	118,786	30,842	11	118,786	30,842	29	339,454	
WWSB	40	N	SARASOTA	FL	8	291,856	6,498	2	117,926	6,498	2	117,926	6,498	7	173,930	
WYOU	22	N	SCRANTON	PA	33	452,727	28,741	11	117,586	28,741	11	117,586	28,741	29	335,141	
WIS	10	N	COLUMBIA	SC	20	262,766	28,435	12	116,400	28,435	12	116,400	28,435	11	146,366	
WIBW	13	N	TOPEKA	KS	13	211,635	15,892	7	115,039	15,892	7	115,039	15,892	6	96,596	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO.OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO.OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO.OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO.OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WBZ	04	N	BOSTON..	MA	95	2,084,651	50,382	12	110,640	50,382	12	110,640	50,382	89	1,974,011	
KARK	04	N	LITTLE ROCK	AR	24	275,988	37,535	11	107,642	37,535	11	107,642	37,535	13	168,346	
WVTV	18	I	MILWAUKEE	WI	29	478,862	88,012	6	105,141	88,012	6	105,141	88,012	24	373,721	
KATV	07	N	LITTLE ROCK	AR	27	287,226	38,907	12	105,124	38,907	12	105,124	38,907	15	182,102	
KDKA	02	N	PITTSBURGH	PA	58	1,056,874	18,246	13	104,657	18,246	13	104,657	18,246	53	952,217	
KSNT	27	N	TOPEKA	KS	8	199,747	15,010	2	103,151	15,010	2	103,151	15,010	6	96,596	
WNEP	16	N	SCRANTON	PA	36	583,606	20,326	12	99,757	20,326	12	99,757	20,326	31	483,849	
WWLP	22	N	SPRINGFIELD	MA	18	456,918	15,359	5	99,426	15,359	5	99,426	15,359	16	357,492	
KSDK	05	N	ST LOUIS	MO	38	521,921	19,609	13	99,249	19,609	13	99,249	19,609	26	422,672	
WBBM	02	N	CHICAGO	IL	57	1,426,326	24,585	9	99,248	24,585	9	99,248	24,585	52	1,327,078	
WQED	13	E	PITTSBURGH	PA	45	981,307	19,840	8	99,184	19,840	8	99,184	19,840	37	882,123	
WTAE	04	N	PITTSBURGH	PA	57	1,028,249	25,714	14	98,465	25,714	14	98,465	25,714	48	929,784	
KOIN	06	N	PORTLAND	OR	34	559,303	19,108	11	98,419	19,108	11	98,419	19,108	26	460,884	
WTTV	04	I	BLOOMINGTON	IN	38	588,067	135,983	9	98,336	135,983	9	98,336	135,983	30	489,731	
KMBC	09	N	KANSAS CITY	MO	27	539,485	18,735	13	98,047	18,735	13	98,047	18,735	14	441,438	
KATU	02	N	PORTLAND	OR	33	536,440	19,420	10	97,975	19,420	10	97,975	19,420	24	438,465	
WNYC	31	E	NEW YORK	NY	51	2,881,530	23,662	5	97,543	23,662	5	97,543	23,662	47	2,783,987	
WTVS	56	E	DETROIT	MI	36	878,473	7,666	4	93,199	7,666	4	93,199	7,666	33	785,274	
KAET	08	E	PHOENIX	AZ	21	507,543	16,801	10	93,041	16,801	10	93,041	16,801	11	414,502	
WUSA	09	N	WASHINGTON	DC	41	1,230,047	17,254	9	91,928	17,254	9	91,928	17,254	36	1,138,119	
KPLR	11	I	ST LOUIS	MO	41	524,767	91,436	14	87,771	91,436	14	87,771	91,436	28	436,996	
WGBX	44	E	BOSTON	MA	61	1,444,393	66,408	4	87,321	66,408	4	87,321	66,408	59	1,357,072	
WBRC	06	N	BIRMINGHAM	AL	25	415,247	8,670	5	86,542	8,670	5	86,542	8,670	22	328,705	
WVIT	30	N	NEW BRITAIN	CT	28	1,135,702	16,600	4	82,057	16,600	4	82,057	16,600	26	1,053,645	
KQTV	02	N	ST JOSEPH	MO	5	112,971	9,079	1	78,801	9,079	1	78,801	9,079	4	34,170	
WBMG	42	N	BIRMINGHAM	AL	16	253,115	13,946	5	78,564	13,946	5	78,564	13,946	11	174,551	
WVTM	13	N	BIRMINGHAM	AL	22	362,141	13,139	6	78,555	13,139	6	78,555	13,139	17	283,586	
CKWS	11	I	KINGSTON	ON	5	92,832	68,641	4	77,888	68,641	4	77,888	68,641	1	14,944	
KSL	05	N	SALT LAKE CIT	UT	21	274,771	14,725	9	77,415	14,725	9	77,415	14,725	12	197,356	
WEWS	05	N	CLEVELAND	OH	40	923,853	12,928	10	77,191	12,928	10	77,191	12,928	35	846,662	
KMEX	34	I	LOS ANGELES	CA	65	2,077,783	71,417	3	76,843	70,731	3	76,843	70,731	63	2,000,940	686
WLYH	15	N	LANCASTER	PA	27	519,417	25,272	8	76,605	25,272	8	76,605	25,272	23	442,812	
WPLG	10	N	MIAMI	FL	28	950,371	9,210	2	75,908	9,210	2	75,908	9,210	27	874,463	
KEYT	03	N	SANTA BARBARA	CA	14	343,091	20,334	3	75,872	20,334	3	75,872	20,334	12	267,219	
WPTT	22	I	PITTSBURGH	PA	27	736,756	39,253	10	75,652	39,253	10	75,652	39,253	21	661,104	
WTVF	05	N	NASHVILLE	TN	36	439,846	9,823	6	75,359	9,823	6	75,359	9,823	31	364,487	
WSMV	04	N	NASHVILLE	TN	35	431,413	13,513	6	74,296	13,513	6	74,296	13,513	31	357,117	
KLRN	09	E	SAN ANTONIO	TX	10	313,739	11,009	7	74,122	11,009	7	74,122	11,009	3	239,617	
KHTV	39	I	HOUSTON	TX	30	613,167	44,141	5	74,104	44,141	5	74,104	44,141	25	539,063	
WRC	04	N	WASHINGTON	DC	39	1,206,798	17,173	7	74,085	17,173	7	74,085	17,173	35	1,132,713	
WJAC	06	N	JOHNSTOWN	PA	25	331,370	10,065	6	73,608	10,065	6	73,608	10,065	22	257,762	
WZTV	17	I	NASHVILLE	TN	26	333,330	39,355	12	73,152	39,355	12	73,152	39,355	15	260,178	
KXAS	05	N	FORT WORTH	TX	44	720,748	14,981	7	71,795	14,981	7	71,795	14,981	37	648,953	
WNCT	09	N	GREENVILLE	NC	14	234,176	5,643	5	71,774	5,643	5	71,774	5,643	10	162,402	
WRIC	08	N	RICHMOND-PETE	VA	13	307,748	17,277	6	71,479	17,277	6	71,479	17,277	8	236,269	
KTHV	11	N	LITTLE ROCK	AR	20	239,806	13,496	7	71,460	13,496	7	71,460	13,496	13	168,346	
KUSM	09	E	BOZEMAN	MT	8	81,688	14,084	6	70,538	14,084	6	70,538	14,084	2	11,150	
KTXH	20	I	HOUSTON	TX	29	609,010	54,783	4	69,947	54,783	4	69,947	54,783	25	539,063	
WYTV	33	N	YOUNGSTOWN	OH	25	280,081	13,614	10	69,708	13,614	10	69,708	13,614	17	210,373	
WTMJ	04	N	MILWAUKEE	WI	30	448,512	45,603	7	69,250	45,603	7	69,250	45,603	26	379,262	
WTOV	09	N	STEUBENVILLE	OH	18	273,212	17,796	1	68,998	17,796	1	68,998	17,796	18	204,214	
WHYY	12	E	WILMINGTON	DE	54	1,864,243	14,345	4	68,880	14,345	4	68,880	14,345	51	1,795,363	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO.OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO.OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO.OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO.OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WKYT	27	N	LEXINGTON	KY	21	197,433	12,572	11	68,729	12,572	11	68,729	12,572	10	128,704	
KSCI	18	I	SAN BERNARDIN	CA	47	2,030,491	62,472	2	68,133	61,786	2	68,133	61,786	46	1,962,358	686
KTCA	02	E	ST PAUL	MN	36	574,337	15,024	13	67,622	15,024	13	67,622	15,024	25	506,715	
WXTV	41	I	PATERSON	NJ	53	2,975,745	43,685	6	67,450	43,685	6	67,450	43,685	48	2,908,295	
KCPT	19	E	KANSAS CITY	MO	16	446,049	13,224	8	67,003	13,224	8	67,003	13,224	8	379,046	
KETC	09	E	ST LOUIS	MO	32	494,970	11,023	9	66,728	11,023	9	66,728	11,023	23	428,242	
KUTV	02	N	SALT LAKE CIT	UT	18	257,889	12,539	7	66,220	12,539	7	66,220	12,539	11	191,669	
WDAF	04	N	KANSAS CITY	MO	24	516,816	17,178	8	64,941	17,178	8	64,941	17,178	16	451,875	
WCCB	18	I	CHARLOTTE	NC	22	368,472	95,064	9	64,879	95,064	9	64,879	95,064	14	303,593	
WBRZ	02	N	BATON ROUGE	LA	21	324,382	6,746	7	64,623	6,746	7	64,623	6,746	16	259,759	
WPSX	03	E	CLEARFIELD	PA	26	261,490	9,568	6	63,664	9,568	6	63,664	9,568	21	197,826	
WJW	08	N	CLEVELAND	OH	39	900,654	10,638	9	63,230	10,638	9	63,230	10,638	35	837,424	
WLKY	32	N	LOUISVILLE	KY	23	343,727	29,339	7	63,047	29,339	7	63,047	29,339	16	280,680	
WMTW	08	N	PORTLAND-POLA	ME	29	362,471	11,858	6	62,457	11,233	6	62,457	11,233	28	300,014	625
KFOR	04	N	OKLAHOMA CITY	OK	15	206,700	9,579	6	62,092	9,579	6	62,092	9,579	10	144,608	
KRIV	26	I	HOUSTON	TX	26	543,539	45,661	10	61,415	45,661	10	61,415	45,661	18	482,124	
KOMO	04	N	SEATTLE	WA	37	891,237	13,958	6	61,343	12,408	6	61,343	12,408	32	829,894	1,550
WLWT	05	N	CINCINNATI	OH	22	427,890	14,959	6	61,300	14,959	6	61,300	14,959	19	366,590	
WTOG	44	I	ST PETERSBURG	FL	35	858,515	33,903	7	60,591	33,903	7	60,591	33,903	30	797,924	
WDZL	39	I	MIAMI	FL	19	693,047	24,445	4	59,885	24,445	4	59,885	24,445	15	633,162	
KITN	29	I	MINNEAPOLIS	MN	32	539,393	90,043	15	58,181	90,043	15	58,181	90,043	21	481,212	
KWTV	09	N	OKLAHOMA CITY	OK	16	211,174	10,161	7	58,012	10,161	7	58,012	10,161	11	153,162	
WJAR	10	N	PROVIDENCE	RI	48	1,106,337	38,097	6	57,569	38,097	6	57,569	38,097	44	1,048,768	
WETA	26	E	WASHINGTON	DC	36	1,381,725	8,099	9	57,056	8,099	9	57,056	8,099	29	1,324,669	
WATL	36	I	ATLANTA	GA	39	735,396	34,166	12	56,680	34,166	12	56,680	34,166	31	678,716	
WCMH	04	N	COLUMBUS	OH	26	618,360	11,707	7	56,495	11,707	7	56,495	11,707	23	561,865	
WTVQ	36	N	LEXINGTON	KY	20	187,988	8,704	9	56,474	8,704	9	56,474	8,704	11	131,514	
WESH	02	N	DAYTONA BEACH	FL	32	754,102	31,240	3	55,169	31,240	3	55,169	31,240	29	698,933	
WCVB	05	N	BOSTON	MA	94	2,164,394	19,346	6	54,824	19,346	6	54,824	19,346	90	2,109,570	
KVOS	12	I	BELLINGHAM	WA	15	138,617	53,137	5	54,218	51,587	5	54,218	51,587	11	84,399	1,550
KTRK	13	N	HOUSTON	TX	28	583,768	6,973	4	54,066	6,973	4	54,066	6,973	25	529,702	
KBYU	11	E	PROVO	UT	12	224,854	10,661	4	53,450	10,661	4	53,450	10,661	8	171,404	
CHLT	07	I	SHERBROOKE	QU	7	52,734	37,970	7	52,734	37,970	7	52,734	37,970			
WMC	05	N	MEMPHIS	TN	32	366,605	13,114	7	52,294	13,114	7	52,294	13,114	26	314,311	
CBMT	06	I	MONTREAL	QU	9	75,155	27,747	8	51,793	27,747	8	51,793	27,747	3	23,362	
WMAQ	05	N	CHICAGO	IL	56	1,378,905	14,595	10	51,048	14,595	10	51,048	14,595	53	1,327,857	
KING	05	N	SEATTLE	WA	37	891,238	12,019	5	50,890	10,469	5	50,890	10,469	32	840,348	1,550
KIRO	07	N	SEATTLE	WA	36	876,398	12,019	5	50,890	10,469	5	50,890	10,469	31	825,508	1,550
WNED	17	E	BUFFALO	NY	13	378,572	7,775	4	50,274	7,775	4	50,274	7,775	10	328,298	
WTVD	11	N	DURHAM-RALEIG	NC	20	439,977	4,620	3	49,896	4,620	3	49,896	4,620	18	390,081	
WHDH	07	N	BOSTON	MA	87	1,969,328	23,687	8	49,704	23,687	7	49,704	23,687	82	1,919,624	
WNFT	47	I	JACKSONVILLE	FL	12	287,654	29,494	4	49,524	29,494	4	49,524	29,494	8	238,130	
WTIC	61	I	HARTFORD	CT	36	1,207,290	46,540	4	49,499	46,540	4	49,499	46,540	35	1,157,791	
KETA	13	E	OKLAHOMA CITY	OK	12	186,031	7,320	4	49,367	7,320	4	49,367	7,320	8	136,664	
KCSM	60	E	SAN MATEO	CA	28	785,482	7,900	1	48,877	7,900	1	48,877	7,900	27	736,605	
