COPYRIGHT ROYALTY TRIBUNAL

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IN THE MATTER OF :

1986 CABLE ROYALTY
DISTRIBUTION PROCEEDINGS : CRT DOCKET NO. 88-2-86CD

PHASE II :

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(This Volume contains pages 234 through 344)

Room 458
1111 20th Street, N.W.
Washington, D.C.

Wednesday, February 15, 1989

The above-entitled matter came on for hearing, pursuant to notice, commencing at 10:00 a.m.

BEFORE:

EDWARD W. RAY	Chairman
MARIO F. AGUERO	Commissioner
J.C. ARGETSINGER	Commissioner
ROBERT CASSLER	General Counsel

APPEARANCES:

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C O N T E N T S

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MPAA/Program Suppliers'		
11-X (1987 NAB/BFM TV Fin Rpt)	279	279
12-X (Ad Sty - Donahue - 86)	286	286
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P R O C E E D I N G S

(10:03 a.m.)

CHAIRMAN RAY: We will continue the Phase II Cable Distribution. And today we will start with Multimedia's direct case.

But before we start, we have two -- Multimedia has offered corrections on two of its exhibits, dated February the 15th. One is the Sally Jessy Raphael advertisement study done for 1986, and the other is Donahue advertisement study for 1986.

If there is no objection, these will be accepted into the record.

(No response)

CHAIRMAN RAY: Apparently there is no objection, so they will be accepted.

Do you have any opening statement, Mr. Lutzker?

MR. LUTZKER: I just have a brief opening statement, Mr. Chairman.

As has been our situation for the last number of years, we are certainly pleased to appear before the agency to present our case with respect to Phase II. But our presentation, as it has been in the last several years, is tinged with some frustration. As you have heard from the presentation of MPAA the last few days, they have interpreted your rulings and directive as indicating that

the starting point for any analysis is their study, which they present year after year.

And it leaves claimants such as Multimedia, and I would add, without representing them, I believe NAB is in a similar situation. We prefer, and would ask for some clarification that the starting point is, in effect, the decisions of this Tribunal year after year -- the appropriate starting point must be, as you have articulated in rulings in the past, the changes in circumstances and the nature of prior rulings.

Absent that, MPAA has taken the position that it literally will not settle with parties such as Multimedia, absent a full-scale presentation for the agency, which we trust the agency appreciates, is a very expensive process for a relatively small claimant like Multimedia. And while we do not shirk from the responsibility of doing it, we feel that there has come a point, and perhaps it was last year, or the year before, but we feel certainly is this year, where some recognition must be made that the process of the agency is not intended to be abused where circumstances go far beyond the long history and record of the proceeding.

When the Court of Appeals in the D.C. Circuit handled appeals from CRT decisions in recent years, it expressed a recognition that this is one of the most

litigious groups of claimants ever presented to any federal agency in court. And it admonished them in a way which has appeared to be more effective in minimizing the nature of litigation before that court.

And we would hope that some effort at instructing the parties to effectively resolve these matters, short of a hearing, based upon the rulings of the agency, which have been consistently applied over a period of time, would be something that you could articulate. We have identified some notions in our presentation, but we would obviously leave it to the agency to see whether there is something that you can do to assist the parties in reaching a settlement of their cases, based upon the rulings that you have made over the past few years.

For our witness we once again call Richard Thrall.

CHAIRMAN RAY: Mr. Thrall, will you please rise?

Whereupon,

RICHARD C. THRALL

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN RAY: Thank you.

As always, we are very happy to have you appear before us.

THE WITNESS: Thank you. I have enjoyed my--

this will be my eighth appearance here. And while I share the views that Mr. Lutzker made, it is always pleasant to renew the association, although we would be happy to do it under some other circumstances, if we could.

CHAIRMAN RAY: Thank you.

Mr. Lutzker.

DIRECT EXAMINATION

BY MR. LUTZKER:

Q As you have indicated, you've made eight separate appearances before this agency. Your credentials are well know to the Tribunal.

If there is any voir dire --

CHAIRMAN RAY: Is there any voir dire?

MR. LANE: I have none.

CHAIRMAN RAY: There is no voir dire.

BY MR. LUTZKER:

Q Mr. Thrall, will you turn to your testimony?

A (Perusing document)

Q Are there any additions, or correction? As was noted, we filed amended Exhibits 4 and 6. Are there any other corrections you want to identify for the record?

A Yes, there are three additional corrections. On page 11, in paragraph two, the sixth line, the figure 2.55 percent should be 2.56 percent.

On page 17, in line four, it says, "Increased 5

percent over 1985", it should be "Increased 3 percent over 1985".

And in Exhibit 15, under the number of stations in the line that begins "Donahue", where it reads 214, it should read 209. Under the total hours per week, immediately to the right of that, where the figure 1,070 is shown, it should be 1,045.

The total on the next page, which reads 1,465 at the bottom, should be 1,381.55.

And I believe that's it.

Q With respect to the two volume testimony that was submitted, are you familiar with this testimony?

A Yes.

Q And do you adopt this for your testimony in this proceeding?

A Yes, I do.

Q In an effort to sort of focus on the big picture of changed circumstances, what would you characterize as the principal differences in Multimedia's case between the 1985 proceeding and the 1986 proceeding?

A Well, I would say there is nothing between 1985 and '86 that would justify consideration of any lower reward. Performance continued and improved in many areas. Perhaps the most significant improvement was the Sally Jessy Raphael Program which came of age in 1986, and

enjoyed a 90 percent increase in households and persons viewing.

There are several exhibits in here that support the improvement of Sally. Just in an overview, Donahue also improved its ratings over 1985. We continued to produce and distribute Music City and Music City USA, 50 programs distributed there; there were 261 Donahues and 261 Sally Jessy Raphael programs. Donahue's ratings, I think, increased about 16 percent in the year. There were a total of 10 additional specials, which included Country Music specials, plus entertainment and international specials.

So the size of the amount of programming continued, or increased. And Multimedia continued to be a major producer of first-run programming in the United States, and the programming continued to be of value to the cable systems.

Continuing on with Sally Jessy Raphael, it reached 84 stations by the end of the year, and for three-fourths of 1986, Sally continued to be the only -- to have the only woman-hosted, nationally syndicated talk program, which made it very unique. The program was honored by the American Women in Radio and Television, and by the International Film and TV Festival for excellence.

The program did not have as wide distribution as

the Donahue program has, which enhanced its value to cable operators. In addition, Sally is a very good interview subject and generates a great deal of press coverage nationally, which would enhance her value, even in markets where her program was not carried. And beyond that, she also hosted a three-hour talk-net program during 1986 on NBC radio. So she was nationally known for three hours, five nights a week, taking phone calls from people who had problems, further enhancing her value to cable operators in markets where the show was not distributed in 1986.

Q Would you turn to Exhibit 6, underscoring the point about the increased reach of the Sally Jessy Raphael program in 1986?

A (Perusing document) Yes, at the top of the page it shows the 1986 NSI ratings for the program. At the bottom half of the page you see the comparison of '84 through '86. And as you can see, between '85 and '86, in households the Sally Jessy Raphael show increased from 810 to 1,250 households to 1,534,000; and persons reached increased from 912,000 to 1,740,500.

A CATS study showed Sally in 1986, as the fourth ranked syndicated program in daytime television on affiliated stations. So she was a program of significance in that period.

Q Do the NSI statistics include both over-the-air

and cable viewing?

A Yes.

Q Would you, just for purposes of the record, identify with respect to Sally, Exhibit No. 7?

A Exhibit No. 7 is a listing of the program topics which were broadcast during the year, and some sample press coverage about Sally and the program from 1986. While there are similarities in this program and Donahue, there are some differences. Donahue will treat more public affairs issues, while Sally will treat more inter-personal relationship. They will overlap, since Donahue will also do some inter-personal relationships, and Sally will occasionally do some public affairs issues. But on the whole, Sally's program tends to deal more with inter-personal relationships. And the public issues tend to fall into that category.

COMMISSIONER AGUERO: Donahue would really like to get involved in politics many times, yes?

THE WITNESS: Well, Phil feels that he has an obligation because of the platform that he enjoys, to treat significant issues of the day. And so he does -- in 1986, he treated Chernobyl and the Iran-Contra Affair, and the Libyan bombing, and important programs. Whether Phil, personally, has political ambitions, I temper a little bit, he just extended his contract through 1992--

actually, through 1994 with us. So I think he plans to do the show through '92.