KOAT	07	N	ALBUQUERQUE	NM	26	254,478	8,890	4	48,605	8,890	4	48,605	8,890	22	205,873	
WCGV	24	I	MILWAUKEE	WI	27	420,592	169,375	6	47,844	169,375	6	47,844	169,375	23	372,748	
KDFW	04	N	DALLAS	TX	44	724,125	10,321	7	47,197	10,321	7	47,197	10,321	37	676,928	
WSFA	12	N	MONTGOMERY	AL	15	181,256	5,659	4	46,684	5,659	4	46,684	5,659	12	134,572	
KPRC	02	N	HOUSTON	TX	30	590,089	7,811	4	46,550	7,811	4	46,550	7,811	26	543,539	
WENH	11	E	DURHAM	NH	51	1,099,418	8,579	8	46,501	8,579	8	46,501	8,579	47	1,052,917	
KMOV	04	N	ST LOUIS	MO	31	468,894	7,306	6	46,222	7,306	6	46,222	7,306	26	[illegible]	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WXYZ	07	N	DETROIT	MI	42	1,056,395	21,407	5	46,160	21,407	5	46,160	21,407	39	1,010,235	
WKYC	03	N	CLEVELAND	OH	35	875,293	7,154	6	46,031	7,154	6	46,031	7,154	33	829,262	
WLMT	30	I	MEMPHIS	TN	18	252,411	42,078	8	45,990	42,078	8	45,990	42,078	11	206,421	
WRDC	28	N	DURHAM-RALEIG	NC	15	366,376	5,024	4	45,901	5,024	4	45,901	5,024	12	320,475	
WJLA	07	N	WASHINGTON	DC	38	1,197,089	12,450	5	45,038	12,450	5	45,038	12,450	36	1,152,051	
WWBT	12	N	RICHMOND	VA	13	308,326	11,139	5	44,915	11,139	5	44,915	11,139	10	263,411	
WVLA	33	N	BATON ROUGE	LA	15	219,010	6,351	5	44,646	6,351	5	44,646	6,351	11	174,364	
WHMM	32	E	WASHINGTON	DC	23	1,250,053	6,202	3	44,566	5,469	3	44,566	5,469	23	1,205,487	733
KWHY	22	I	LOS ANGELES	CA	48	1,578,172	20,599	3	44,259	19,371	3	44,259	19,371	45	1,533,913	1,228
WUTV	29	I	BUFFALO	NY	13	363,872	23,354	6	43,599	23,354	6	43,599	23,354	9	320,273	
WJKS	17	N	JACKSONVILLE	FL	13	290,200	6,788	4	43,527	6,788	4	43,527	6,788	9	246,673	
WCCO	04	N	MINNEAPOLIS	MN	33	561,456	10,372	7	42,958	10,372	7	42,958	10,372	27	518,498	
KSAT	12	N	SAN ANTONIO	TX	13	330,799	4,410	4	42,520	4,410	4	42,520	4,410	9	288,279	
WLIO	35	N	LIMA	OH	11	116,661	6,389	3	42,470	6,389	3	42,470	6,389	8	74,191	
WCSH	06	N	PORTLAND	ME	25	342,164	8,829	3	42,251	8,204	3	42,251	8,204	23	299,913	625
WCIU	26	I	CHICAGO	IL	36	1,140,618	23,716	7	42,051	23,716	7	42,051	23,716	32	1,098,567	
WGTE	30	E	TOLEDO	OH	23	447,701	5,995	5	41,631	5,995	5	41,631	5,995	20	406,070	
WCIA	03	N	CHAMPAIGN	IL	18	222,336	7,776	7	41,275	7,776	7	41,275	7,776	14	181,061	
WPTY	24	I	MEMPHIS	TN	24	313,149	53,293	11	41,167	53,293	11	41,167	53,293	15	271,982	
WKRN	02	N	NASHVILLE	TN	28	374,850	3,775	2	41,036	3,775	2	41,036	3,775	26	333,814	
WISN	12	N	MILWAUKEE	WI	27	419,977	17,752	4	40,903	17,752	4	40,903	17,752	25	379,074	
WOSU	34	E	COLUMBUS	OH	26	604,376	6,888	4	40,488	6,888	4	40,488	6,888	22	563,888	
KENS	05	N	SAN ANTONIO	TX	13	330,799	4,108	4	40,385	4,108	4	40,385	4,108	10	290,414	
KMOL	04	N	SAN ANTONIO	TX	12	326,525	4,108	4	40,385	4,108	4	40,385	4,108	9	286,140	
KXTV	10	N	SACRAMENTO	CA	34	734,490	8,571	3	40,366	8,571	3	40,366	8,571	31	694,124	
WITI	06	N	MILWAUKEE	WI	26	416,951	17,930	4	40,130	17,930	4	40,130	17,930	24	376,821	
WLTZ	38	N	COLUMBUS	GA	8	125,148	9,342	2	40,084	9,342	2	40,084	9,342	6	85,064	
WDBJ	07	N	ROANOKE	VA	21	256,862	16,726	4	39,620	16,726	4	39,620	16,726	19	217,242	
KTVK	03	N	PHOENIX	AZ	19	500,226	6,215	4	39,572	6,215	4	39,572	6,215	15	460,654	
KCTV	05	N	KANSAS CITY	MO	23	494,766	7,087	6	39,448	7,087	6	39,448	7,087	17	455,318	
KPDX	49	I	VANCOUVER	WA	22	437,222	29,949	6	39,037	29,949	6	39,037	29,949	17	398,185	
WGTV	08	E	ATHENS	GA	38	729,445	5,163	6	38,213	5,163	6	38,213	5,163	33	691,232	
WISC	03	N	MADISON	WI	13	193,077	15,253	4	37,938	15,253	4	37,938	15,253	11	155,139	
CBFT	02	I	MONTREAL	QU	3	42,577	13,617	2	37,705	13,617	2	37,705	13,617	1	4,872	
KXAN	36	N	AUSTIN	TX	9	218,248	4,766	2	37,303	4,766	2	37,303	4,766	7	180,945	
WMBD	31	N	PEORIA	IL	12	157,083	5,632	5	37,056	5,632	5	37,056	5,632	8	120,027	
WLEX	18	N	LEXINGTON	KY	17	161,238	6,387	8	37,005	6,387	8	37,005	6,387	9	124,233	
WPCB	40	I	GREENSBURG	PA	21	704,145	24,129	5	36,539	24,129	5	36,539	24,129	19	667,606	
WPTA	21	N	FT WAYNE	IN	15	151,832	6,929	6	36,485	6,929	6	36,485	6,929	11	115,347	
KGSW	14	I	ALBUQUERQUE	NM	19	205,460	27,433	5	35,897	27,433	5	35,897	27,433	14	169,563	
WQAD	08	N	MOLINE	IL	14	185,486	6,215	3	35,871	6,215	3	35,871	6,215	12	149,615	
KVIE	06	E	SACRAMENTO	CA	33	633,703	7,497	5	35,362	7,497	5	35,362	7,497	28	598,341	
WXIN	59	I	INDIANAPOLIS	IN	32	527,186	36,672	3	35,346	36,672	3	35,346	36,672	29	491,840	
WPXT	51	I	PORTLAND	ME	17	201,289	28,075	6	34,877	27,450	6	34,877	27,450	14	166,412	625
WFRV	05	N	GREEN BAY	WI	12	223,655	7,515	4	33,898	7,515	4	33,898	7,515	16	189,757	
WHTM	27	N	HARRISBURG	PA	25	450,386	5,103	4	33,823	5,103	4	33,823	5,103	23	416,563	
KSAZ	10	N	PHOENIX	AZ	21	507,543	5,303	4	33,543	5,303	4	33,543	5,303	19	474,000	
WDRB	41	I	LOUISVILLE	KY	19	317,821	43,167	3	33,526	43,167	3	33,526	43,167	17	284,295	
WBIR	10	N	KNOXVILLE	TN	31	280,732	5,837	2	33,389	5,837	2	33,389	5,837	30	247,343	
WWTV	09	N	CADILLAC	MI	14	101,456	6,682	2	33,224	6,682	2	33,224	6,682	13	68,232	
WWUP	10	N	SAULT STE MAR	MI	5	46,221	3,443	3	33,123	3,443	3	33,123	3,443	2	13,098	
KSNW	03	N	WICHITA	KS	14	201,830	5,486	4	32,871	5,486	4	32,871	5,486	11	168,959	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO.OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO.OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO.OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO.OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WTHR	13	N	INDIANAPOLIS	IN	34	545,005	3,020	2	32,748	3,020	2	32,748	3,020	32	512,257	
WAKC	23	N	AKRON	OH	16	456,460	5,634	3	32,511	5,634	3	32,511	5,634	16	423,949	
WYES	12	E	NEW ORLEANS	LA	14	397,423	5,372	2	32,268	5,372	2	32,268	5,372	13	365,155	
WISH	08	N	INDIANAPOLIS	IN	35	550,624	4,141	2	31,720	4,141	2	31,720	4,141	33	518,904	
WGNT	27	I	PORTSMOUTH	VA	15	396,906	23,608	4	31,518	23,608	4	31,518	23,608	12	365,388	
WTVT	13	N	TAMPA	FL	28	675,200	7,415	3	31,078	7,415	3	31,078	7,415	27	644,122	
WKOW	27	N	MADISON	WI	12	171,636	15,151	6	31,078	15,151	6	31,078	15,151	10	140,558	
WMTV	15	N	MADISON	WI	12	171,636	15,151	6	31,078	15,151	6	31,078	15,151	10	140,558	
WGBA	26	I	GREEN BAY	WI	15	175,417	18,705	5	30,838	18,705	5	30,838	18,705	11	144,579	
KFTY	50	I	SANTA ROSA	CA	13	274,092	28,826	4	30,726	28,826	4	30,726	28,826	10	243,366	
KCSO	19	I	MODESTO	CA	27	588,478	15,128	2	30,655	15,128	2	30,655	15,128	25	557,823	
KOED	11	E	TULSA	OK	11	217,939	7,371	4	30,549	7,371	4	30,549	7,371	7	187,390	
WHSI	67	I	SMITHTOWN	NY	3	192,617	30,352	1	30,190	30,352	1	30,190	30,352	3	162,427	
WNMU	13	E	MARQUETTE	MI	7	64,241	16,050	4	29,861	16,050	4	29,861	16,050	4	34,380	
WHBF	04	N	ROCK ISLAND	IL	12	167,447	5,650	3	29,725	5,650	3	29,725	5,650	9	137,722	
CKCO	13	I	KITCHENER	ON	2	81,473	22,340	1	29,462	22,340	1	29,462	22,340	1	52,011	
WHP	21	N	HARRISBURG	PA	22	422,914	3,803	3	29,293	3,803	3	29,293	3,803	20	393,621	
WTIU	30	E	BLOOMINGTON	IN	10	97,860	2,243	2	28,973	2,243	2	28,973	2,243	8	68,887	
WBGU	27	E	BOWLING GREEN	OH	17	257,752	5,100	4	28,957	5,100	4	28,957	5,100	15	229,795	
WDHN	18	N	DOTHAN	AL	5	60,448	6,751	1	28,763	6,751	1	28,763	6,751	4	31,685	
WXEL	42	E	WEST PALM BEA	FL	16	550,762	6,947	1	28,664	6,947	1	28,664	6,947	15	522,098	
WTVZ	33	I	NORFOLK	VA	15	388,442	26,051	5	28,516	26,051	5	28,516	26,051	12	359,926	
KTVI	02	N	ST LOUIS	MO	29	457,223	3,678	4	28,464	3,678	4	28,464	3,678	26	428,759	
WIFR	23	N	FREEPORT	IL	11	185,321	4,605	1	28,441	4,605	1	28,441	4,605	11	156,880	
KOCO	05	N	OKLAHOMA CITY	OK	13	171,591	5,003	5	28,441	5,003	5	28,441	5,003	10	143,150	
KOVR	13	N	STOCKTON	CA	34	737,841	6,122	2	28,375	6,122	2	28,375	6,122	33	709,466	
WNUV	54	I	BALTIMORE	MD	16	651,533	20,386	3	28,320	20,386	3	28,320	20,386	14	623,213	
KTWU	11	E	TOPEKA	KS	11	222,288	6,674	2	28,029	6,674	2	28,029	6,674	9	194,259	
WKJG	33	N	FT WAYNE	IN	13	139,234	5,927	5	28,016	5,927	5	28,016	5,927	10	111,218	
WTVR	06	N	RICHMOND	VA	18	341,723	6,312	4	27,702	6,312	4	27,702	6,312	15	314,021	
WKXT	08	N	KNOXVILLE	TN	24	216,834	6,859	5	27,548	6,859	5	27,548	6,859	19	189,286	
WHSH	66	I	MARLBOROUGH	MA	24	581,302	13,575	3	27,463	13,575	3	27,463	13,575	22	553,839	
WCPO	09	N	CINCINNATI	OH	22	609,815	4,951	2	27,404	4,951	2	27,404	4,951	21	582,411	
WNDS	50	I	DERRY	NH	25	508,146	21,405	4	27,366	21,405	4	27,366	21,405	25	480,780	
WLUK	11	N	GREEN BAY	WI	22	264,528	3,893	4	27,327	3,893	4	27,327	3,893	19	237,201	
WHNT	19	N	HUNTSVILLE	AL	17	195,760	3,867	3	26,961	3,867	3	26,961	3,867	15	168,799	
KTZZ	22	I	SEATTLE	WA	22	751,966	17,493	3	26,894	17,493	3	26,894	17,493	19	725,072	
KCPM	24	N	CHICO	CA	6	110,170	3,104	1	26,647	3,104	1	26,647	3,104	5	83,523	
WNWO	24	N	TOLEDO	OH	18	279,696	4,197	6	26,527	4,197	6	26,527	4,197	16	253,169	
KWQC	06	N	DAVENPORT	IA	13	173,042	4,995	2	26,493	4,995	2	26,493	4,995	11	146,549	
KHAI	20	I	HONOLULU	HI	4	261,148	28,238	2	26,419	28,238	2	26,419	28,238	2	234,729	
WWL	04	N	NEW ORLEANS	LA	20	435,086	3,877	4	26,416	3,877	4	26,416	3,877	17	408,670	
WFYI	20	E	INDIANAPOLIS	IN	20	403,472	1,640	2	26,254	1,640	2	26,254	1,640	19	377,218	
WRTV	06	N	INDIANAPOLIS	IN	33	531,928	1,623	1	26,101	1,623	1	26,101	1,623	32	505,827	
WKRG	05	N	MOBILE	AL	19	323,987	3,947	4	26,035	3,947	4	26,035	3,947	17	297,952	
WDCN	08	E	NASHVILLE	TN	25	327,899	3,856	4	25,801	3,856	4	25,801	3,856	22	302,098	
WAFF	48	N	HUNTSVILLE--DE	AL	17	195,239	3,393	3	25,323	3,393	3	25,323	3,393	15	169,916	
WMVS	10	E	MILWAUKEE	WI	29	456,954	5,525	5	25,283	5,525	5	25,283	5,525	25	431,671	
WPMT	43	I	YORK	PA	23	478,922	81,307	3	25,248	81,307	3	25,248	81,307	22	453,674	