Certainly, yes, of great interest in political issues and public affairs issues, whether he has personal aspirations is --

COMMISSIONER AGUERO: What position would he like to have?

THE WITNESS: What would he like to have? I think he --

COMMISSIONER AGUERO: President, or --

(Laughter)

THE WITNESS: I think he will stay on the air as long as the public likes his program. I think he's decided that he makes a contribution there, greater than he could make if he was in the Senate, which has been mentioned.

As they say in the South, "I could be wrong", and I probably am wrong, but I don't think he has serious desires of being in the Senate.

BY MR. LUTZKER:

Q Turning back to the Sally program for a minute, Exhibit 8, which we submitted a slightly corrected version of for purposes of adding one additional market information -- would you first indicate in prior proceedings, has Multimedia presented any evidence with

respect to the Sally Jessy Raphael program, of an estimate of the advertising value of that program?

A No, we haven't.

Q Would you identify Exhibit 8, and summarize it for the Tribunal?

A In Exhibit 8 we have done an advertising study, similar to the ones that we have done for many years, on Donahue, where we have obtained the average spot prices for 30-second commercials being charged by stations in the markets shown at the top, which represent 13.29 percent of the United States. We have projected that to the 56 percent of the US average of Sally's coverage in 1986 times the commercials -- the number of commercials in the show.

We used 1987 data as the basis of this. We had used some earlier data in past years, and we updated it, and instead of taking the old data and adding inflation, we used '86 and went back a year, subtracting inflation.

Q You indicated '86, you mean '87 data?

A '87 data, and went back to '86, and came up with an average annual advertising revenue, which we adjusted, projecting 80 percent sell-out, which is less than we had projected on Donahue, recognizing that Sally being a new program, did not have quite the position Donahue enjoyed in the strength as an advertising vehicle, and projected

that to the 56 percent of the United States.

CHAIRMAN RAY: Again, the purpose of this exhibit is to measure the marketplace value in a television market. And are you projecting this value to cable?

THE WITNESS: One of the criteria is the marketplace value of the program.

CHAIRMAN RAY: Is there a difference in compulsory license, cable market and free over-the-air television market -- not free in the sense -- advertiser pay for it, but --

THE WITNESS: It is very hard to separate the value of a program from any individual market. You are selling it in one market may affect its value in another market. And whether it is carried -- all of these things intertwine.

So, I don't know that you can say that there is a value of -- a marketplace value of the Sally Jessy --

CHAIRMAN RAY: The cable system may measure the values differently than a broadcast station, right?

THE WITNESS: Well, I think there would be a carryover, the cable system certainly would not value as highly a program that had very low marketplace value to an over-the-air broadcast station.

CHAIRMAN RAY: Even if it was extremely artful

-- I was only kidding.

(Laughter)

CHAIRMAN RAY: I'm finished.

THE WITNESS: I think maybe the cable systems would go for uniqueness and for popularity, and you know, if you can take two blanket words, so I think there is a relationship to the marketplace value among over-the-air stations and the marketplace value to the cable operator. They are certainly not interested in our failures. And the bottom line to the advertising study is that of the non-network, non-local spot sales in 1986, the value of the Sally Jessy Raphael show, advertising would be .38 percent.

If that were added to the Donahue average, which I will get into later, would total 2.56 percent in this category.

Last year the Donahue advertising study came up with a value of 1.61. So, the .38 of Sally represents 23.5 percent of what Donahue was last year. And combined, we have a sizable increase from 1.61 up to 2.56.

So for whatever value the advertising study has been in past years, it has increased value in 1986.

BY MR. LUTZKER:

Q Turning now to the Donahue program, would you-- and the agency is generally familiar with this program,

but would you generally comment about the Donahue program in 1986, drawing initial attention to Exhibit 5?

A Okay. Well, Donahue continued to be the most significant program in our presentation in 1986. In addition to the things that I already mentioned, the program did major health issues, including originating from an AIDS ward live, in a hospital in the New York area. It treated a program with Baby Jessie who was in need of a heart transplant, and donor heart was located and announced during the program. It continued to be a major program.

Exhibit 6 shows the ratings. And, again, at the top will show the NSI ratings, through the year, in rating share, to people reached, daily households. At the bottom of the page is a comparison of the households and persons reached, '84 through '86. And Donahue achieved, or surpassed not only the 1985 levels, but also the 1983 levels, when this Tribunal awarded Multimedia one percent.

Q Would you turn back now to the corrected Exhibit 4, and to the advertising study for the Donahue program?

A (Perusing documents) This is the advertising study I referred to a moment ago. Once again, the methodology is the same as we have presented in past cases, but we have used 1987 data and reduced it for adjustment. In this case the percentage in the US figure

covered by the Donahue show is 97 percent, the projection is at 100 percent of sell-out. And the bottom line figure is that Donahue would represent 2.18 percent of the non-network, non-local spot revenue, in 1986, which would compare with 1.61 in our advertising study in 1985.

Donahue also expanded into more diverse time periods in 1986, and some of this increase represents the fact that more stations carried Donahue in early fringe in 1986, than had in the previous year. And because of greater sets in use and greater advertiser acceptance, advertising rates are higher in the early fringe, than they are in daytime.

It also is an advantage to the cable system, because it gives them a greater diversity of time periods, when a distant import can be broadcast at other -- at times other than when the program is available on the local station.

Q I will get back to the summary in a minute, but for immediate purposes would you identify Exhibits 1 and 3?

A (Perusing documents) Exhibit 1 is the program summaries for 1986, again showing what was treated in there, a wide variety of subject matter. Exhibit 3 are articles concerning the Donahue show. The Donahue show continues, as it has in the past, not only to deal with

important issues of the day, but also to create news of itself. And some of these articles are illustrations of news that has been generated on the Donahue program in 1986.

There are also some articles in here that relate to a 1987 program, which was a summary of Donahue 20-years, which we will refer to later.

Q Multimedia is not making a claim for the 1987 program, is it?

A No, no, the reference here is merely because that program dealt with the Donahue program historically, and did include 1986. And we felt formed a very strong case for the background that Donahue's program has consistently been a program of significance and value. And that background contributed to 1986 presentations.

Q I would like to focus you with respect to both the Donahue and the Sally Jessy Raphael program, on two issues. First, this point that you made about the time diversity of the program. Would you explain the relevance of that for the Tribunal, in the context of cable retransmission and the value to cable operators?

A Well, Donahue had been traditionally a very successful program at 9:00 o'clock in the morning, and while there were some variations, that was the dominant time the program was on-the-air. The only variation in

time periods in that situation would be the four time zone. And so a station in a Central Time Zone could import a distant signal from an Eastern Time Zone, and get a program an hour earlier than it would be carried on the local affiliate, or a program from a Mountain, or Western Time Zone, and get a program an hour, or two later, than it would have been available on the affiliate.

And as the Donahue time periods diversified into early fringe and other areas, the diversity of time periods available to cable systems by importing programs from other markets, even within the same time zone, is enhanced.

So if the local station is running it at 9:00 o'clock in the morning, and you can import a distant signal that is doing it at 4:00 o'clock in the afternoon, the cable operator can offer Donahue to its viewers at a time, other than when the local station is offering it.

Q Second, would you comment about the attractiveness for cable operators of first-run programming, of which you have indicated both Donahue and Sally are predominately first-run programs?

A In 1986, it became very clear that the most effective programming for over-the-air television stations, particularly over-the-air affiliate television stations, was first-run programming in the syndicated

area. The success of programs like Donahue and Sally Jessy Raphael, and Hour Magazine, and other programs, showed that this was something that the affiliated over-the-air stations, and independent stations could offer, that was extremely successful.

And so by being able to import that into the cable system, they were able to offer the same programming, which was becoming the backbone of syndicated programming, on the over-the-air stations.

Q Multimedia also produced in 1986, as in prior years, other programs in the area of children's programming, country music, and other specials, did it not?

A Yes, it continued to do the Young People's Specials, there were 10 programs in this long and extremely well honored series, four of them were new productions by us, one of them was the first television exposure of a program called Molly's Pilgrim. Molly's Pilgrim won an Oscar for 1985 as the best live action film. The program got many honors, the Houston Film Festival. The Horrible Secret was the best children's program by American Women in Radio and Television.

And in my 1985 testimony, I referred to awards won by programs which had their second broadcast in 1986, and I would reference that, including John Carradine's

National Emmy Award for Umbrella Jack.

The programs, again, were produced and distributed with study guides, which the stations could distribute to schools, and continued a long and proud tradition for Multimedia.

In addition, we did 10 additional specials, which I would classify as country music, international and entertainment specials. And those ranged from country music, the 21st Annual -- I am just starting production on the 23rd, I apologize, but the 21st Annual Music City News Country Awards. Two programs that were of an historic nature, and we've gone through several title changes of this, so you may find it called Space Bridge I and Space Bridge II, or you may find it called Citizen Summit I, or Citizen Summit II.

These were two programs that were produced, the first one was done actually on the 29th of December 1985, and was offered to Donahue stations over a roughly one-month window, which carried it through January of 1986. This was done in Seattle, Station WKING, with Phil Donahue and a group of US citizens in the audience there, through a very complicated satellite hook-up, conducting a dialogue with a group of Russian citizens gathered together in Russia with Vladimir Pozner hosting them there. And this became a person-to-person exchange.

The second program was sub-titled -- after you get through Space Bridge and Citizen Summit, Woman-to-Woman, and these were all women audiences, it was done in Boston, at WCBB. And offered, again, to the Donahue stations.

These programs, we think, formed an important link in creating an understanding between the American people and the Russian people, which hopefully will have long-range benefits, far beyond anything that we are considering here today.

And we have an exhibit that --

Q Well, let me just have you identify the exhibits that we have in our case. Would you first turn to Exhibit No. 9?

A (Perusing documents) All right, Exhibit No. 9 is a list of the Young People's Specials, which were distributed in 1986, showing the NTI rating that these programs received, and the total households that those programs reached.

Q The total household figure is the average total household?

A Average audience, total households, yes.

Q Would you identify Exhibit 10?

A (Perusing documents) Exhibit 10, these are the program summaries and study guides that I referred to, for

these programs. Initially, you will see a summary of the 10 programs, and then the information that went to the promotion managers, the synopsis of the program, the cast of the program, bios on the actors and the study guides that were provided to the stations for distribution to the school systems, photographs for newspaper stories, and advertisement slicks that were provided, so that they could be placed in either newspapers, or TV Guide, or other things, for those 10 shows.

Q And this is similar to information that Multimedia has provided in the past?

A This is very similar to what we have done from the beginning on the Young People's Specials.

Q Would you next identify Exhibits 11 and 12?

A (Perusing documents) Okay, 11 contains articles dealing with the country music specials, the entertainment specials, and the international program summaries. You will notice the first one is called a Space Bridge with Donahue and Vladimir Pozner. We had not yet come up with Citizen Summit.

And in the next article it had progressed to Citizen Summit. And then there are several articles here talking about that program and its importance, and what was done. And a little bio on Phil Donahue and Vladimir Pozner, this was distributed to the stations, plus some of

the same type of advertising support that was sent; press releases describing our country music shows. The 20th Annual Music City News, the Marty Robbins, Super Legend--actually, it is a rough, out of the typewriter on the clips we included in that program, which I probably would have had retyped, if I thought it was going to end up here, and the cast of the Marty Robbins show.

Exhibit 12 is the ratings of these programs. Again, these are NTI ratings, and in these ratings it shows the total audience and the average audience figures. And to perhaps save time, the total audience is anybody who watched five minutes, and the average audience is the average audience per quarter hour.

Q As in past years, has it been Multimedia's position that the MPAA analysis which focuses on a limited number of stations, during the identified sweep periods, fails to reflect with respect to the specials, in particular?

A Yes.

Q Its access in the cable community?

A Yes, nothing has changed there. We are dealing here with 20 specials, stations tend to program specials outside rating periods, because they have to sell advertising on a year 'round basis, based on the ratings sweeps. And so they need to have their regularly scheduled

programs there, and for that reason they rarely place specials inside rating periods. They tend to place them outside, so they are under-measured by the MPAA study.

Q Would you identify Exhibit 13?

A (Perusing document) Exhibit 13, we have listed the stations and the dates and times that those specials were broadcast. And we have put an "X" in the right-hand margin if that broadcast period fell during one of the rating periods in the MPAA study.

Q In that context, let me direct your attention to page 3 of this exhibit.

A (Perusing document)

Q And the second item -- well, let me just clarify what this exhibit provides. If you will turn back to the first page of the exhibit, the first column is listing of stations that carried this program, My First Swedish Bombshell.

A Yes.

Q And the market, and you indicated it was the date aired. Now, in the absence of any notation in the sweep week column indicates --

A That indicates that this program at that date and time fell outside of any of the periods measured in the MPAA study.

Q Okay. Now, on the second page --

A None of those were.

Q None of those were identified?

A None of those were in the period measured.

Q On the third page "Xs" begin to appear about a quarter of the way up from the bottom of the page. I will draw your attention to the WZTV, WZTV is a Multimedia station?

A Yes, that is one -- in 1986, it was one of our owned and operated stations.

Q And it is located in Nashville, Tennessee?

A In Nashville, Tennessee, the home of country music.

Q Now, there is an "X" in that Nielsen sweep period, which means that this broadcast on WZTV occurred during a sweep period?

A That's correct.

CHAIRMAN RAY: What about Bakersfield, California, is that the home of country music, too?

THE WITNESS: Well, it has certainly gotten more notoriety.

CHAIRMAN RAY: Than it should have. Okay.

THE WITNESS: Thanks to Buck Owens.

BY MR. LUTZKER:

Q To your knowledge, was WZTV included within the --

A No, it was not included in the MPAA study.

Q And in last year's proceeding, Multimedia in the context of rebuttal, went through an exhibit similar to this, did it not, with --

A Yes, if we added all of these "Xs" up, we would come out with a figure, the 39 percent of these specials were broadcast within time periods measured by the MPAA study. Last year the exhibit we presented had 35 percent of those programs occurring during rating periods measured in the MPAA study.

When we received the data from MPAA, in '85, and were able then to go through as to how many of those were actually rated, only 10 percent of the programs were rated in 1985, as opposed to 35 percent they included.

This year there are 39 percent of the programs that occurred during the period when they might have been rated. From a very preliminary study, we can say that number will be drastically reduced, and we will be happy later to present the number. But we anticipate that it will be similar to the difference from 35 to 10 in 1985. And that this 39 percent will be reduced, also in a similar manner.

Q Multimedia owned and operated stations, also produce and syndicate certain programs, do they not?

A Yes, we had three stations in 1986, that

distributed programs in syndication.

Q And would you refer to Exhibit 14?

A (Perusing document) You will find those in Exhibit 14, WBIR in Knoxville, distributed a program, The Cumberland College Christmas Program. WWT -- actually there are two stations, three program projects, WLWT in Cincinnati, produced the Red Scene Sports Programs, and also, a program on Ruth Lyons, Portrait of a Legend, Ruth Lyons was from 1949 to 1967, perhaps, the most powerful woman in broadcast in the United States, at a local station. Her program was carried on four mid-western stations, and she substituted on the Today Show, and was a summer replacement on NBC. And this program was dedicated to her memory. She conducts a hospital fund for hospitalized children, which continues on to this day.

And while it has no direct bearing on this, she passed away this past November, during the fund drive in her name.

But those three program projects were produced by our own stations and distributed.

Q As in past years, Multimedia has attempted, has it not, to indicate for the Tribunal the amount of time that its programs occupy on broadcast facilities, has it not?

A Yes.

Q And would you turn to Exhibit 15?

A (Perusing document) Yes, and again, we have in Exhibit 15 repeated the study with the same methodology we have used in the past, showing the programs and their frequency, the hours per week, the number of stations carrying them, and the total hours per week of each program. Adding all of those up, we reach a total of 1,381.55 hours per week of programming. This represents a 3 percent increase in the amount of time in a typical week from our 1985 study, and a 2 percent share of the syndicated programming by Multimedia, all of those considerably higher than they were.

Q How much is Multimedia seeking in this 1986 proceeding?