KVVT	64	I	BARSTOW	CA	5	63,383	20,258	3	25,101	20,258	3	25,101	20,258	2	38,282	
WUNG	58	E	CONCORD	NC	13	268,745	5,086	3	24,988	5,086	3	24,988	5,086	10	243,757	
KIIN	12	E	IOWA CITY	IA	13	216,606	4,949	4	24,931	4,949	4	24,931	4,949	10	191,675	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO. OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO. OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO. OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO. OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
KSTP	05	N	MINNEAPOLIS-S	MN	31	540,833	4,218	5	24,857	4,218	5	24,857	4,218	27	515,976	
WKPC	15	E	LOUISVILLE	KY	11	259,276	4,262	2	24,856	4,262	2	24,856	4,262	10	234,420	
WLAE	32	E	NEW ORLEANS	LA	9	310,019	4,314	4	24,849	4,314	4	24,849	4,314	6	285,170	
WYMT	57	N	HAZARD	KY	8	51,672	4,294	5	24,847	4,294	5	24,847	4,294	4	26,825	
WTVY	04	N	DOTHAN	AL	13	126,104	4,198	1	24,838	4,198	1	24,838	4,198	13	101,266	
WPRI	12	N	PROVIDENCE	RI	45	980,264	19,932	4	24,747	19,932	4	24,747	19,932	44	955,517	
WNDU	16	N	SOUTH BEND	IN	18	181,080	4,543	5	24,615	4,543	5	24,615	4,543	14	156,465	
WXON	20	I	DETROIT	MI	32	783,648	14,766	5	24,433	14,766	5	24,433	14,766	30	759,215	
WGAL	08	N	LANCASTER	PA	33	609,408	3,083	5	24,374	3,083	5	24,374	3,083	33	585,034	
KSPS	07	E	SPOKANE	WA	8	139,392	4,898	3	24,322	4,898	3	24,322	4,898	5	115,070	
WFSB	03	N	HARIFORD	CT	42	1,339,356	22,068	4	24,216	22,068	4	24,216	22,068	42	1,315,140	
KLFY	10	N	LAFAYETTE	LA	15	198,703	3,448	3	24,209	3,448	3	24,209	3,448	14	174,494	
KLUZ	41	I	ALBUQUERQUE	NM	5	122,194	17,590	3	24,129	17,590	3	24,129	17,590	2	98,065	
KUED	07	E	SALT LAKE CIT	UT	15	215,615	4,320	4	23,946	4,320	4	23,946	4,320	11	191,669	
WGME	13	N	PORTLAND	ME	22	286,640	3,772	3	23,688	3,147	3	23,688	3,147	22	262,952	625
WDKY	56	I	DANVILLE	KY	14	146,388	17,287	6	23,664	17,287	6	23,664	17,287	10	122,724	
WSET	13	N	LYNCHBURG	VA	15	195,996	5,689	3	23,516	5,689	3	23,516	5,689	12	172,480	
WSIU	08	E	CARBONDALE	IL	12	108,460	2,813	1	23,399	2,813	1	23,399	2,813	11	85,061	
KGW	08	N	PORTLAND	OR	29	472,255	4,549	6	23,337	4,549	6	23,337	4,549	25	448,918	
WKRC	12	N	CINCINNATI	OH	18	581,834	4,234	1	23,298	4,234	1	23,298	4,234	17	558,536	
WSRE	23	E	PENSACOLA	FL	10	148,481	6,732	5	23,171	6,732	5	23,171	6,732	7	125,310	
KEZI	09	N	EUGENE	OR	17	193,602	5,047	3	23,039	5,047	3	23,039	5,047	14	170,563	
KDLT	05	N	MITCHELL	SD	8	75,278	4,761	3	22,740	4,761	3	22,740	4,761	5	52,538	
WAFB	09	N	BATON ROUGE	LA	20	295,432	3,182	4	22,543	3,182	4	22,543	3,182	17	272,889	
WSBE	36	E	PROVIDENCE	RI	30	767,875	4,507	2	22,330	4,507	2	22,330	4,507	29	745,545	
WFUM	28	E	FLINT	MI	16	380,240	1,200	1	22,257	1,200	1	22,257	1,200	16	357,983	
WTZA	62	I	KINGSTON	NY	22	243,947	21,981	3	22,037	16,311	3	22,037	16,311	21	221,910	5,670
WGBO	66	I	JOLIET	IL	38	1,210,242	13,959	3	22,003	13,959	3	22,003	13,959	38	1,188,239	
WPSD	06	N	PADUCAH	KY	19	144,848	3,478	3	21,906	3,478	3	21,906	3,478	17	122,942	
WBTV	03	N	CHARLOTTE	NC	30	469,896	5,626	4	21,698	5,626	4	21,698	5,626	28	448,198	
WDSU	06	N	NEW ORLEANS	LA	16	407,132	6,928	3	21,614	6,928	3	21,614	6,928	15	385,518	
WANE	15	N	FT WAYNE	IN	14	163,938	4,793	5	21,593	4,793	5	21,593	4,793	12	142,345	
KDNL	30	I	ST LOUIS	MO	25	420,740	28,039	6	21,497	28,039	6	21,497	28,039	21	399,243	
WUSF	16	E	TAMPA	FL	21	691,266	3,180	1	21,433	3,180	1	21,433	3,180	20	669,833	
WWMT	03	N	KALAMAZOO	MI	22	385,359	18,056	4	21,127	18,056	4	21,127	18,056	21	364,232	
WDSI	61	I	CHATTANOOGA	TN	11	162,885	11,379	5	21,126	11,379	5	21,126	11,379	8	141,759	
WLTV	23	I	MIAMI	FL	18	661,819	24,106	2	20,869	24,106	2	20,869	24,106	16	640,950	
WTNZ	43	I	KNOXVILLE	TN	20	193,387	25,191	7	20,765	25,191	7	20,765	25,191	14	172,622	
WEHT	25	N	EVANSVILLE	IN	12	122,258	2,441	3	20,479	2,441	3	20,479	2,441	9	101,779	
WMTJ	40	E	FAJARDO	PR	6	195,467	3,861	1	20,240	3,433	1	20,240	3,433	5	175,227	428
WSJU	18	N	SAN JUAN	PR	5	171,669	3,433	1	20,240	3,433	1	20,240	3,433	4	151,429	
WMGM	40	N	WILDWOOD	NJ	11	218,726	21,547	1	20,228	21,547	1	20,228	21,547	11	198,498	
KHOU	11	N	HOUSTON	TX	28	560,395	2,815	3	20,168	2,815	3	20,168	2,815	26	540,227	
WFTY	50	I	WASHINGTON	DC	18	887,787	11,182	2	20,048	11,182	2	20,048	11,182	17	867,739	
WKNO	10	E	MEMPHIS	TN	22	298,845	3,921	5	20,038	3,921	5	20,038	3,921	19	278,807	
KSMQ	15	E	AUSTIN	MN	6	70,890	5,361	2	20,000	5,361	2	20,000	5,361	4	50,890	
WSOC	09	N	CHARLOTTE	NC	24	395,557	7,294	4	19,830	7,294	4	19,830	7,294	22	375,727	
KMSB	11	I	TUCSON	AZ	7	143,986	21,803	3	19,785	21,803	3	19,785	21,803	4	124,201	
WDBB	17	I	TUSCALOOSA	AL	5	68,396	46,571	2	19,785	46,571	2	19,785	46,571	3	48,611	
WALA	10	N	MOBILE	AL	15	268,713	3,381	3	19,709	3,381	3	19,709	3,381	15	249,004	
KCPQ	13	I	TACOMA	WA	31	836,742	19,192	1	19,610	17,642	1	19,610	17,642	30	817,132	1,550
CHCH	11	I	HAMILTON	ON	5	60,652	14,125	3	19,570	14,125	3	19,570	14,125	2	41,082	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO. OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO. OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO. OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO. OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WJCL	22	N	SAVANNAH	GA	11	148,916	2,820	4	19,432	2,820	4	19,432	2,820	9	129,484	
WAWS	30	I	JACKSONVILLE	FL	12	287,654	12,402	2	19,331	12,402	2	19,331	12,402	10	268,323	
WBKO	13	N	BOWLING GREEN	KY	7	58,062	2,493	4	19,185	2,493	4	19,185	2,493	4	38,877	
WDEF	12	N	CHATTANOOGA	TN	19	233,012	13,215	2	19,154	13,215	2	19,154	13,215	17	213,858	
WFTV	09	N	ORLANDO	FL	35	751,026	2,167	3	18,987	2,167	3	18,987	2,167	33	732,039	
WHMB	40	I	INDIANAPOLIS	IN	18	356,979	11,659	4	18,928	11,659	4	18,928	11,659	16	338,051	
WGNO	26	I	NEW ORLEANS	LA	15	384,295	13,011	2	18,852	13,011	2	18,852	13,011	13	365,443	
KTVX	04	N	SALT LAKE CIT	UT	14	210,519	3,136	3	18,850	3,136	3	18,850	3,136	11	191,669	
WNVC	56	E	FAIRFAX	VA	11	437,206	3,453	2	18,819	2,720	2	18,819	2,720	11	418,387	733
WHAS	11	N	LOUISVILLE	KY	23	324,916	6,992	2	18,812	6,992	2	18,812	6,992	22	306,104	
WAVE	03	N	LOUISVILLE	KY	22	322,266	6,992	2	18,812	6,992	2	18,812	6,992	21	303,454	
WUFT	05	E	GAINESVILLE	FL	12	345,222	1,780	2	18,753	1,780	2	18,753	1,780	11	326,469	
WBNG	12	N	BINGHAMTON	NY	8	148,926	3,476	3	18,665	3,476	3	18,665	3,476	7	130,261	
KPBS	15	E	SAN DIEGO	CA	8	633,079	4,083	1	18,429	3,664	1	18,429	3,664	7	614,650	419
WSNS	44	I	CHICAGO	IL	22	898,720	7,979	2	18,281	7,979	2	18,281	7,979	22	880,439	
KARE	11	N	MINNEAPOLIS	MN	32	509,326	2,572	5	18,129	2,572	5	18,129	2,572	28	491,197	
WLS	07	N	CHICAGO	IL	57	1,388,447	7,885	8	18,047	7,885	8	18,047	7,885	55	1,370,400	
KLGT	23	I	MINNEAPOLIS-S	MN	20	433,261	22,878	6	17,935	22,878	6	17,935	22,878	16	415,326	
WCNC	36	N	CHARLOTTE	NC	18	345,131	3,714	2	17,925	3,714	2	17,925	3,714	16	327,206	
WJCT	07	E	JACKSONVILLE	FL	14	338,007	3,761	2	17,888	3,761	2	17,888	3,761	12	320,119	
WAIQ	26	E	MONTGOMERY	AL	6	92,511	2,920	1	17,802	2,920	1	17,802	2,920	5	74,709	
WGEM	10	N	QUINCY	IL	9	62,199	3,288	3	17,727	3,288	3	17,727	3,288	6	44,472	
KTBO	14	I	OKLAHOMA CITY	OK	4	111,683	12,971	2	17,671	12,971	2	17,671	12,971	2	94,012	
CBWT	06	I	WINNIPEG	MB	2	21,277	10,780	1	17,669	10,780	1	17,669	10,780	1	3,608	
CKY	07	I	WINNIPEG	MB	1	17,669	10,780	1	17,669	10,780	1	17,669	10,780			
WVUE	08	N	NEW ORLEANS	LA	18	426,689	6,485	3	17,620	6,485	3	17,620	6,485	16	409,069	
WTOC	11	N	SAVANNAH	GA	12	155,561	2,688	2	17,607	2,688	2	17,607	2,688	10	137,954	
WHOI	19	N	PEORIA	IL	9	137,240	2,385	2	17,213	2,385	2	17,213	2,385	8	120,027	
KOPB	10	E	PORTLAND	OR	19	412,202	3,140	4	17,168	3,140	4	17,168	3,140	17	395,034	
WLNE	06	N	NEW BEDFORD	MA	40	910,689	16,091	3	17,155	16,091	3	17,155	16,091	39	893,534	
KOKI	23	I	TULSA	OK	10	209,067	22,094	3	17,151	22,094	3	17,151	22,094	9	191,916	
KTTU	18	I	TUCSON	AZ	7	143,986	19,017	2	17,125	19,017	2	17,125	19,017	5	126,861	
WHLT	22	N	HATTIESBURG	MS	3	40,234	2,098	1	17,073	2,098	1	17,073	2,098	2	23,161	
WXXI	21	E	ROCHESTER	NY	10	263,223	2,812	4	17,010	2,812	4	17,010	2,812	7	246,213	
WOI	05	N	AMES	IA	13	145,239	3,363	4	16,956	3,363	4	16,956	3,363	10	128,283	
WHFT	45	I	MIAMI	FL	4	276,443	6,617	2	16,930	6,617	2	16,930	6,617	4	259,513	
WHAG	25	N	HAGERSTOWN	MD	12	174,740	4,062	3	16,839	4,062	3	16,839	4,062	9	157,901	
WJBK	02	N	DETROIT	MI	38	1,017,005	1,698	2	16,816	1,698	2	16,816	1,698	37	1,000,189	
KTUL	08	N	TULSA	OK	19	293,034	3,160	3	16,774	3,160	3	16,774	3,160	17	276,260	
KHET	11	E	HONOLULU	HI	5	264,132	4,752	1	16,743	4,752	1	16,743	4,752	4	247,389	
WUHF	31	I	ROCHESTER	NY	8	67,162	11,379	6	16,464	11,379	6	16,464	11,379	6	50,698	
KOKH	25	I	OKLAHOMA CITY	OK	11	158,999	10,507	4	16,341	10,507	4	16,341	10,507	8	142,658	
WFFT	55	I	FT WAYNE	IN	17	185,788	8,973	5	16,095	8,973	5	16,095	8,973	15	169,693	
WATM	23	N	ALTOONA	PA	12	144,838	2,556	3	16,065	2,556	3	16,065	2,556	11	128,773	
KTWO	02	N	CASPER	WY	9	55,329	2,672	3	16,059	2,672	3	16,059	2,672	6	39,270	
KTLC	43	E	OKLAHOMA CITY	OK	7	134,640	9,246	2	15,961	9,246	2	15,961	9,246	5	118,679	
KSMO	62	I	KANSAS CITY	MO	11	394,979	12,620	3	15,933	12,620	3	15,933	12,620	8	379,046	
KUTP	45	I	PHOENIX	AZ	13	443,645	11,422	3	15,900	11,422	3	15,900	11,422	10	427,745	
KNXV	15	I	PHOENIX	AZ	10	421,803	11,422	3	15,900	11,422	3	15,900	11,422	7	405,903	
KVAL	13	N	EUGENE	OR	8	108,879	3,291	1	15,874	3,291	1	15,874	3,291	7	93,005	
KIMT	03	N	MASON CITY	IA	6	79,927	3,688	1	15,695	3,688	1	15,695	3,688	5	63,232	
KAAL	06	N	AUSTIN	MN	8	67,551	3,688	1	15,695	3,688	1	15,695	3,688	7	51,856	

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WSEE	35	N	ERIE	PA	14	165,400	3,348	3	15,569	3,348	3	15,569	3,348	12	149,831	
KTXA	21	I	FORT WORTH	TX	34	625,491	10,084	4	15,494	10,084	4	15,494	10,084	31	609,997	
KSLA	12	N	SHREVEPORT	LA	15	179,478	2,666	3	15,451	2,666	3	15,451	2,666	12	164,027	
KHNL	13	I	HONOLULU	HI	5	262,790	12,219	1	15,401	12,219	1	15,401	12,219	4	247,389	
WJET	24	N	ERIE	PA	15	164,530	3,119	5	15,398	3,119	5	15,398	3,119	12	149,132	
KPHO	05	I	PHOENIX	AZ	22	512,812	8,590	4	15,236	8,590	4	15,236	8,590	19	497,576	
KLAX	31	N	ALEXANDRIA	LA	4	48,539	3,195	2	15,157	3,195	2	15,157	3,195	2	33,382	
KRRT	35	I	KERRVILLE	TX	7	266,019	3,424	2	15,082	3,424	2	15,082	3,424	5	250,937	
WNEG	32	I	TOCCOA	GA	4	28,104	12,620	2	15,043	12,620	2	15,043	12,620	3	13,061	
KMEB	10	E	WAILUKU	HI	3	39,955	3,735	1	14,878	3,735	1	14,878	3,735	2	25,077	
WALB	10	N	ALBANY	GA	15	167,546	2,077	2	14,749	2,077	2	14,749	2,077	13	152,797	
KETS	02	E	LITTLE ROCK	AR	11	162,276	2,811	2	14,738	2,811	2	14,738	2,811	10	147,538	
WKOI	43	I	RICHMOND	IN	10	172,802	8,736	4	14,668	8,736	4	14,668	8,736	10	158,134	
WEVV	44	I	EVANSVILLE	IN	12	116,362	8,196	3	14,583	8,196	3	14,583	8,196	9	101,779	
WFIE	14	N	EVANSVILLE	IN	12	116,362	2,049	3	14,583	2,049	3	14,583	2,049	9	101,779	
WLII	11	I	CAGUAS	PR	6	189,619	10,230	1	14,392	9,802	1	14,392	9,802	5	175,227	428
WICZ	40	N	BINGHAMTON	NY	7	139,287	2,548	3	14,338	2,548	3	14,338	2,548	6	124,949	
WSAZ	03	N	HUNTINGTON	WV	22	257,532	2,590	4	14,276	2,590	4	14,276	2,590	20	243,256	
WCHS	08	N	CHARLESTON	WV	24	275,658	2,608	4	14,117	2,608	4	14,117	2,608	22	261,541	
KNME	05	E	ALBUQUERQUE	NM	13	170,900	2,670	2	14,018	2,670	2	14,018	2,670	11	156,882	
KPNX	12	N	PHOENIX	AZ	19	255,684	2,232	4	13,985	2,232	4	13,985	2,232	17	241,699	
WTTO	21	I	BIRMINGHAM	AL	13	189,540	10,758	3	13,906	10,758	3	13,906	10,758	11	175,634	
WQLN	54	E	ERIE	PA	12	129,030	2,490	3	13,854	2,490	3	13,854	2,490	10	115,176	
CISA	07	I	LETHBRIDGE	AB	2	17,957	10,861	1	13,820	10,861	1	13,820	10,861	1	4,137	
CHAN	08	I	VANCOUVER	BC	9	72,319	13,057	3	13,803	11,507	3	13,803	11,507	6	58,516	1,550
WICU	12	N	ERIE	PA	16	172,534	3,575	4	13,767	3,575	4	13,767	3,575	14	158,767	
WRLK	35	E	COLUMBIA	SC	3	104,646	4,041	1	13,625	4,041	1	13,625	4,041	2	91,021	
WHME	46	I	SOUTH BEND	IN	16	161,558	8,421	4	13,562	8,421	4	13,562	8,421	13	147,996	
KUSI	51	I	SAN DIEGO	CA	8	628,171	11,410	1	13,521	10,991	1	13,521	10,991	7	614,650	419
KDSM	17	I	DES MOINES	IA	13	145,239	9,851	4	13,447	9,851	4	13,447	9,851	9	131,792	
KDTV	14	I	SAN FRANCISCO	CA	41	1,156,669	9,768	2	13,340	9,768	2	13,340	9,768	39	1,143,329	
WTXX	20	I	WATERBURY	CT	32	1,181,439	10,110	2	13,326	10,110	2	13,326	10,110	31	1,168,113	
WMGC	34	N	BINGHAMTON	NY	7	139,287	2,392	2	13,303	2,392	2	13,303	2,392	6	125,984	
WDAM	07	N	LAUREL	MS	4	36,435	2,656	2	13,274	2,656	2	13,274	2,656	2	23,161	
WTAJ	10	N	ALTOONA	PA	22	215,658	1,846	3	13,219	1,846	3	13,219	1,846	20	202,439	
WHRO	15	E	HAMPTON	VA	17	417,451	2,698	4	13,148	2,698	4	13,148	2,698	14	404,303	
WVVI	66	I	MANASSAS	VA	11	349,185	7,345	1	13,137	7,345	1	13,137	7,345	10	336,048	
WNEM	05	N	BAY CITY	MI	15	234,237	2,336	2	13,098	2,336	2	13,098	2,336	13	221,139	
WLTX	19	N	COLUMBIA	SC	6	109,094	2,885	3	13,000	2,885	3	13,000	2,885	4	96,094	
WRGB	06	N	SCHENECTADY	NY	24	370,522	15,152	3	12,786	13,345	3	12,786	13,345	22	357,736	1,807
WKBT	08	N	LA CROSSE	WI	9	87,717	4,770	2	12,748	4,770	2	12,748	4,770	8	74,969	
WUNI	27	I	WORCESTER	MA	50	1,317,719	11,331	1	12,650	11,331	1	12,650	11,331	50	1,305,069	
KAYU	28	I	SPOKANE	WA	9	164,440	8,829	3	12,411	8,829	3	12,411	8,829	6	152,029	
WDSE	08	E	DULUTH-SUPERI	MN	6	46,649	5,654	3	12,340	5,654	3	12,340	5,654	4	34,309	
WAAY	31	N	HUNTSVILLE	AL	16	158,209	2,405	4	12,212	2,405	4	12,212	2,405	14	145,997	
WCBB	10	E	AUGUSTA	ME	17	190,346	3,164	3	12,208	2,539	3	12,208	2,539	17	178,138	625
WMUR	09	N	MANCHESTER	NH	25	441,831	2,180	3	12,135	2,180	3	12,135	2,180	23	429,696	
WLUC	06	N	MARQUETTE	MI	6	59,095	973	2	12,119	973	2	12,119	973	5	46,976	
WSJV	28	N	ELKHART	IN	14	157,218	2,103	3	12,062	2,103	3	12,062	2,103	12	145,156	
KAME	21	I	RENO	NV	8	115,381	8,233	1	11,906	8,233	1	11,906	8,233	8	103,475	
WHNS	21	I	ASHEVILLE	NC	22	256,114	33,527	3	11,872	33,527	3	11,872	33,527	19	244,242	
KWEX	41	I	SAN ANTONIO	TX	6	398,205	7,111	2	11,744	7,111	2	11,744	7,111	4	386,461	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WCCU	27	I	URBANA	IL	4	56,658	13,168	2	11,665	13,168	2	11,665	13,168	2	44,993	
KFVS	12	N	CAPE GIRARDEA	MO	21	145,466	1,224	2	11,534	1,224	2	11,534	1,224	19	133,932	
WLBZ	02	N	BANGOR	ME	7	56,181	1,204	2	11,526	1,204	2	11,526	1,204	5	44,655	
WVII	07	N	BANGOR	ME	6	43,115	1,204	2	11,526	1,204	2	11,526	1,204	4	31,589	
WNGM	34	I	ATHENS	GA	7	69,548	46,702	2	11,430	46,702	2	11,430	46,702	6	58,118	
WJTV	12	N	JACKSON	MS	13	154,442	3,814	3	11,381	3,814	3	11,381	3,814	11	143,061	
WXTX	54	I	COLUMBUS	GA	7	96,385	10,362	1	11,321	10,362	1	11,321	10,362	6	85,064	
WITN	07	N	WASHINGTON	NC	13	145,243	4,319	3	11,132	4,319	3	11,132	4,319	11	134,111	
WPMI	15	I	MOBILE	AL	17	274,961	16,199	5	11,006	16,199	5	11,006	16,199	14	263,955	
WETK	33	E	BURLINGTON	VT	7	62,575	1,343	2	10,861	1,343	2	10,861	1,343	5	51,714	
WTSF	61	I	ASHLAND	KY	6	85,251	9,176	1	10,768	9,176	1	10,768	9,176	5	74,483	
KBCI	02	N	BOISE	ID	5	72,789	2,119	1	10,750	2,119	1	10,750	2,119	4	62,039	
WEDU	03	E	TAMPA	FL	26	758,937	1,213	1	10,708	1,213	1	10,708	1,213	26	748,229	
WGXA	24	N	MACON	GA	8	99,824	1,892	2	10,612	1,892	2	10,612	1,892	7	89,212	
KJRH	02	N	TULSA	OK	13	221,172	5,783	3	10,504	5,783	3	10,504	5,783	10	210,668	
CHEK	06	I	VICTORIA	BC	5	50,311	7,124	1	10,419	7,124	1	10,419	7,124	4	39,892	
K66BW	66	L	PASCO	WA	3	48,330	7,124	1	10,419	7,124	1	10,419	7,124	2	37,911	
WQPT	24	E	MOLINE	IL	4	86,179	2,066	1	10,389	2,066	1	10,389	2,066	3	75,790	
KAKE	10	N	WICHITA	KS	13	186,001	1,904	2	10,269	1,904	2	10,269	1,904	12	175,732	
XEW	02	I	MEXICO CITY	DF	2	33,042		1	10,269		1	10,269		1	22,773	
KVAW	16	I	EAGLE PASS	TX	2	18,059	33,528	1	10,269	33,528	1	10,269	33,528	1	7,790	
KTEN	10	N	ADA	OK	7	63,296	2,186	1	10,197	2,186	1	10,197	2,186	6	53,099	
WBBJ	07	N	JACKSON	TN	11	76,490	2,271	2	10,099	2,271	2	10,099	2,271	9	66,391	
KVUE	24	N	AUSTIN	TX	9	188,227	2,421	3	10,087	2,421	3	10,087	2,421	6	178,140	
WBOC	16	N	SALISBURY	MD	10	148,517	6,339	3	10,013	6,339	3	10,013	6,339	10	138,504	
WMHT	17	E	SCHENECTADY	NY	28	404,014	6,984	1	10,001	1,314	1	10,001	1,314	27	394,013	5,670
WAVY	10	N	PORTSMOUTH	VA	18	406,473	1,397	1	9,862	1,397	1	9,862	1,397	18	396,611	
CKPR	02	I	THUNDER BAY	ON	1	10,305	3,303	1	9,841	3,303	1	9,841	3,303	1	464	
WPNE	38	E	GREEN BAY	WI	15	175,417	1,292	3	9,778	1,292	3	9,778	1,292	13	165,639	
WKAR	23	E	EAST LANSING	MI	15	302,909	2,116	3	9,774	2,116	3	9,774	2,116	14	293,135	
WXMT	30	I	NASHVILLE	TN	10	204,009	4,373	1	9,770	4,373	1	9,770	4,373	9	194,239	
KCIT	14	I	AMARILLO	TX	8	76,039	5,425	2	9,668	5,425	2	9,668	5,425	6	66,371	
WMEA	11	E	BIDDEFORD	ME	9	173,366	1,862	1	9,636	1,862	1	9,636	1,862	8	163,730	
KTBN	40	I	SANTA ANA	CA	45	1,323,269	10,572	1	9,521	10,030	1	9,521	10,030	45	1,313,748	542
WMPB	67	E	BALTIMORE	MD	11	254,176	2,167	2	9,436	1,434	2	9,436	1,434	10	244,740	733
WSPA	07	N	SPARTANBURG	SC	30	348,126	1,478	2	9,338	1,478	2	9,338	1,478	30	338,788	
KOCB	34	I	OKLAHOMA CITY	OK	8	138,857	5,477	2	9,242	5,477	2	9,242	5,477	7	129,615	
KWCH	12	N	HUTCHINSON	KS	10	163,267	1,678	1	8,811	1,678	1	8,811	1,678	9	154,456	
KSNF	16	N	JOPLIN	MO	10	43,668	884	2	8,771	884	2	8,771	884	8	34,897	
KSPR	33	N	SPRINGFIELD	MO	4	61,619	1,163	1	8,713	1,163	1	8,713	1,163	3	52,906	
WCVE	23	E	RICHMOND	VA	11	275,850	1,489	2	8,671	1,489	2	8,671	1,489	9	267,179	
KDAF	33	I	DALLAS	TX	32	615,742	4,768	2	8,521	4,768	2	8,521	4,768	30	607,221	
KDFI	27	I	DALLAS	TX	32	615,742	4,768	2	8,521	4,768	2	8,521	4,768	30	607,221	
WOWT	06	N	OMAHA	NE	8	217,112	1,592	2	8,507	1,592	2	8,507	1,592	6	208,605	
WYLE	26	I	FLORENCE	AL	4	43,469	33,369	1	8,497	33,369	1	8,497	33,369	3	34,972	
WSLS	10	N	ROANOKE	VA	16	199,508	979	1	8,474	979	1	8,474	979	15	191,034	
WEDH	24	E	HARTFORD	CT	19	716,650	2,047	2	8,444	2,047	2	8,444	2,047	18	708,206	
KRWG	22	E	LAS CRUCES	NM	5	123,509	1,535	2	8,384	1,535	2	8,384	1,535	4	115,125	
WSKG	48	E	BINGHAMTON	NY	9	147,597	1,496	2	8,310	1,496	2	8,310	1,496	7	139,287	
KWET	12	E	CHEYENNE	OK	7	31,640	1,257	2	8,271	1,257	2	8,271	1,257	6	23,377	
WOLF	38	I	SCRANTON	PA	16	204,241	4,161	1	8,258	4,161	1	8,258	4,161	16	195,983	