A Well, considering the Sally Jessy Raphael dramatic increases at 1983 levels, and the continued quality and continued first-run value of this program, the advertising increase, the time increase, and factoring that with an element of practicality, we are asking for .925, which I believe is an increase in the 10 to 12 percent area.

MR. LUTZKER: Mr. Chairman, at this point we have a videotape which is Mr. Thrall's Exhibit No. 2, of the Donahue program. And with the Tribunal's --

CHAIRMAN RAY: Will that be the last --

MR. LUTZKER: That will be the last.

CHAIRMAN RAY: Well, before we get to that, do any of the commissioners have any questions?

COMMISSIONER AGUERO: No questions.

CHAIRMAN RAY: Do you have any questions?

COMMISSIONER ARGETSINGER: No.

CHAIRMAN RAY: I would like to ask you a question, Mr. Thrall.

EXAMINATION BY THE TRIBUNAL

BY CHAIRMAN RAY:

Q Have you studied, have you read MPAA's direct case in this proceeding?

A I have read it, yes.

Q Okay.

A I don't think I would classify it as studied yet, but I have read it.

Q In previous proceedings you have presented evidence on certain programs that were carried outside of the sweep period?

A Yes.

Q I believe you indicated, and perhaps we gave some consideration to -- you indicated that these programs were under-measured, or not measured at all?

A Yes.

Q And should be. Well, in this proceeding, MPAA

has presented numerous programs that they claim were transmitted outside -- were broadcast and transmitted to cable systems outside the sweep period. Do you have any comments on what kind of consideration, or to what degree should the CRT consider these thousands and thousands of program hours?

A I think there is no question that there are programs within the MPAA program list which deserve more consideration than they receive, under the MPAA formula. And if MPAA presented the case of those programs, that justified an increased award for those programs, certainly those programs should receive it. And that should be reduced from the money that goes to the MPAA for distribution to the programs that they now include in their rating sweeps.

In effect, they have said "Our rating sweeps are responsible for 100 percent of the pie. Now, we will take that 100 percent and we would then like to take our programs that fall outside, and have 110 percent".

I think there is a case that can be made for programs within the study that fall outside, but that that cannot exist alongside with the blanket award to MPAA. It would have to come within the distribution of that money, among the MPAA stations.

Q Well, Mr. Thrall, let me ask you this question,

do you think it is our responsibility, or do we even have any right to determine the method of distribution between the claimants of any group, whether it is MPAA, or if it is Multimedia?

A I think --

Q Just so you can understand what I am saying here -- If MPAA presents evidence that there were a number of their programs that were not measured, or under-measured during the sweep period -- this is the same thing you have done in prior proceedings, right?

If the CRT -- if there is evidence that there had been timely filed claims by the copyright owners, or the representatives of the copyright owners, and if MPAA was the agent for these owners to come before the CRT, should it matter to the CRT what MPAA's arrangements and distribution is?

A No, no.

Q Then the awards for these additional shows, if any is given by the CRT, should be given as a total award to MPAA, the same way it was given as a total award -- I am asking you should it be, as a total award to Multimedia for all programs, those that appeared within the sweep, and those that appeared without the sweep? If we gave some consideration for those, then I can't quite see the difference.

Maybe you can make me see the difference.

A Well, what we have is a fraternity here.

Q Okay.

A With a limited number of members. And we have got a formula which satisfies those members, or at least the important members, through such actions as the continued, expensive litigation that we are going through today, MPAA keeps the small people in line. (A) They don't understand what we are doing here, they don't understand totally how the Copyright Tribunal works and so --

Q Excuse me, one second, I think that the CRT suggested, and suggested that MPAA present this evidence, I believe it was asked, "Why don't you present this evidence?"

A Of the programs that fall outside?

Q Right.

A Well, what I am saying is the MPAA has limited what is getting awarded to a certain number of stations, in a certain number of rating periods, that gives them more compensation than they would have, if all of the programs, not only ours, but the MPAA's and those people who are not represented, presented presentations here on all five criteria -- we probably might never get through doing it that way.

But that certainly would be the fair way to do it. And then go from a zero base, and say, all right, this deserves this much money, and this much money, and this much money.

What can't be done, and what I think MPAA might be suggesting, is that we will say that our study shows that we should get 99 percent of the pie. And now we will show you how much of our study is neglected, and that should get the other one percent of the pie.

And so Multimedia shouldn't get anything, because they are not represented in our study.

You can't do both. Either show us the whole year, show us the quality of all of the programs, show us everything, and drop the blanket thing of saying we get it all, because we get 99 percent of it anyway. And so who cares about the other eight months of the year, who cares about the 600 television stations that don't get measured, who cares about the poor producers who broadcast programs outside of rating periods and never get recognized, who cares about the people who have shows from 2:00 o'clock in the morning until 6:00 o'clock in the morning, that never get recognized, who cares about a Superstation being able to program a local show of theirs into a rating sweep, and maybe walk out of this Tribunal with $1-$2 million extra, because this formula allows them to do it -- I mean, all

of these things are -- and we have gone over and over this in the past, are our problems with the study.

I am saying you can't keep that in place, and then argue that because we are ignoring our own programs -- if Warner Brothers is going to get -- I don't know.

CHAIRMAN RAY: Thank you very much.

COMMISSIONER ARGETSINGER: I would like to follow up on that, if I might.

CHAIRMAN RAY: Yes. And I want Mr. Lane to know that we have broadened the scope of his testimony, and you can cross to that extent.

COMMISSIONER ARGETSINGER: We are getting a little bit of rebuttal, but as long as we are going here -- this is livening us up.

BY COMMISSIONER ARGETSINGER:

Q I understand what you are saying about the small members of the MPAA group, but what is your opinion, if every station were surveyed in regard to your case -- we are not talking about the small producers who come up showing zero, but if there was a blanket survey which showed everything --

A If we had a blanket --

Q -- would that change your case in proportion as much as MPAA's?

A It would change our case from the standpoint

that one of the five criteria would be more accurate. However, there are five criteria, and they all have to be addressed.

Q Right, I understand that.

A I would be much happier with that. And as we said earlier, we would reach a settlement with the MPAA, based on the track record of what the Copyright Tribunal in its wisdom has done.

Q And that's a very good answer for your part, and I can understand why you want to mention the five. But just focusing in on this one, do you think that if there was one complete survey, that it would change the relative positions between your company and the entirety of the MPAA represented companies?

A Yes.

Q Significantly?

A We are now dealing with enough money in the pool that a very slight move is significant. So, yes.

BY COMMISSIONER AGUERO:

Q Just a follow-up question, in those programs that you have in your list that were not caught in the sweep periods, in your methodology do pay those programs, or you don't pay those programs?

A I am not sure that I follow you.

Q For those programs that you have in your list,

that were not covered in the sweep periods, would Multimedia give someone those programs, or not, in your methodology of payment to your representatives?

A You mean would our Multimedia stations?

Q Yes.

A Our Multimedia stations would be motivated, as any other station, to run regular programming. It is rare that a Multimedia station will schedule one of our specials in a rating sweep.

Commissioner, I think that most of these programs are barter-syndication, and so there is not an exchange of money, except in certain key markets, where in order to make a performance guarantee, sometimes stations extract a fee, in addition to a barter sale. But that doesn't relate as much to ratings sweeps, as it does to getting clearance. And in some cases, that occurs in periods outside -- well, in many cases that occurs outside the rating sweeps, and outside the measurement period.

MR. LUTZKER: And, Commissioner, these are programs that are owned by Multimedia, so that to the extent that they air outside, and the Tribunal compensates them, Multimedia is the producer and syndicator. So it is proper to claim them in both categories.

CHAIRMAN RAY: Well, are you ready to show the -- oh, do you want to take a break first? All right, we

will take a 10-minute break while we get set up.

(Whereupon, a short recess was taken)

CHAIRMAN RAY: Back on the record.

(Whereupon, Exhibit No. 2, a videotape of the Donahue 20th Anniversary Special was shown)

CHAIRMAN RAY: Have you finished?

MR. LUTZKER: That concludes our direct case.

CHAIRMAN RAY: We will return at 2:00 o'clock, and we will start the cross with Mr. Lane.

(Whereupon, at 11:55 a.m., the luncheon recess was taken, to reconvene at 2:00 p.m.)