WXMI	17	I	GRAND RAPIDS	MI	17	285,516	7,611	3	8,184	7,611	3	8,184	7,611	17	277,332	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO.OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO.OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO.OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO.OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WPDE	15	N	FLORENCE	SC	12	114,756	4,788	2	8,175	4,788	2	8,175	4,788	11	106,581	
KGTV	10	N	SAN DIEGO	CA	8	622,680	2,173	1	8,030	1,754	1	8,030	1,754	7	614,650	419
WJRT	12	N	FLINT	MI	16	299,706	1,671	1	7,952	1,671	1	7,952	1,671	15	291,754	
WUNE	17	E	LINVILLE	NC	9	85,923	1,797	3	7,927	1,797	3	7,927	1,797	6	77,996	
WROC	08	N	ROCHESTER	NY	10	263,223	1,220	2	7,908	1,220	2	7,908	1,220	9	255,315	
WIRB	56	I	MELBOURNE	FL	10	224,220	4,051	1	7,896	4,051	1	7,896	4,051	9	216,324	
KTRE	09	N	LUFKIN	TX	4	34,303	1,399	2	7,834	1,399	2	7,834	1,399	3	26,469	
KCCO	07	N	ALEXANDRIA	MN	8	46,511	1,429	2	7,771	1,429	2	7,771	1,429	6	38,740	
WOWK	13	N	HUNTINGTON	WV	20	244,891	1,542	4	7,494	1,542	4	7,494	1,542	19	237,397	
WEAU	13	N	EAU CLAIRE	WI	11	126,047	3,825	2	7,446	3,825	2	7,446	3,825	11	118,601	
KMEG	14	N	SIOUX CITY	IA	7	40,017	1,261	2	7,379	1,261	2	7,379	1,261	5	32,638	
WAPT	16	N	JACKSON	MS	6	106,954	1,395	1	7,366	1,395	1	7,366	1,395	5	99,588	
KWHB	47	I	TULSA	OK	3	24,531	4,999	1	7,350	4,999	1	7,350	4,999	2	17,181	
WABU	68	I	BOSTON	MA	51	1,169,385	4,072	3	7,344	4,072	3	7,344	4,072	51	1,162,041	
WFLX	29	I	WEST PALM BEA	FL	22	710,332	3,606	1	7,317	3,606	1	7,317	3,606	21	703,015	
WPEC	12	N	WEST PALM BEA	FL	21	684,371	902	1	7,317	902	1	7,317	902	20	677,054	
WPTV	05	N	PALM BEACH	FL	21	684,371	902	1	7,317	902	1	7,317	902	20	677,054	
WPBF	25	N	TEQUESTA-W PA	FL	15	379,359	902	1	7,317	902	1	7,317	902	14	372,042	
KLTV	07	N	TYLER	TX	9	83,128	1,203	2	7,303	1,203	2	7,303	1,203	7	75,825	
WJMN	03	N	ESCANABA	MI	4	40,413		1	7,290		1	7,290		3	33,123	
KSBY	06	N	SAN LUIS OBIS	CA	8	171,965	1,413	1	7,259	1,413	1	7,259	1,413	7	164,706	
KOMU	08	N	COLUMBIA	MO	8	62,863	1,770	2	7,184	1,770	2	7,184	1,770	6	55,679	
WLOX	13	N	BILOXI	MS	9	123,695	6,154	1	7,179	6,154	1	7,179	6,154	8	116,516	
WAND	17	N	DECATUR	IL	13	186,621	1,158	3	7,035	1,158	3	7,035	1,158	13	179,586	
WTVA	09	N	TUPELO	MS	11	49,032	1,163	1	6,999	1,163	1	6,999	1,163	10	42,033	
KVVU	05	I	HENDERSON	NV	5	178,402	6,432	1	6,917	6,432	1	6,917	6,432	4	171,485	
KLRT	16	I	LITTLE ROCK	AR	12	162,591	4,493	2	6,912	4,493	2	6,912	4,493	10	155,679	
WIPB	49	E	MUNCIE	IN	9	117,660	1,010	2	6,897	1,010	2	6,897	1,010	8	110,763	
KOTV	06	N	TULSA	OK	13	234,339	1,418	2	6,825	1,418	2	6,825	1,418	11	227,514	
KAMR	04	N	AMARILLO	TX	11	90,029	898	1	6,821	898	1	6,821	898	10	83,208	
KVII	07	N	AMARILLO	TX	10	78,454	898	1	6,821	898	1	6,821	898	9	71,633	
WVPT	51	E	STAUNTON	VA	9	115,761	986	2	6,773	986	2	6,773	986	8	108,988	
WTSG	31	I	ALBANY	GA	10	71,463	4,778	3	6,752	4,778	3	6,752	4,778	9	64,711	
WACH	57	I	COLUMBIA	SC	4	100,954	30,567	1	6,737	30,567	1	6,737	30,567	3	94,217	
WTLK	14	I	ROME	GA	6	58,867	8,142	1	6,714	8,142	1	6,714	8,142	5	52,153	
WHSV	03	N	HARRISONBURG	VA	9	101,713	1,407	1	6,695	1,407	1	6,695	1,407	8	95,018	
WNYT	13	N	ALBANY	NY	18	306,408	1,090	2	6,688	1,090	2	6,688	1,090	18	299,720	
WBSG	21	I	BRUNSWICK	GA	5	47,131	4,785	1	6,645	4,785	1	6,645	4,785	4	40,486	
WKCF	18	I	CLERMONT	FL	19	542,561	4,623	1	6,597	4,623	1	6,597	4,623	18	535,964	
WNYB	49	I	BUFFALO	NY	9	321,147	2,359	2	6,554	2,359	2	6,554	2,359	9	314,593	
KVPT	18	E	FRESNO	CA	8	166,153	1,334	1	6,482	1,334	1	6,482	1,334	7	159,671	
WNJS	23	E	CAMDEN	NJ	25	1,059,619	723	1	6,459	723	1	6,459	723	25	1,053,160	
WTVW	07	N	EVANSVILLE	IN	13	120,029	997	3	6,436	997	3	6,436	997	11	113,593	
WIVM	09	N	COLUMBUS	GA	16	179,989	2,828	3	6,432	2,828	3	6,432	2,828	14	173,557	
WCNY	24	E	SYRACUSE	NY	11	255,181	1,428	2	6,308	1,428	2	6,308	1,428	10	248,873	
KAEF	23	N	ARCATA	CA	3	36,675	1,115	1	6,213	1,115	1	6,213	1,115	2	30,462	
KLRU	18	E	AUSTIN	TX	8	184,350	1,240	2	6,210	1,240	2	6,210	1,240	6	178,140	
WBAK	38	N	TERRE HAUTE	IN	4	43,948	947	1	6,204	947	1	6,204	947	3	37,744	
WICS	20	N	SPRINGFIELD	IL	9	103,337	937	1	6,142	937	1	6,142	937	9	97,195	
WMSN	47	I	MADISON	WI	10	137,000	7,815	2	6,037	7,815	2	6,037	7,815	9	130,963	
KVHP	29	I	LAKE CHARLES	LA	10	121,172	5,719	1	6,027	5,719	1	6,027	5,719	9	115,145	
KLPA	25	E	ALEXANDRIA	LA	3	39,409	1,430	1	6,027	1,430	1	6,027	1,430	2	33,382	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO.OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO.OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO.OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO.OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
KFXK	51	I	LONGVIEW	TX	8	89,284	3,061	1	6,016	3,061	1	6,016	3,061	7	83,268	
WJZY	46	I	BELMONT	NC	24	376,898	3,259	2	6,002	3,259	2	6,002	3,259	23	370,896	
KENW	03	E	PORTALES	NM	9	61,144	1.417	1	5,964	1,417	1	5,964	1,417	8	55,180	
KOBR	08	N	ROSWELL	NM	8	59,248	1,417	1	5,964	1,417	1	5,964	1,417	7	53,284	
WCTI	12	N	NEW BERN	NC	6	58,120	1,159	2	5,923	1,159	2	5,923	1,159	4	52,197	
WMTU	16	I	JACKSON	TN	7	55,939	2,406	1	5,915	2,406	1	5,915	2,406	6	50,024	
WOTV	41	N	BATTLE CREEK	MI	13	224,902	981	2	5,901	981	2	5,901	981	12	219,001	
WILX	10	N	LANSING	MI	7	136,815	2,248	1	5,858	2,248	1	5,858	2,248	7	130,957	
WMGT	41	N	MACON	GA	7	95,106	1,073	2	5,797	1,073	2	5,797	1,073	6	89,309	
WENY	36	N	ELMIRA	NY	6	73,454	909	2	5,757	909	2	5,757	909	5	67,697	
KTAL	06	N	SHREVEPORT-TE	LA	13	164,649	1.160	1	5,755	1,160	1	5,755	1,160	12	158,894	
KBSI	23	I	CAPE GIRARDEA	MO	18	118,122	4,435	2	5,666	4,435	2	5,666	4,435	16	112,456	
KTEH	54	E	SAN JOSE	CA	42	1,270,469	1,325	1	5,515	1,325	1	5,515	1,325	41	1,264,954	
WEEK	25	N	PEORIA	IL	11	152,128	913	2	5,510	913	2	5,510	913	10	146,618	
WOFL	35	I	ORLANDO	FL	32	680,332	2,830	3	5,482	2,830	3	5,482	2,830	31	674,850	
WGVU	35	E	GRAND RAPIDS	MI	16	277,961	1,134	2	5,446	1,134	2	5,446	1,134	15	272,515	
WSAW	07	N	WAUSAU	WI	8	57,340	6,163	2	5,430	6,163	2	5,430	6,163	6	51,910	
KFVE	05	I	HONOLULU	HI	5	264,132	3,502	1	5,428	3,502	1	5,428	3,502	4	258,704	
WUCP	08	I	JOHNSTOWN	PA	19	248,565	3,465	2	5,364	3,465	2	5,364	3,465	18	243,201	
KADN	15	I	LAFAYETTE	LA	8	121,766	2,723	1	5,333	2,723	1	5,333	2,723	7	116,433	
KTTW	17	I	SIOUX FALLS	SD	2	42,790	3,707	1	5,268	3,707	1	5,268	3,707	1	37,522	
KETK	56	N	JACKSONVILLE	TX	6	72,448	5,941	1	5,196	5,941	1	5,196	5,941	5	67,252	
WLFI	18	N	LAFAYETTE	IN	8	96,529	602	1	5,151	602	1	5,151	602	8	91,378	
WCPX	06	N	ORLANDO	FL	32	702,641	640	2	5,123	640	2	5,123	640	31	697,518	
KORO	28	I	CORPUS CHRISTI	TX	4	65,212	4,093	2	5,096	4,093	2	5,096	4,093	3	60,116	
WJHL	11	N	JOHNSON CITY	TN	14	148,050	1,029	1	5,034	1,029	1	5,034	1,029	13	143,016	
KWTX	10	N	WACO	TX	6	96,204	662	1	5,021	662	1	5,021	662	5	91,183	
KIVI	06	N	NAMPA	ID	5	72,789	1,154	1	5,017	1,154	1	5,017	1,154	4	67,772	
KTRV	12	I	NAMPA	ID	5	72,789	4,615	1	5,017	4,615	1	5,017	4,615	4	67,772	
KISU	10	E	POCATELLO	ID	5	50,674	1,154	1	5,017	1,154	1	5,017	1,154	4	45,657	
KPVI	06	N	POCATELLO	ID	5	50,674	1,154	1	5,017	1,154	1	5,017	1,154	4	45,657	
KCCI	08	N	DES MOINES	IA	13	145,239	878	2	4,978	878	2	4,978	878	12	140,261	
KAUZ	06	N	WICHITA FALLS	TX	7	78,053	879	1	4,949	879	1	4,949	879	6	73,104	
WOLO	25	N	COLUMBIA	SC	4	99,157	1,249	1	4,940	1,249	1	4,940	1,249	3	94,217	
KLJB	18	I	DAVENPORT	IA	9	126,540	3,596	1	4,937	3,596	1	4,937	3,596	8	121.603	
KUON	12	E	LINCOLN	NE	4	163,115	823	1	4,912	823	1	4,912	823	3	158,203	
WFXR	27	I	ROANOKE	VA	4	29,141	2,723	1	4,882	2,723	1	4,882	2,723	3	24,259	
WGPR	62	I	DETROIT	MI	27	698,013	3,887	2	4,876	3,887	2	4,876	3,887	27	693,137	
WNRW	45	I	WINSTON-SALEM	NC	16	296,472	2,686	1	4,837	2,686	1	4,837	2,686	15	291,635	
WBRA	15	E	ROANOKE	VA	14	192,597	672	1	4,837	672	1	4,837	672	13	187,760	
WGGT	48	I	GREENSBORO	NC	6	77,275	2,686	1	4,837	2,686	1	4,837	2,686	5	72,438	
WUNF	36	E	ROANOKE RAPID	NC	2	16,063	672	1	4,837	672	1	4,837	672	1	11,226	
WOOD	08	N	GRAND RAPIDS	MI	19	348,889	1,157	2	4,814	1,157	2	4,814	1,157	18	344,075	
KABR	29	I	SAN ANTONIO	TX	4	244,430	3,424	1	4,813	3,424	1	4,813	3,424	3	239,617	
WCAX	03	N	BURLINGTON	VT	17	126,163	802	1	4,777	802	1	4,777	802	16	121,386	
KFME	13	E	FARGO	ND	6	42,889	929	1	4,767	929	1	4,767	929	5	38,122	
KWCM	10	E	APPLETON	MN	5	21,350	929	1	4,767	929	1	4,767	929	4	16,583	
KSAX	42	N	ALEXANDRIA	MN	5	20,469	929	1	4,767	929	1	4,767	929	4	15,702	
KCBD	11	N	LUBBOCK	TX	4	55,346	897	1	4,725	897	1	4,725	897	3	50,621	
KLBK	13	N	LUBBOCK	TX	4	55,346	897	1	4,725	897	1	4,725	897	3	50,621	
WHEC	10	N	ROCHESTER	NY	9	258,969	753	1	4,722	753	1	4,722	753	8	254,247	
WETM	18	N	ELMIRA	NY	5	48,248	753	1	4,722	753	1	4,722	753	4	43,526	