AFTERNOON SESSION

(2:00 p.m.)

CHAIRMAN RAY: Mr. Lane.

MR. LANE: Thank you, Mr. Chairman.

CROSS-EXAMINATION

BY MR. LANE:

Q Mr. Thrall, Chairman Ray this morning was asking you some questions about measuring the marketplace value in your advertising study. And am I correct in understanding your answer, that you were saying television market and cable market is all kind of the same place, so when you see value in one market, you see value in the other market?

A Well, certainly there is a value to a program, a $10 program is not as important to -- in either the cable market, or in an over-the-air market, as a $1 million program. And so the value of a program has something to do with its attractiveness to cable, or its attractiveness to any market, that was the point I think I was trying to make.

Q Well, let me ask you this, could a $10 program on television be a $1 million program to cable?

A There are some elements that would make a program attractive to a cable system, other than marketplace value. For example, cable systems are sold by

appealing to various interests of the subscriber. So the Weather Channel probably doesn't have the subscribers that maybe America's Cup might have had. But because the Weather Channel will appeal to certain number of the people, who want to know that it is available, that might influence some to sign it for the cable, or the Wall Street Report, or Arts and Entertainment, or the National Network, or any of those things that appear to a specific taste might have a value to the cable operator, in excess of the market value.

But market value certainly is a factor that would affect both the cable operator, and the general marketplace.

Q Well, I guess what I am trying to find out is for television programs, syndicated television programs, movies and specials, and series, is it your testimony that a $10 program in the television marketplace will have roughly $10 of value in the cable marketplace, or that a $10 program in the television marketplace could go up to $1 million, or vice versa?

A I don't think I can comment on a hypothetical situation like that. I don't think I am saying any of those things. I am saying that the program that is worth more in the marketplace is a program that can suffer more harm, and a program that may be of benefit. There may be

other considerations in a cable, but I am not saying that you can draw some kind of a mathematical formula that says a $10 program is worth $1 million, or a $1 million program is worth $10.

Q But in general, let's say we are not looking for formulas, but trends. Is it your testimony that a $10 program, the average $10 program, or all $10 programs on television would be worth roughly $10 on cable, and all $1 million programs would be worth roughly $1 million on cable?

A Well, I don't think I can answer that question. I don't think it is an answerable question. There are programs listed in the MPAA Report that are worth a lot more money than I think they ought to be worth, based on their marketplace value anywhere else, except in the Copyright Tribunal.

CHAIRMAN RAY: Well, Mr. Thrall, if you tell CRT that the Donahue show, on an advertising study, the value is at a certain amount, what do you want us to do with that information?

THE WITNESS: It has been my impression that when the Tribunal established marketplace value as one of the five criteria, that it recognized that marketplace value had something to do with the significance of the program. And that certainly related to the harm that

could be done and the value to the cable operator.

CHAIRMAN RAY: Are you asking us to project this broadcast television value directly to the compulsory license -- cable compulsory license?

THE WITNESS: No, I am saying you can't --

CHAIRMAN RAY: Are you saying it is a starting point for the value?

THE WITNESS: I think it is one of five measurements, a marketplace value. And that is what we have presented, to try to give an indication of the marketplace value.

To now try to go in and change marketplace value meaning what the project is worth totally, and say what it is worth to the cable operator, you know, I think it a step that you --

CHAIRMAN RAY: Is a different step?

THE WITNESS: Yes, and I think it is sort of changing the game.

CHAIRMAN RAY: Now I understand how you want me to deal with this.

I'm sorry to interrupt.

MR. LANE: That's quite all right.

BY MR. LANE:

Q Mr. Thrall, I am a little bit confused about your television marketplace. Last year you recall your

famous "out-of-whack" exhibit, do you have that in mind, where you measured the price for a certain movie, Shalako, and those movies? Do you recall that exhibit?

A I think in the rebuttal testimony?

Q Yes. And what did you measure in that exhibit?

A The marketplace value on the over-the-air stations.

Q But didn't you measure in that exhibit the cost that you alleged that the stations paid for Shalako?

A I don't remember that specific title, but we attempted, with the limited data that we had available, to show what the value of that was to over-the-air stations, as compared to the value to the Copyright Tribunal.

Q But I want to focus in on what your testimony-- you took the Multimedia-owned stations, the price that they paid for that, and then you projected that to the United States, is that correct?

A Yes.

Q Now, that was the station purchasing the product, correct?

A Correct.

Q Now, if I turned to your Exhibit 4 in this proceeding, the advertising study, that doesn't measure that at all, does it?

A No. It would be much easier if we could do it

that way, but this is confidential information that the company will not disclose.

Q So this advertising study is actually a step removed from the marketplace, the television marketplace that you measured when you were measuring our programs, correct? This is what an advertiser, not a television station, not a cable operator is going to pay to use that time, in that time slot?

A Well, this is what the stations, or the syndicator would theoretically realize in the selling of all the advertising in the show. I didn't have the data to do that with, with Shalako.

Q Well, is it your testimony that Donahue received $183 million when it syndicated this program to all of the stations in the United States?

A No.

Q Well, isn't that what you just said? You just said that the advertising dollars are what are realized by the syndicator?

A And the stations.

Q And the stations. How is that broken up?

A What?

Q How is that broken up? How much does the syndicator get, and how much does the station, do you know?

MR. LUTZKER: I would have to object. This also treads into some confidential information.

BY MR. LANE:

Q Mr. Thrall, you don't have any idea, on an average United States basis, how much stations pay for programming, as the percent of their revenues?

A No -- I mean, it is confidential information, and I wouldn't use it, if I had it.

CHAIRMAN RAY: I don't think he is asking for any specific --

BY MR. LANE:

Q I am not asking for Donahue, I am not asking for Multimedia. I am asking you if you know, in your experience in the television industry, how much, on average, a station pays for program expenses as a percentage of its revenues?

A No.

MR. LANE: Mr. Chairman, at this time I would like to enter an exhibit, as Program Suppliers Exhibit 11-X. It is one-page, from the 1987 NAB Television Financial Report. I know these reports have been introduced in prior proceedings. Just for the record, I am sure NAB is right here to correct, the 1987 edition actually reports 1986 expenses.

MR. STEWART: Do we get copyright royalties for

this?

MR. LANE: In the Jukebox Hearing and the mechanical reproduction, or whatever.

(Whereupon, the document was marked for identification as MPAA-Program Suppliers' Exhibit No. 11-X.)

BY MR. LANE:

Q Now, Mr. Thrall, if you look at the bottom pie chart on this page, it indicates, does it not, that program and production expenses amount to 30.6 percent of the average revenues, of the average television station?

A (Perusing document) It says that the stations spent 30.6 percent of their expenses for programming and production.

Q Okay. And do you know, from your knowledge as a television executive -- do you have any knowledge of what percentage of expenses, program production costs, have been on Multimedia stations, or anyplace else that you have worked?

A No.

Q So that your Exhibit -- the number that Donahue receives, is it going to be fair to state that it is going to be something less than $182 million, that you, Multimedia receives for the sale, the syndication of

Donahue?

A Where is the $182 million?

Q I'm sorry, on the corrected version it is $183 million, Exhibit 4.

A (Perusing document) So you are saying of the $183 million here, that that does not all come to Multimedia?

Q Yes.

A That's correct.

CHAIRMAN RAY: Excuse us for one moment, so we can take a break for Phyllis.

(Whereupon, a short recess was taken)

BY MR. LANE:

Q I think, Mr. Thrall, you may have been in the middle of an answer.

A Well, I just had a question with regard to this exhibit. When it, up above lists Local Advertising and National Advertising, and then below where it lists Program, Production and Programming Costs, I don't know where barter figures into this. Whether stations, if they give up half of the spots in a program, in order to get the program free, attach some value to those half of the spots they are giving up, and account for it in their accounting system, and report it to the NAB, or whether they only deal with the money that they actually pay out.

And their programs, ours, and many others, that are sold either all barter, or partially barter, barter/cash, or all cash.

CHAIRMAN RAY: Well, Mr. Lane, do you know whether this 30.6 percent includes all forms of advertising compensation, including barter?

MR. LANE: Mr. Chairman, I would have to go back and read it. I don't recall. And with NAB right here --

CHAIRMAN RAY: All right.

BY MR. LANE:

Q How does your Exhibit 4 treat barter?

A We treat it as we treat all of the spots, we treat them altogether.

Q So you assign a value to barter, is that --

A We assign the same value to barter as we assign -- well, we have only dealt with Donahue and Sally, and barter is a very small part of that. We don't do an advertising study on the specials, which tend to be -- in most cases, although the Citizen Summits, were not barter, most of them are, the specials are barter.

In the case of Sally and Donahue, I think Sally there is 30-seconds that is barter within the show, but primarily cash. And then Donahue, half barter and the rest cash. But we have treated those all the same, with the same average spot price.

We also have not put any value in here for promotional consideration spots, which the local stations don't usually figure.

Q Mr. Thrall, is it true that the markets that you have selected for the 1986 study are significantly different from the markets that you have used in the 1983 -- at least as early as 1983, to 1985?

A I haven't really looked at it, it is quite possible it is. We didn't select the markets. We requested the advertising representative to provide us with markets on which they had data, that would spread across the spectrum, from large stations to small stations.

Q Just so that there is no doubt on the record, is this a copy of your 1985 exhibit? (Handing)

A (Perusing document) Yes.

Q And could you just review the markets in that, and compare them to the list?

A Do you want me to go through, market-by-market?

Q I don't want you to read it, I would just like you to review it, and tell me if it is significantly different?

A (Perusing document) Yes, it is different.

Q Isn't it true, Mr. Thrall, that in the earlier advertising study, you had no market below Market 97?

A That's right.

Q And in this study you have, I believe, it is eight markets below that?

A (Perusing document) Correct.

Q And isn't it also true that -- I didn't count them, but you have several markets in what we call the second 50 markets, in the earlier study and you only have five in this study?

A (Perusing document) That's possible -- it appears to be.

Q And isn't it also true that in the earlier study -- I guess you can take it at face value -- there are 32 markets and in this study there are only 22 markets?

A Correct.

Q And as a result of that, the coverage of the United States accounted for by these markets is significantly lower than the coverage in the earlier studies?

A That's correct.

Q Now, in your view, do any of these things have an effect on the results of this study?

A I don't believe so, because we end up with an average price. It is presented as an estimate and not as an exact figure --

Q I'm sorry, I didn't want to cut you off.

A I don't see anything to suggest that this is a great variation, the results are a great variation from the other lists.

Q So you are saying that the results of the 1986 study do not vary greatly from the results of the '85 study?

A I think the variation, the sample change, would be more than offset by the length of time of adjusting the earlier figures, upward with inflation. So, while -- you know, we are not saying this is exact, it certainly is a ballpark figure. And I don't believe that the sample is responsible for any difference in the results.

Q Mr. Thrall, the second thing that you did was, in the '85 study you moved up -- you never quite get the right year for the advertising study, so you have to move it up, or move it down. In the '85 study you moved it up, right?

A Yes.

Q And in this one you moved it down?

A Yes, I promise next year -- we have to come back next year, we will use the actual figures from '87.

Q Well, do you think then if you had started with the '84 --

A '83.

Q Well, you've got the exhibit right there, I

think it was '84 in the earlier study.

A (Perusing document)

Q It should be the first line with numbers in it.

A Yes, okay, '84.

Q So do you think if we had adjusted that upwards for -- you already have one adjustment in that exhibit, for '85, and then we adjusted it upward for '86, would that have made any difference?

A It probably would have been slightly different, but I don't think it would have made a significant difference. And the question really would be whether or not changes in the marketplace were more responsible for that, which are outside of inflation. And there is, as I pointed out in my testimony, Donahue increased its exposure in early fringe in 1986. And so there is -- that demonstrates a reason that you would expect the 1986-- something beyond what inflation would do.

And while I haven't done the study both ways, I believe I am right that that would explain any difference between the two.

Q How many of these markets in the 1986 study was Donahue on, in other than a morning time slot?

A I haven't examined that.

Q So, as far as you know, they could all be 9:00 a.m., or 10:00 a.m. time slots here, that Donahue was

carried?

A I could check it, I don't know that.

Q Do you know what the inflation rate was in 1986?

A You know, I would have to double-check, but I think it was somewhere in the 2 percent area.

Q It was actually 1.1, Mr. Thrall.

A Okay.

MR. LANE: At this time, Mr. Chairman, I would like enter a one-page document, entitled Advertising Study for Donahue, 1986, as Program Suppliers Exhibit 12-X. And this exhibit is kind of foreshortened --

MR. STEWART: If I may raise one quibble, Mr. Chairman. We are all representing program suppliers in this phase of the proceeding, and I wish this had been labeled MPAA Exhibits, rather than Program Suppliers Exhibits.

CHAIRMAN RAY: That's a good point. So why don't we change for the record, 11-X and 12-X, and call them MPAA/PS, Program Suppliers --

(Whereupon, the document was marked for identification as MPAA-Program Suppliers' Exhibit No. 12-X.)

MR. LANE: Do we get an award for the longest title in our exhibit?

CHAIRMAN RAY: Well, I hope we don't have to give an award for the longest cross.

(Laughter)

BY MR. LANE:

Q Mr. Thrall, if you look through this exhibit, and you compare it to the earlier exhibit, is it correct that $5,444 is the number that you have shown in your 1985 exhibit as the 1985 selling price?

A (Perusing document) Yes, the adjusted -- the 1985 adjusted for inflation figure, yes.

Q And in that exhibit, you adjusted upward for the next year's rate of inflation, is that correct?

A That's correct.

Q And that is what we did with the 1.1 percent rate, and then we simply multiplied out the numbers, and just putting aside the totals, is it correct that we have followed the exact procedure that you have followed, in computing these figures?

A (Perusing document) Without getting into detail on that, it appears so.

Q And the only difference -- or I shouldn't say the only difference, but the one thing that we did was we took your total spot sales from the 1986 exhibit, for the $11 billion and the $8.4 billion number, is that correct?

A I am not sure I followed that.

Q The total spot sales non-network -- it is the same number as you show on your exhibit, is that correct -- your 1986 exhibit, and the 8.4 billion is the same number?

A (Perusing document) Yes.

Q And the results that we get on this, with this calculation, is 122.8 million versus your 183.4 million, correct?

A (Perusing document) Yes.

Q And as a percentage, the difference is approximately 50 percent, is that correct?

A (No response)

Q That is 183 million is approximately between 40 and 50 percent greater than 122 million?

A (Pause) Okay.

Q And do you consider the difference between 183 million and 122 million substantial?

A Yes.

Q So that, if you had followed the study as you had done it in previous years, it would have made a substantial difference, wouldn't it, from the way that you have selected here?

A It would have made a difference in the total number, cutting through to the bottom line, the 1.46, when added to the Sally, would still have resulted in an

increase. And the question of which methodology -- this would have disregarded any change in the distribution pattern of the program.

So, the bottom line is I don't think it would make a whole lot of difference in what we presented to the Tribunal.

CHAIRMAN RAY: And in your testimony this morning -- I would have to go back.

THE WITNESS: We said 2.18 for Donahue, plus .38 for Sally Jessy Raphael. Last year we had 1.61 for Donahue. So the variation from year-to-year, if we had used the other way, would be from 1.46 to 1.61. And with Sally Jessy Raphael added to the study -- and I don't think there is any question using either methodology, that the total advertising study for the two programs would not have been greater than it was in the 1985 presentation.

BY MR. LANE:

Q But the total for Donahue alone, which was lower --

A If we had figured it this way, yes.

Q Yes. And --

A I could add that I got the figures for 1987 about a week too late to use them last year. And so it is possible that we under-estimated the value in 1985.

Q Mr. Thrall, as I understand it, is it your

testimony that the difference in the markets would also not make a very substantial difference in the results?

A The difference in the markets carrying Donahue?

Q Yes, that are listed in this advertising study that you --

A I don't believe so, I don't believe it would have had an effect on the results.

MR. LANE: At this time I would like to introduce as MPAA/Program Suppliers Exhibit 13-X a one-page document called Donahue Advertising Study.

(Whereupon, the document was marked for identification as MPAA-Program Suppliers' Exhibit No. 13-X.)