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WHO	13	N	DES MOINES	IA	13	144,452	933	2	4,712	933	2	4,712	933	12	139,740	
WCTE	22	E	COOKEVILLE	TN	5	32,556	644	1	4,709	644	1	4,709	644	5	27,847	
WMAZ	13	N	MACON	GA	12	119,424	804	3	4,692	804	3	4,692	804	12	114,732	
WVEU	69	I	ATLANTA	GA	24	610,148	3,655	3	4,668	3,655	3	4,668	3,655	24	605,480	
KBMT	12	N	BEAUMONT	TX	9	115,145	735	1	4,553	735	1	4,553	735	8	110,592	
KEDT	16	E	CORPUS CHRIST	TX	6	73,113	619	1	4,519	619	1	4,519	619	5	68,594	
KZTV	10	N	CORPUS CHRIST	TX	6	73,113	3,449	1	4,519	3,449	1	4,519	3,449	5	68,594	
WEAO	49	E	AKRON	OH	14	541,994	836	1	4,513	836	1	4,513	836	14	537,481	
WVAH	11	I	CHARLESTON	WV	21	256,536	5,532	5	4,404	5,532	5	4,404	5,532	21	252,132	
WPBY	33	E	HUNTINGTON	WV	14	174,340	632	2	4,374	632	2	4,374	632	13	169,966	
WRLH	35	I	RICHMOND	VA	5	215,699	3,307	1	4,320	3,307	1	4,320	3,307	4	211,379	
KEET	13	E	EUREKA	CA	4	40,993	751	1	4,318	751	1	4,318	751	3	36,675	
KUAT	06	E	TUCSON	AZ	7	143,986	1,046	1	4,283	1,046	1	4,283	1,046	6	139,703	
WZZM	13	N	GRAND RAPIDS	MI	15	254,993	801	1	4,225	801	1	4,225	801	14	250,768	
WKSO	29	E	SOMERSET	KY	10	46,167	813	1	4,221	813	1	4,221	813	9	41,946	
KSIN	27	E	SIOUX CITY	IA	4	28,490	1,346	2	4,205	1,346	2	4,205	1,346	2	24,285	
WEAR	03	N	PENSACOLA	FL	16	254,993	584	1	4,169	584	1	4,169	584	15	250,824	
CKGN	06	I	PARIS	ON	1	4,159	1,862	1	4,159	1,862	1	4,159	1,862			
KREM	02	N	SPOKANE	WA	11	168,875	740	1	4,137	740	1	4,137	740	10	164,738	
KHQ	06	N	SPOKANE	WA	10	155,055	740	1	4,137	740	1	4,137	740	9	150,918	
KXLY	04	N	SPOKANE	WA	10	148,884	740	1	4,137	740	1	4,137	740	9	144,747	
WOWL	15	N	FLORENCE	AL	4	39,842	475	1	4,102	475	1	4,102	475	4	35,740	
WLEF	36	E	PARK FALLS	WI	2	11,380	672	1	4,090	672	1	4,090	672	1	7,290	
WCPB	28	E	SALISBURY	MD	6	113,014	803	1	4,079	803	1	4,079	803	6	108,935	
WGGB	40	N	SPRINGFIELD	MA	16	362,323	955	1	4,067	955	1	4,067	955	16	358,256	
KYMA	11	N	YUMA	AZ	4	50,197	681	1	4,058	681	1	4,058	681	3	46,139	
WTAP	15	N	PARKERSBURG	WV	3	48,477	448	1	4,053	448	1	4,053	448	3	44,424	
KRBK	31	I	SACRAMENTO	CA	28	611,833	2,711	1	4,008	2,711	1	4,008	2,711	27	607,825	
KGNS	08	N	LAREDO	TX	2	24,461	546	1	3,954	546	1	3,954	546	1	20,507	
WECT	06	N	WILMINGTON	NC	17	233,253	2,673	1	3,953	1,087	1	3,953	1,087	17	229,300	1,586
WMFE	24	E	ORLANDO	FL	21	552,216	584	1	3,921	584	1	3,921	584	20	548,295	
WCLF	22	I	CLEARWATER	FL	13	538,937	1,407	1	3,907	1,407	1	3,907	1,407	13	535,030	
KTIN	21	E	FORT DODGE	IA	4	15,300	501	1	3,902	501	1	3,902	501	3	11,398	
KCRG	09	N	CEDAR RAPIDS	IA	11	137,212	725	2	3,890	725	2	3,890	725	10	133,322	
WGRB	34	I	CAMPBELLSVILL	KY	7	35,614	5,448	2	3,845	5,448	2	3,845	5,448	6	31,769	
KYOU	15	I	OTTUMWA	IA	5	24,615	2,826	1	3,810	2,826	1	3,810	2,826	4	20,805	
WGTU	29	N	TRAVERSE CITY	MI	10	48,141	601	1	3,725	601	1	3,725	601	9	44,416	
CFCF	12	I	MONTREAL	QU	5	53,312	1,610	2	3,674	1,610	2	3,674	1,610	5	49,638	
KOB	04	N	ALBUQUERQUE	NM	13	152,451	792	1	3,632	792	1	3,632	792	12	148,819	
XEPM	02	I	JUAREZ-EL PAS	CH	2	89,222	3,169	1	3,632	3,169	1	3,632	3,169	1	85,590	
KMBH	60	E	HARLINGEN	TX	7	69,324	673	1	3,600	673	1	3,600	673	6	65,724	
KMTV	03	N	OMAHA	NE	8	217,112	769	1	3,595	769	1	3,595	769	7	213,517	
KETV	07	N	OMAHA	NE	8	216,303	769	1	3,595	769	1	3,595	769	7	212,708	
KPTM	42	I	OMAHA	NE	7	213,359	15,353	1	3,595	15,353	1	3,595	15,353	6	209,764	
KTCI	17	E	ST PAUL	MN	16	414,668	881	2	3,593	881	2	3,593	881	15	411,075	
WTVP	47	E	PEORIA	IL	7	118,726	692	1	3,589	692	1	3,589	692	6	115,137	
KHSL	12	N	CHICO	CA	8	120,581	719	1	3,553	719	1	3,553	719	7	117,028	
KIXE	09	E	REDDING	CA	7	90,845	719	1	3,553	719	1	3,553	719	6	87,292	
KRCR	07	N	REDDING	CA	7	90,845	719	1	3,553	719	1	3,553	719	6	87,292	
WVCY	30	I	MILWAUKEE	WI	9	237,366	3,119	1	3,552	3,119	1	3,552	3,119	8	233,814	
KJTL	18	I	WICHITA FALLS	TX	6	73,104	2,419	1	3,515	2,419	1	3,515	2,419	5	69,589	
KXII	12	N	ARDMORE	OK	7	59,446	530	1	3,500	530	1	3,500	530	6	55,946	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO.OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO.OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO.OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO.OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
KHSH	67	I	ALVIN	TX	6	170,705	2,107	1	3,491	2,107	1	3,491	2,107	5	167,214	
WKBW	07	N	BUFFALO	NY	19	410,020	533	2	3,479	533	2	3,479	533	18	406,541	
KTSC	08	E	PUEBLO-COLORA	CO	4	117,646	661	1	3,452	661	1	3,452	661	3	114,194	
KXRM	21	I	COLORADO SPRI	CO	4	117,646	2,643	1	3,452	2,643	1	3,452	2,643	3	114,194	
KYFC	50	I	KANSAS CITY	MO	7	340,061	2,228	1	3,433	2,228	1	3,433	2,228	6	336,628	
KOLR	10	N	SPRINGFIELD	MO	8	82,523	557	1	3,433	557	1	3,433	557	7	79,090	
KYTV	03	N	SPRINGFIELD	MO	6	67,674	557	1	3,433	557	1	3,433	557	5	64,241	
WKBS	47	I	ALTOONA	PA	11	115,705	2,051	1	3,360	2,051	1	3,360	2,051	10	112,345	
CHSJ	04	I	SAINT JOHN	NB	2	12,221	1,970	1	3,226	1,970	1	3,226	1,970	1	8,995	
CKCW	02	I	MONCTON	NB	1	3,226	1,970	1	3,226	1,970	1	3,226	1,970			
WREG	03	N	MEMPHIS	TN	25	320,131	673	2	3,171	673	2	3,171	673	25	316,960	
WOGX	51	I	OCALA	FL	9	158,222	13,815	1	3,159	13,815	1	3,159	13,815	9	155,063	
WLOV	27	N	WEST POINT	MS	6	24,502	731	2	3,159	731	2	3,159	731	5	21,343	
WFMZ	69	I	ALLENTOWN	PA	16	463,041	1,807	3	3,065	1,807	3	3,065	1,807	16	459,976	
KWES	09	N	ODESSA	TX	4	65,392	714	1	3,004	714	1	3,004	714	3	62,388	
WHOA	32	N	MONTGOMERY	AL	9	93,593	335	1	2,989	335	1	2,989	335	8	90,604	
KAIT	08	N	JONESBORO	AR	11	66,197	544	1	2,950	544	1	2,950	544	10	63,247	
WGCB	49	I	RED LION	PA	15	344,281	1,973	1	2,932	1,973	1	2,932	1,973	14	341,349	
WCET	48	E	CINCINNATI	OH	13	337,230	596	1	2,900	596	1	2,900	596	12	334,330	
WSTR	64	I	CINNCINNATI	OH	12	334,157	11,894	1	2,900	11,894	1	2,900	11,894	11	331,257	
KKTV	11	N	COLORADO SPRI	CO	6	123,460	572	1	2,870	572	1	2,870	572	5	120,590	
KTAB	32	N	ABILENE	TX	6	51,983	543	1	2,818	543	1	2,818	543	5	49,165	
WJHG	07	N	PANAMA CITY	FL	9	104,664	992	1	2,800	992	1	2,800	992	9	101,864	
KFDM	06	N	BEAUMONT	TX	9	113,317	566	1	2,725	566	1	2,725	566	8	110,592	
WKPT	19	N	KINGSPORT	TN	13	137,706	526	1	2,718	526	1	2,718	526	12	134,988	
W43AV	43	L	WAUKESHA	WI	2	41,604	14,353	1	2,712	14,353	1	2,712	14,353	1	38,892	
CKVU	21	I	VANCOUVER	BC	4	18,594	2,267	1	2,710	2,267	1	2,710	2,267	3	15,884	
WVIZ	25	E	CLEVELAND	OH	24	715,335	236	1	2,708	236	1	2,708	236	24	712,627	
WDBD	40	I	JACKSON	MS	5	99,588	2,371	1	2,680	2,371	1	2,680	2,371	4	96,908	
WYED	17	I	GOLDSBORO	NC	3	98,586	2,028	1	2,608	2,028	1	2,608	2,028	3	95,978	
KUID	12	E	MOSCOW	ID	3	30,780	626	1	2,603	626	1	2,603	626	2	28,177	
WBOY	12	N	CLARKSBURG	WV	8	74,500	465	1	2,573	465	1	2,573	465	8	71,927	
WWNY	07	N	CARTHAGE	NY	2	18,875	2,521	1	2,555	2,521	1	2,555	2,521	2	16,320	
WMEB	12	E	ORONO	ME	6	47,186	451	1	2,531	451	1	2,531	451	5	44,655	
KTFH	49	I	CONROE	TX	2	13,047	2,135	1	2,522	2,135	1	2,522	2,135	1	10,525	
WFXI	08	I	MOREHEAD CITY	NC	3	33,992	2,259	1	2,486	2,259	1	2,486	2,259	2	31,506	
KMSG	59	I	SANGER	CA	4	123,894	2,018	1	2,452	2,018	1	2,452	2,018	3	121,442	
WRBL	03	N	COLUMBUS	GA	13	155,884	443	3	2,366	443	3	2,366	443	13	153,518	
KAVU	25	N	VICTORIA	TX	5	34,709	527	1	2,312	527	1	2,312	527	4	32,397	
KOET	03	E	EUFAULA	OK	4	40,348	431	1	2,310	431	1	2,310	431	3	38,038	
WEMT	39	I	GREENEVILLE	TN	12	132,151	1,604	1	2,277	1,604	1	2,277	1,604	12	129,874	
KHBS	40	N	FORT SMITH	AR	4	37,727	490	1	2,185	490	1	2,185	490	3	35,542	
KAKM	07	E	ANCHORAGE	AK	2	45,296	690	1	2,161	690	1	2,161	690	1	43,135	
KIMO	13	N	ANCHORAGE	AK	2	45,296	690	1	2,161	690	1	2,161	690	1	43,135	
KTUU	02	N	ANCHORAGE	AK	2	45,296	690	1	2,161	690	1	2,161	690	1	43,135	
KTVA	11	N	ANCHORAGE	AK	2	45,296	690	1	2,161	690	1	2,161	690	1	43,135	
WJTC	44	I	PENSACOLA	FL	9	165,511	11,101	1	2,080	11,101	1	2,080	11,101	8	163,431	
KFDA	10	N	AMARILLO	TX	10	83,208	528	1	1,896	528	1	1,896	528	9	81,312	
WTMV	32	I	LAKELAND	FL	13	372,314	911	1	1,814	911	1	1,814	911	13	370,500	
KGAN	02	N	CEDAR RAPIDS	IA	10	134,258	2,263	2	1,783	2,263	2	1,783	2,263	10	132,475	
KWWL	07	N	WATERLOO	IA	9	131,026	2,263	2	1,783	2,263	2	1,783	2,263	9	129,243	
WTGI	61	I	WILMINGTON	DE	7	518,481	1,317	1	1,726	1,317	1	1,726	1,317	7	516,755	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO.OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO.OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO.OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO.OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WAXA	40	N	ANDERSON	SC	3	27,459	2,867	1	1,710	2,867	1	1,710	2,867	2	25,749	
WBSX	31	I	ANN ARBOR	MI	6	208,972	1,324	1	1,578	1,324	1	1,578	1,324	6	207,394	
WLFL	22	I	RALEIGH	NC	15	370,493	930	2	1,574	930	2	1,574	930	15	368,919	
WEKW	52	E	KEENE	NH	4	37,769	274	1	1,518	274	1	1,518	274	4	36,251	
WMCC	23	I	MARION	IN	17	309,852	2,406	1	1,396	2,406	1	1,396	2,406	17	308,456	
WTEN	10	N	ALBANY	NY	23	368,533	228	2	1,382	228	2	1,382	228	23	367,151	
WSCV	51	I	FT LAUDERDALE	FL	8	385,252	796	1	1,374	796	1	1,374	796	8	383,878	
WDLI	17	I	CANTON	OH	6	178,928	977	1	1,363	977	1	1,363	977	6	177,565	
WMVT	36	E	MILWAUKEE	WI	20	330,311	269	1	1,339	269	1	1,339	269	20	328,972	
KJZZ	14	I	SALT LAKE CIT	UT	7	164,182	975	1	1,313	975	1	1,313	975	7	162,869	
WHBQ	13	N	MEMPHIS	TN	22	306,212	196	1	1,154	196	1	1,154	196	22	305,058	
WTOL	11	N	TOLEDO	OH	21	294,112	162	2	1,101	162	2	1,101	162	21	293,011	
WTVG	13	N	TOLEDO	OH	20	291,289	162	2	1,101	162	2	1,101	162	20	290,188	
WLVT	39	E	ALLENTOWN	PA	32	1,101,202	162	1	1,088	162	1	1,088	162	32	1,100,114	
KLST	08	N	SAN ANGELO	TX	2	29,298	229	1	1,075	229	1	1,075	229	2	28,223	
WFXG	54	I	AUGUSTA	GA	7	102,195	1,013	1	1,074	1,013	1	1,074	1,013	7	101,121	
WXII	12	N	WINSTON-SALEM	NC	18	315,475	348	1	1,058	348	1	1,058	348	18	314,417	
WQRF	39	I	ROCKFORD	IL	10	149,475	811	2	1,013	811	2	1,013	811	10	148,462	
WICD	15	N	CHAMPAIGN	IL	4	56,658	221	2	893	221	2	893	221	4	55,765	
WTJC	26	I	SPRINGFIELD	OH	2	163,187	3,616	1	868	3,616	1	868	3,616	2	162,319	
WUPW	36	I	TOLEDO	OH	18	278,821	2,974	2	842	2,974	2	842	2,974	18	277,979	
WPWR	50	I	CHICAGO	IL	41	1,254,545	619	1	823	619	1	823	619	41	1,253,722	
WOIO	19	I	SHAKER HEIGHT	OH	34	876,726	2,355	2	820	2,355	2	820	2,355	34	875,906	
KTMD	48	I	GALVESTON	TX	6	376,290	377	1	735	377	1	735	377	6	375,555	
WTVH	05	N	SYRACUSE	NY	16	294,268	110	1	728	110	1	728	110	16	293,540	
WSTM	03	N	SYRACUSE	NY	14	243,066	110	1	728	110	1	728	110	14	242,338	
WSYT	68	I	SYRACUSE	NY	13	232,943	2,364	1	728	2,364	1	728	2,364	13	232,215	
WGGS	16	I	GREENVILLE	SC	12	172,100	585	1	721	585	1	721	585	12	171,379	
WETG	66	I	ERIE	PA	6	86,222	512	1	694	512	1	694	512	6	85,528	
WFLA	08	N	TAMPA	FL	28	802,989	117	1	666	117	1	666	117	28	802,323	
WABI	05	N	BANGOR	ME	8	69,135	1,247	1	613	622	1	613	622	8	68,522	625
WWHO	53	I	CHILLECOTHE	OH	2	26,989	177	1	567	177	1	567	177	2	26,422	
KZIA	48	I	LOS CRUCES	NM	2	108,364	320	1	540	320	1	540	320	2	107,824	
WMAE	12	E	BOONEVILLE	MS	3	9,996	117	1	520	117	1	520	117	3	9,476	
CJOH	13	I	OTTAWA	ON	1	14,944	286	1	489	286	1	489	286	1	14,455	
WHIZ	18	N	ZANESVILLE	OH	5	68,584	39	1	487	39	1	487	39	5	68,097	
KDOC	56	I	ANAHEIM	CA	42	1,508,987	1,035	1	466	493	1	466	493	42	1,508,521	542
KSWT	13	N	YUMA	AZ	4	50,197	70	1	406	70	1	406	70	4	49,791	
WNIN	09	E	EVANSVILLE	IN	8	96,032	99	1	382	99	1	382	99	8	95,650	
WITF	33	E	HERSHEY	PA	24	497,570	77	1	360	77	1	360	77	24	497,210	
WOAY	04	N	OAK HILL	WV	7	61,554	197	1	340	197	1	340	197	7	61,214	
KCAU	09	N	SIOUX CITY	IA	9	47,226	58	1	337	58	1	337	58	9	46,889	
WFWA	39	E	FORT WAYNE	IN	4	77,939	43	1	297	43	1	297	43	4	77,642	
WSST	55	I	CORDELE	GA	3	39,405	231	1	295	231	1	295	231	3	39,110	
WRSP	55	I	SPRINGFIELD	IL	8	97,711	183	1	291	183	1	291	183	8	97,420	
WSBT	22	N	SOUTH BEND	IN	13	148,231	28	1	235	28	1	235	28	13	147,996	
WTTE	28	I	COLOMBUS	OH	19	523,988	66	1	192	66	1	192	66	19	523,796	
WTJP	60	I	GADSDEN	AL	3	35,203	151	1	177	151	1	177	151	3	35,026	
WATE	06	N	KNOXVILLE	TN	25	225,805	15	1	155	15	1	155	15	25	225,650	
WYVN	60	I	MARTINSBURG	WV	6	107,818	92	1	137	92	1	137	92	6	107,681	
WRGT	45	I	DAYTON	OH	22	566,952	117	1	136	117	1	136	117	22	566,816	
WLJT	11	E	LEXINGTON	TN	7	61,475	24	1	123	24	1	123	24	7	61,352	