BY MR. LANE:

Q Now, this study, Mr. Thrall, examines the difference between your original and your corrected. And I would just like you to look at your original exhibit in this proceeding and in the first line you show $4800, do you not?

A (Perusing document) This is the exhibit we corrected?

Q Yes, the original exhibit as filed?

A Yes.

Q And then you show the total selling price in the

corrected exhibit as $4835, correct?

A (Perusing document) Correct.

Q And then if you look down to your adjusted to project to 97 percent of the US, in your original you show 13.93, correct?

A (Perusing document) Yes.

Q And on your corrected you show 13.98, correct?

A (Perusing document) Our corrected?

Q Yes.

A 13.98, yes.

Q And the difference between those two numbers is .05, is that right?

A That's correct.

Q And the difference between 4835 and 4800 is $35, correct?

A Yes.

Q And all of the other numbers -- the computation follows the same computation that you followed in your exhibit, is that correct?

A (Perusing document) It appears to, again without going through them all.

Q And what is the final result, using the numbers on 13-X?

A (Perusing document) Well, it says 4.36.

Q Well, do you doubt that the -- I have a

calculator, if you would like to run the numbers.

A Well, it would take me more than just running the numbers. We would have to take a recess and really examine it in detail to comment on it. But it is your exhibit.

Q Do you consider the difference between 4.36 and 2.17 to be significant?

A Between 2.17 and 4.36?

Q I'm sorry, I will use your corrected, 2.18?

A Yes.

Q Mr. Thrall, the way that I -- looking at your exhibit -- your corrected exhibit in 1986, at $183 million, and your earlier exhibit in the 1985 proceeding of $121 million as the total revenues for Donahue, are those the two correct numbers?

A (Perusing document)

Q I think it is wrong on the first page, but you can look it over.

A (Perusing document) The $121,502,360?

Q Right. And in this exhibit, in your present testimony it is $183 million. And I think -- would you agree with me that that is about a 50 percent difference?

A Yes, I think you already asked me that, and I think I already agreed to that.

Q Did Multimedia's revenues from the sale of

Donahue increase by 50 percent?

MR. LUTZKER: Objection, this enters into confidentiality, financial information.

MR. LANE: Mr. Chairman, I think that is an answer that doesn't have to give any confidential information -- did it increase by 50 percent?

I don't know what the starting number is and I don't know what the ending number is. There is nothing I can figure out from an increase of 50 percent.

MR. LUTZKER: One of the difficulties I have had in dealing with the presentation to the Tribunal is this particular client's insistence that financial information be kept confidential. And we have done this with respect to matters of HPAA, and this is -- financial information of this sort, which is on public record, is confidential.

CHAIRMAN RAY: Can you -- first of all, Mr. Lane, would you like to try rephrasing the question, or are you ready for us to vote on it?

MR. LANE: I don't know how I could rephrase it in any other way.

CHAIRMAN RAY: All right. The objection is sustained.

MR. LANE: Thank you.

At this time, Mr. Chairman, I would like to introduce as HPAA/Program Suppliers Exhibit 14-X, the 1987

Form 10-K filed by Multimedia, Inc. with the Securities and Exchange Commission. And the second page of that exhibit is one page from that report, actually it is from the 1987 Annual Report of Multimedia, Inc., page 3.

(Whereupon, the document was marked for identification as MPAA-Program Suppliers' Exhibit No. 14-X.)

BY MR. LANE:

Q Mr. Thrall, is the Donahue show -- which division of the Multimedia, Inc. of the four divisions listed on page 3, would the Donahue show fall in?

A Entertainment.

Q Now, in the operating revenues for 1986 versus 1985, would you read those two figures into the record, please, for Entertainment?

A (Perusing document) '85 and when?

Q And '86.

A '85 was 45,118; '86, 51,524.

Q Is that an increase of 50 percent?

A That is not an increase of 50 percent.

Q Is it an increase of, maybe, 15 percent, is it not?

A I don't know.

COMMISSIONER AGUERO: Around 15 percent.

BY MR. LANE:

Q Mr. Thrall, would you turn to your Exhibit 5, please?

A (Perusing document)

Q Are there any numbers on there that increased by 50 percent, from 1985 to 1986?

A (Perusing document) No.

Q You testified this morning, and it is in your written testimony, that the increase in ratings for Donahue was 16 percent, between 1985 and 1986, is that correct?

A Yes.

Q And that is the increase, is it not, in the May, July and November, from six to seven?

A (Perusing document) Well, I believe it is the increase from seven to eight, and six to seven.

Q But if we divided it out, it would just -- the seven to eight is really a 12 percent increase, isn't it?

A I would have to add these up and calculate on it.

Q Do you think you could state with certainty that there is a 16 percent increase between a rating of six and a rating of seven?

A (No response)

Q Can you state that with certainty?

A Do you want me to get my calculator out and double-check it?

Q No, I want you to use your expertise as a man who has been in the industry for many years, and tell me, in your experience, if you think the difference between-- if you can state with absolute certainty that the difference between a rating of six and a rating of seven is 16 percent?

A It is between 16 and 17 percent.

Q Would you look down at November, in the daytime households?

A (Perusing document)

Q Do you have that?

A Yes.

Q In 1986 were there fewer, or more households in November, than in 1985, that watched Donahue?

A There were fewer.

Q And yet the rating increased from six to seven, according to your chart, did it not?

A Yes.

Q And would you look down in the Total Persons Reached and indicate whether in November, in 1986, the number is lower, or higher than in November of '85?

A (Perusing document) 4,000 lower.

Q And yet the number increased, correct?

A What number?

Q The rating number?

A That's correct.

Q And do you think that those two latter numbers would support a 16 percent increase in Donahue?

A What do you mean support an increase?

Q Support the 16 percent that you have indicated --

A I said a 16 percent increase in the rating. I did not testify that there was a 16 percent increase in the households, or in the persons watching. And I believe that is accurate, that it is between 16 and 17 percent increase.

Q And I am asking you whether these two latter figures, which are obtained from the same Nielsen books, are they not?

A Oh, yes, yes, they certainly are.

Q Would they support, by themselves, your claim that there is a 16 percent increase?

A They wouldn't -- the 16 percent increase that Nielsen reports in the rating, Nielsen doesn't show the demographics. But I have expressed my opinion on Nielsen, ad infinitum at these hearings, over and over and over, which is one of the reasons that I object to the MPAA Study putting everything in the Nielsen basket -- rating

and demographics are not necessarily determined exactly the same way.

And so they are two different things. And obviously, if I had wanted to say there was a 16 percent increase in homes, I would have said that. I didn't say that.

Q Uh-huh.

A I said there was a 16 percent increase in rating, and, no, there is not a 16 percent increase in homes, nor in the persons report.

Q In fact, isn't it true, Mr. Thrall, that -- look in the total households for 1986 -- isn't it true that in each period, as you go through the year, the number becomes smaller and smaller?

A (Perusing document) That's true, and if we go from '84 through '86, on the average, at the bottom, it gets larger and larger.

Q Uh-huh. But the number in November of 1986 is smaller than any number in 1985, isn't that correct?

A In which, in households, or in persons reached?

Q In either one? In both, I should say.

A (Perusing document) Yes, if we say that a 4,000 change out of 6,154,000 is lower, yes, it is lower.

Q And it is also lower than the November '84 number, isn't it?

A That's correct, although if you apply the statistical error curve to these ratings, it could be that the lower rating is actually higher than the lower rating. So, I don't think it proves anything.

Q So now you are saying that the lower rating could actually -- the six could actually be higher than the seven, is that your testimony?

A Of course, it could be, yes.

Q Thank you. I would like to turn to your Exhibit 6, Mr. Thrall.

A (Perusing document)

Q I'm sorry, let's just stay with Exhibit No. 5 for just a minute. Could you tell us when Oprah was first broadcast in 1986?

A September.

Q So your statement on page 3, the first full paragraph, you didn't mean to suggest that Oprah was on during the whole of 1986, did you?

A On page 3?

Q Yes.

A (Perusing document)

Q The first two sentences of the first full paragraph?

A (Perusing document) No, in fact, I think somewhere else I testified that for the first three-

fourths of 1986, Sally Jessy Raphael had been the only woman host on television, and the other fourth of the year, it would have been Oprah Winfrey.

Q That's on page 9 of your testimony. Now, would you turn to Exhibit 6, please?