FORM 3 RANKED BY FULLTIME DISTANT SUBSCRIBERS

CALL SIGN	CH	TYPE	COMMUNITY	ST	TOTAL NO.OF CABLE SYS'S	TOTAL TOTAL SUBSCRS	TOTAL TOTAL FEE-GEN	ALL-DISTANT NO.OF CABLE SYS'S	ALL-DISTANT TOTAL SUBSCRS	ALL-DISTANT TOTAL FEE-GEN	FULL-TIME-DISTANT NO.OF CABLE SYS'S	FULL-TIME-DISTANT TOTAL SUBSCRS	FULL-TIME-DISTANT TOTAL FEE-GEN	LOCAL NO.OF CABLE SYS'S	LOCAL TOTAL SUBSCRS	LOCAL TOTAL FEE-GEN
WIVB	04	N	BUFFALO	NY	18	406,660	21	1	119	21	1	119	21	18	406,541	
WQOW	18	N	EAU CLAIRE	WI	2	18,886	10	1	71	10	1	71	10	2	18,815	
WGHP	08	N	HIGH POINT	NC	19	321,022	7	1	21	7	1	21	7	19	321,001	
WMDT	47	N	SALISBURY	MD	9	139,997	5	1	18	5	1	18	5	9	139,979	

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W/8 (Part of P.S. Ex 11-X)

Before the
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OFFICE OF THE SECRETARY

In the Matter of Implementation of Section 26 of the Cable Television Consumer Protection and Competition Act of 1992 Inquiry into Sports Programming Migration	PP Docket No. 93-21

TO: The Commission

COMMENTS OF
THE OFFICE OF THE
COMMISSIONER OF BASEBALL

Robert Alan Garrett
Bruce A. Henoch
ARNOLD & PORTER
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 872-6700

Attorneys for the Office of the
Commissioner of Baseball

Of Counsel:

Thomas J. Ostertag
Office of the Commissioner
of Baseball
350 Park Avenue
17th Floor
New York, New York 10022

March 29, 1993

station's commitment to broadcast national network programming and syndicated programming. In Baseball's experience, however, one of the most significant factors is the availability of a large number of Baseball telecasts via superstations. These telecasts fractionalize audiences, and they undercut a station's ability to serve as an exclusive source of particular Baseball games.

C. Superstations

(1). In 1993 seven stations that are the flagships of 9 clubs will be available for delivery via satellite to cable systems around the United States. These "superstations" will present a total of 695 telecasts of Baseball games:

Table 3
Baseball Telecasts
Over Superstations (1993)

KTLA	Angels	50
	Dodgers	46
KTVT	Rangers	90
KWGN	Rockies	71
WGN	Cubs	140
	White Sox	48
WPIX	Yankees	50
WTBS	Braves	125
WWOR	Mets	75
		695

In 1980, there were only three superstations -- WTBS, WGN, and WOR. Collectively, they presented 315 telecasts of Baseball games.

consistently televised 50 games each season since prior to the Orioles entering into a contract with HTS. Clearly, no public interest purpose would be served by having deprived Orioles fans of the option to view Orioles games that would not otherwise have been televised.

F. National Cable Network

(1). The national cablecasting of Baseball originated in 1980, when the USA Network presented approximately 40 baseball telecasts during each of the 1980, 1981, 1982 and 1983 seasons. From 1983 to 1989 there were no national cable telecasts of Baseball games. In 1989 Baseball entered into a landmark telecasting arrangement with ESPN. That arrangement, which covers the 1990-93 seasons, was intended to increase substantially the viewing options available to Baseball fans across the country.

From the standpoint of the fan, the ESPN contract has been an enormous success. ESPN has made available to the American public more than 150 Baseball telecasts during each of the 1990, 1991 and 1992 seasons. As required by contract, those telecasts have provided balanced national exposure to all Baseball teams. This allows fans to watch teams that they might not otherwise have available, and allows fans who live in remote areas

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May 4, 1993

BY HAND

Mr. Jonathan D. Levy
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

Re: FCC Study on Sports Migration

Dear Jonathan:

Pursuant to your request, enclosed are the following charts:

1. 1980 baseball flagship broadcasts, broken down by club and by home and away games.

2. 1984 baseball telecasts, broken down by flagship and regional sport network telecasts by club, and by home and away games.

3. 1993 baseball telecasts, broken down by flagship and regional sport network telecasts by club, and by home and away games.

4. Baseball superstation telecasts for 1993.

5. Local flagship ratings from 1980 through 1992 for the Yankees, Red Sox and White Sox.

6. Average national broadcast network ratings for regular season and post season games, plus the All-Star Game, from 1982 through 1992.

7. Total superstation baseball telecasts for each of the years 1980 through 1993.

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Please feel free to call me if you have any questions, or if you need any additional information.

Best regards.

Sincerely

Robert Alan Garrett

bcc: Tom Ostertag
Dave Alworth

SUPERSTATION TELECASTS 1980-1993

Superstation	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
WTBS	96	147	117	146	148	145	143	145	133	126	105	121	124	125
WGN*	137	145	149	150	149	144	146	148	148	146	175	184	183	188
WGN*	88	97	97	86	87	87	87	75	75	75	78	74	74	75
WPIX					96	96	97	55	52	74	76	55	50	50
KTVT					29	50	50	59	64	66	69	74	73	90
KTLA **									55	60	54	54	49	96
WGN*									75	74	74	75	73	75
KWGN														71
Totals	321	309	363	302	509	522	523	482	602	621	631	637	626	770

* WGN telecast Cubs games only through 1989. Starting 1990, WGN telecast both Cubs and White Sox games.

** KTLA telecast Angels games only through 1992. Starting 1993, KTLA telecasts both Angels and Dodgers games.

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P.S. Ex. 11 -X Cp (3 stapled sections)

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FEDERAL COMMUNICATIONS COMMISSION
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July 2, 1993

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Inquiry Into Sports Programming Migration
PP Docket No. 93-21

Dear Mr. Caton:

This letter is being sent on behalf of the Office of the Commissioner of Baseball to bring to the FCC's attention several pieces of information contained in the Interim Report released by the Commission on July 1, 1993 in the above-captioned proceeding that are at variance with data provided by Baseball pursuant to the Notice of Inquiry.

First, paragraph 44 of the Report incorrectly states that, as shown in Chart 8 of the Report, the number of Baseball games broadcast locally has remained steady, with 1,694 games broadcast in 1980 and the same number in 1992. This assertion is in error for two reasons. First, Chart 8 does not provide data for 1980, begining instead with 1982. Second, the number of Baseball games broadcast on local television actually increased substantially from 1980 to 1992, from 1,392 games in 1980 to 1,547 games in 1992.

Second, virtually all of the data found in Chart 8 of the Report is incorrect. The correct information regarding the number of local television and cable telecasts of Baseball games was found in a chart provided to the Commission in a filing submitted by Baseball on May 5, 1993 (this filing was a revised version of the same chart submitted by Baseball as

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Exhibit A of its Comments). A copy of this chart is attached to this letter.

Any questions regarding this letter should be referred to the undersigned.

Sincerely,

Bruce A. Henoch

Attachment

cc: Jane Hinckley Halprin
Scott Roberts

	Flagship Broadcasts		RSN Telecasts		Total Telecasts	
	Number	% of Whole	Number	% of Whole	Number	% of Whole
1980	1392	36%	NA	NA	NA	NA
1981	1488	38%	215	6%	1703	44%
1982	1494	38%	400	10%	1894	49%
1983	1484	38%	659	17%	2143	55%
1984	1426	37%	1032	27%	2458	63%
1985	1461	38%	740	19%	2201	57%
1986	1505	39%	815	21%	2320	60%
1987	1521	39%	891	23%	2412	62%
1988	1566	40%	933	24%	2499	64%
1989	1575	41%	968	25%	2543	65%
1990	1552	40%	1103	28%	2655	68%
1991	1574	40%	1148	30%	2722	70%
1992	1547	40%	1157	30%	2704	70%
1993*	1584	41%	1146	29%	2730	70%
1993**	1705	40%	1206	29%	2911	69%

* Does not include two expansion clubs -- % of whole based on 3888 possible telecasts (24 clubs X 162 games)

** Does include two expansion clubs -- % of whole based on 4212 possible telecasts (26 clubs X 162 games)

Note: Telecasts over national broadcast and cable networks are not included in these totals.

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JSC EXHIBIT
6

RESULTS BY STRATA, 1989-93

	Q. 4 Allocation	
	1989	1992
Strata 1		
Sports	33.8%	38.1%
Movies	30.2	26.5
Syndicated	14.2	14.9
News	14.2	13.3
PBS	1.3	1.9
Devotional	6.4	4.9
Canadian	0.0	0.4
Total	100.0%	100.0%
Strata 2		
Sports	32.3%	37.0%
Movies	32.3	25.5
Syndicated	19.0	15.1
News	11.2	13.8
PBS	1.3	3.4
Devotional	3.8	4.5
Canadian	0.1	0.6
Total	100.0%	100.0%
Strata 3		
Sports	37.5%	36.0%
Movies	31.4	26.3
Syndicated	15.1	18.4
News	10.6	12.2
PBS	1.9	3.1
Devotional	2.9	3.9
Canadian	0.6	0.2
Total	100.0%	100.0%
Strata 4		
Sports	34.7%	43.3%
Movies	29.8	24.9
Syndicated	20.5	14.4
News	11.3	12.4
PBS	0.5	0.8
Devotional	3.3	3.5
Canadian	0.0	0.7
Total	100.0%	100.0%

JSC (ATT. 6)

RESULTS BY STRATA, 1989-93

	Q. 4 Allocation				
	1989	1990	1991	1992	1993
Strata 1					
Sports	33.8%	36.5%	34.6%	38.1%	41.7%
Movies	30.2	28.3	24.9	26.5	25.0
Syndicated	14.2	13.8	15.6	14.9	15.6
News	14.2	14.0	16.1	13.3	11.1
PBS	1.3	1.5	3.6	1.9	1.3
Devotional	6.4	5.8	5.3	4.9	5.3
Canadian	0.0	0.0	0.0	0.4	0.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%
Strata 2					
Sports	32.3%	36.8%	35.7%	37.0%	39.4%
Movies	32.3	27.8	25.2	25.5	23.8
Syndicated	19.0	15.7	13.6	15.1	15.6
News	11.2	12.0	15.3	13.8	12.6
PBS	1.3	4.1	4.3	3.4	4.4
Devotional	3.8	3.5	5.7	4.5	4.0
Canadian	0.1	0.1	0.1	0.6	0.2
Total	100.0%	100.0%	100.0%	100.0%	100.0%
Strata 3					
Sports	37.5%	35.7%	37.5%	36.0%	42.0%
Movies	31.4	32.8	26.6	26.3	23.3
Syndicated	15.1	15.1	15.8	18.4	15.2
News	10.6	11.7	13.7	12.2	12.8
PBS	1.9	1.7	2.4	3.1	1.6
Devotional	2.9	3.1	3.5	3.9	4.5
Canadian	0.6	0.0	0.5	0.2	0.5
Total	100.0%	100.0%	100.0%	100.0%	100.0%
Strata 4					
Sports	34.7%	37.0%	36.1%	43.3%	47.8%
Movies	29.8	29.3	26.5	24.9	27.3
Syndicated	20.5	14.8	18.5	14.4	7.9
News	11.3	13.5	13.5	12.4	14.8
PBS	0.5	2.5	1.6	0.8	0.3
Devotional	3.3	3.0	3.2	3.5	1.9
Canadian	0.0	0.0	0.6	0.7	0.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%

NUMBER OF SUBSCRIBERS

CABLE NETWORK	1989	1990	1991	1992	1993
ESPN	54,800,000	56,265,000	59,195,000	58,950,000	61,600,000
SPORTSCHANNEL AMERICA	2,100,000	2,320,000	2,320,000	2,408,633	2,408,633
ARIZONA SPORTS PRGMG NETWORK	210,000	310,000	310,000	340,000	380,000
EMPIRE SPORTS NETWORK			316,000	319,000	400,000
KBL SPORTS NETWORK			1,400,000	1,500,000	1,900,000
MADISON SQUARE GARDEN NETWORK	3,400,000	4,300,000	4,500,000	4,600,000	5,000,000
MEADOWS RACING NETWORK	600,000	700,000	700,000	700,000	700,000
MIDWEST SPORTS CHANNEL	275,000	275,000	610,000	610,000	985,000
NIAGARA FRONTEIR SPORTS NETWORK	800,000	800,000			
NORTHWEST CABLE SPORTS NETWORK	700,000		700,000	700,000	
PACIFIC SPORTS CHANNEL		1,100,000			
PRIME SPORTS NETWORK	300,000				
PRIME SPORTS NETWORK INTERMOUNTAIN WEST		300,000	395,300	400,300	465,237
PRIME SPORTS NETWORK MIDWEST		30,000	233,400	250,000	284,799
PRIME SPORTS NETWORK ROCKY MOUNTAIN		780,000	1,056,000	1,200,000	1,222,735
PRIME SPORTS NETWORK UPPER MIDWEST		108,000	196,800	340,000	302,638
PRIME SPORTS NETWORK NORTHWEST		1,100,000	1,500,000	1,600,000	
PRIME TICKET	3,800,000	4,200,000	4,200,000	4,300,000	4,200,000
SPORTSCHANNEL BAY AREA		1,691,000			
SPORTSCHANNEL CHICAGO	1,507,270		2,017,612	2,017,612	2,245,472
SPORTSCHANNEL CINCINNATI		70,000	300,541	543,800	1,223,819
SPORTSCHANNEL OHIO	280,000	650,000	904,000	958,400	1,157,000
SPORTSCHANNEL PHILADELPHIA		1,300,000	1,750,000	1,800,000	1,900,000
SPORTSOUTH		1,000,000	1,600,000	2,500,000	3,200,000
SUNSHINE NETWORK	2,800,000	2,900,000	3,078,542	3,078,542	3,230,000
HOME SPORTS ENTERTAINMENT	1,000,000	2,400,000	2,800,000	3,060,000	3,400,000
HOME TEAM SPORTS	1,200,000	1,800,000	2,200,000	2,225,000	2,500,000
NEW ENGLAND SPORTS NETWORK	317,201	380,000	380,000	380,000	400,000
PRISM	427,000	470,000	470,000	470,000	400,000
PRO–AM SPORTS	523,000	625,000	750,000	750,000	800,000
SPORTSCHANNEL FLORIDA	650,000	950,000	1,200,000	1,600,000	1,600,000
SPORTSCHANNEL LOS ANGELES	125,000	125,000	150,000	150,000	
SPORTSCHANNEL NEW ENGLAND	1,028,431	1,200,000	1,300,000	1,300,000	1,400,000
SPORTSCHANNEL NEW YORK	1,300,000	1,300,000	1,500,000	1,516,000	1,516,000
SPORTSCHANNEL PACIFIC			1,700,000	1,748,900	2,100,000
TOTAL	78,142,902	89,449,000	99,733,195	102,316,187	106,921,333

COMPARISON 1992 BORTZ SURVEY PBS RESPONSES WITH 1992 ROYALTY PAYMENTS FOR PBS

P.S. EX. 13-X

NO.	CALL SIGN	CALL SIGN	CALL SIGN	CALL SIGN	CALL SIGN	CALL SIGN	CALL SIGN	CALL SIGN	CALL SIGN	CALL SIGN	PBS DSEs	TOTAL DSEs	% PBS DSEs	PBS VALUE	INDEX
1413	WTBS	WNET	WGBS	WTXF	WPHL	WNJU					0.25	5.25	4.76%	20%	420
365	WTBS	WWOR	WNYW	WROC	WPIX	WXXI					0.25	4.50	5.56%	20%	360
1434	WTBS	WGN	KITN	KSMQ							0.25	3.25	7.69%	25%	325
1426	WTBS	WLIW									0.25	1.25	20.00%	60%	300
1319	WTBS	WGN	WWOR	WEDU	WUFT	WACX					0.50	4.50	11.11%	30%	270
1448	WTBS	WFSB	WTIC	WVIT	WNJU	WVIA					0.25	3.75	6.67%	15%	225
1364	WTBS	WGN	WWOR	WNED	WNYW	WPIX					0.25	5.25	4.76%	10%	210
1293	WTBS	WGN	WWOR	WCBS	WABC	WPIX	WSKG	WNET			0.50	5.00	10.00%	20%	200
2240	WTBS	WPIX	WSBK	WGBX	WLVI	WHDH	WFXT				0.25	4.50	5.56%	10%	180
2113	WTBS	KUHT	KTXH								0.25	2.25	11.11%	20%	180
465	WTBS	WSBK	WGBH	CKSH	CHLT						0.25	4.25	5.88%	10%	170
716	WTBS	WWOR	WABC	WNET							0.25	2.50	10.00%	15%	150
1465	WTBS	WGN	KCET	KTLA	KCOP	KCBS	KCAL	KABC	KTTV	KNBC	0.25	7.00	3.57%	5%	140
2155	WTBS	WFLD	WTTTW								0.25	2.25	11.11%	15%	135
1462	WTBS	WGN	WWOR	WHA							0.25	3.25	7.69%	10%	130
1678	WTBS	KDFW	KLTV	WFAA	KXAS	KTVT	KERA				0.25	3.25	7.69%	10%	130
1698	WTBS	WGN	KITN	KSMQ							0.25	3.25	7.69%	10%	130
965	WTBS	KQED	WIBW	KSWF	KMBC	KCHB					0.25	1.75	14.29%	15%	105
1399	WTBS	WGN	KOED	KARK							0.25	2.50	10.00%	10%	100
500	WTBS	WGTE	WBGU	CBET							0.50	2.50	20.00%	20%	100
2100	WTBS	WGN	KLRN								0.25	2.25	11.11%	10%	90
1342	WTBS	WGN	WWOR	WTTW	WHA	WFLD					0.50	4.50	11.11%	10%	90
1392	WTBS	WGN	WTTU	WXIN	WISH	WRTV	WTHR	WFYI			0.25	4.00	6.25%	5%	80
1858	WTBS	KSPS									0.25	1.25	20.00%	15%	75
305	WTBS	WGN	WKBD	WFRV	WLEF						0.25	3.50	7.14%	5%	70
205	WTBS	WGN	WMVS	WTMJ	WVTV						0.25	3.50	7.14%	5%	70
578	WTBS	WGN	WWOR	KBYU							0.25	3.25	7.69%	5%	65
744	WTBS	WGN	WTTW								0.25	2.25	11.11%	5%	45
1139	WTBS	WWOR	WJCT								0.25	2.25	11.11%	5%	45
1406	WTBS	WSBK	WNET								0.25	2.25	11.11%	5%	45
1475	WTBS	WVIA									0.25	1.25	20.00%	5%	25