A (Perusing document)

Q Mr. Thrall, when I look at the daytime ratings for November, actually, if I look at any of the daytime ratings -- let's just take May, to pick up a different month. I see threes, even though I see in the households more than doubling of the number.

A (Perusing document) Yes.

Q Why is that?

A That is basically because there are more stations carrying the program, and that is reflected in the households, but the average rating is not affected.

Q And similarly, with the SHARE figure, just sticking with May, even though it is more than double the number of households, the SHARE only goes up by two, is that the same reason?

A That's correct.

Q So in other words, as you draw more of the universe in, your audience has got to expand greater and greater, just to hold its rating and its SHARE, is that a fair statement?

A Yes, I think that is fair.

Q How many -- do you recall how many stations you testified, in 1985, Sally Jessy Raphael was on, in November, at the end of the year?

A I would have to refresh my memory, 50 sticks in my mind, but I am not sure that is right.

Q I believe it is 70.

A Was it 70?

Q Let me see, I can give you a quick reference for that -- (perusing document) -- well, you testified earlier that it is 84 stations in 1986, right at the end of 1986?

A Yes.

Q (Handing document)

A (Perusing document) It says 65, and then it is written in 71.

Q Do you know what types of markets were picked up by Sally, those extra 14, or 15?

A I do not, offhand I don't recall that.

Q And the Sally show shows a slightly less downward increase over the course of the year, but again, the November number is lower than the February number, is it not, in the total households and the total persons?

A (Perusing document) Yes.

Q And is it fair to say that there were more stations carrying this program in November of 1986, than

were carrying it in February of 1986?

A I think that is logical, yes.

Q Mr. Thrall, I would like to get an idea, if you can help me, with your idea of the relative value of the particular programs in your claim. Let me just characterize your testimony, or your exhibits over the years, you have Donahue, you bring in Sally, you have had the awards programs pretty steadily, and you have varying levels of country music shows, specials, and you have the Young People's Specials, would that be correct?

A Yes.

Q And some years -- I remember one year, I think you had 26 country music specials, right? And then other years it goes down? I think you said you had 10 this year, correct?

A Ten -- we had 10 Young People's Specials, and 10 entertainment, country music and international specials.

Q Over the years, one problem that I have is does Donahue's value to the Multimedia claim change over those years, in your judgment?

A Well, in my judgment there have been some changes that have happened, in fact, that didn't recognize changes that happened in the value of the programming. I think Donahue has increased in value. In the first year that we came in, there were no country programs. And when

the country programs were added, there was no change in the award. So there was no recognition of them.

Donahue has been, throughout all of our presentations, the major item, and continues in 1986. Sally introduces a significant addition to that.

As far as the other programming there, it has gone up and down, but it has been difficult to measure that that played a great role. When it went up we didn't get any benefit.

Q I am sure my question was fairly inartful. What I am seeking is your assessment, not the way the Tribunal views it, just what Multimedia and you, as their witness, have viewed it. Do you think Donahue is 75 percent of your claim?

A Well, I have never made a percentage, and I would be reluctant to assign a particular percentage to a show. Donahue is a significant part of our case, and we present evidence in the five criteria on Donahue, that shows that it hasn't diminished, it's grown. And we have added Sally to it.

So, the whole is larger. How much of the whole now is Donahue, and how much is something else, I am not prepared to speculate.

Q Well, is it your testimony that -- let's say that you started off with 100 in the first year, before

Sally Jessy Raphael. And now you are up to, arbitrarily pick 110, is that how you view it?

A I never assign those kinds of numbers, no.

Q Well, I am not talking about numbers, I am talking about a concept. Are you saying that Sally Jessy Raphael has added something totally new, that was never considered in your award, and can't be accounted for by all of your other programs -- they all retain the same value, year in and year out, and she is just something above and beyond that?

Or has the percentages, in your mind, shifted?

A No, I -- there have been years when I have come here and in my mind I have said, you know, well, we ought to do a lot better, because we have a lot more. And I have walked away without it. And I think my viewpoint, as it has evolved, CRT decision by CRT decision, is that unless there is a significant change in what we have done, we are going to be treated about the same.

And I don't have any quarrel with that. So I have not gone in and said, gee, we have 3 percent more, so we ought to get 3 percent more here. And that is why we would have been more than pleased to have settled two years ago, three years ago, with MPAA, just recognizing as a starting point, the Copyright Tribunal's decision.

That is as far as I have gone. And I have never,

in my own mind, or on paper, or with anyone said Donahue is 70 percent, or 75 percent, or 80 percent. I wouldn't pretend to do that.

Q Mr. Thrall, would you look at your Exhibit 15, please?

A (Perusing document) Yes.

Q Do you have that?

A Yes.

Q Now is the time exhibit, correct?

A Correct.

Q And in light of your last answer, am I correct in assuming that just because Donahue has 1,045 of the almost 1400 hours, that that doesn't mean that Donahue is somehow worth whatever that percentage is?

A No, that would be nice, if we could do that, but in two years, if we are still coming back, Sally will become an hour program. She will be in 144 markets, 115 of them will be one hour markets. The time consideration on Sally is going to take a dramatic thing -- and I realize that doesn't affect the 1986 case, but to suggest that somehow, if I put a percentage on these now, I could come back in two years and take credit for the fact that Sally might have doubled in that time period, or maybe tripled, I have no idea of knowing, you know, what the data will be in there.

So the time study speaks for itself. It doesn't attempt to establish unit values on the thing. It says Multimedia's claim is based on this much time, that is one of five criteria. We address that we are unique in bothering with, I guess -- but, no, I don't say that the 209 units of Donahue, compared to the -- hour units of Donahue compared to the 80 half hour units of Sally establishes a criteria.

Q Well, let me ask you this, does the -- are you saying that the 20 hours of the Multimedia station syndications have the same value as the 209 number of Donahue?

A No, I said, I had not attached any value on a per unit to a program in our claim.

Q I am not asking you to attach a per unit, I am just trying to understand --

A You are asking me if I value one the same as the other, which is attaching a per unit value. No, I don't consider them all the same. I said I consider Donahue the most important part of our presentation.

Q And is Sally Jessy Raphael the second most important part?

A At this point, I believe so, yes.

Q Would you value Young People's Special more highly than New Music City USA?

A I am not going to play the game.

CHAIRMAN RAY: You are a good father, you don't talk about your children in public.

(Laughter)

BY MR. LANE:

Q Mr. Thrall, just turning to your advertising study.

A Which one?

Q Exhibit 4.

A (Perusing document)

Q Does this tell me that on all the stations that carry Donahue, that we can assign a 2 percent value to the programming, non-network programming on that station to Donahue, 2.18?

A Well, that would be attempting to take the final results to each part of the total, and I don't know that you could do that. You can say that the average of the total is that, but I don't know if you can go back and say that each part of the average would be exactly the same. You know that wouldn't be true.

Q No, I meant 2 percent of all of the stations, I didn't mean each individual station is exactly 2.18. I meant is what this says, all the stations that carry Donahue, together, collectively, the non-network programming on all of those stations, 209 stations, the

value of Donahue is 2.18 percent?

A No, it doesn't do that.

Q What does it do?

A It says that Donahue represents 2.18 percent of the non-network, non-local spot sales for 1986. And it doesn't deal with the 209 as an entity.

Q Well, is the 2.18 just for those 209 stations, too low, or too high?

A I have no idea.

MR. LANE: I wonder if we can just take a break and maybe I can --

CHAIRMAN RAY: All right, let's take 10-minutes.

(Whereupon, a short recess was taken)

CHAIRMAN RAY: Back on the record, please.

BY MR. LANE:

Q Mr. Thrall, would you turn to your Exhibit 9, please?

A (Perusing documents) Yes.

Q This exhibit is based on NTI ratings, correct?

A That's correct.

Q And similarly, your Exhibit 12 is based on NTI ratings, correct?

A That's correct.

Q And as the Tribunal knows, but you can verify, the NTI are the metered markets, correct?

A Well, they are now. They weren't in 1986--well, let me clarify that. There has been a great deal of publicity about that, people meters did not go in until the following year. There were meters involved in the NTI, which was a combination of metered markets, plus diaries. And it still is, except they have added some interactive button-pushing that handles the demographics.

So, yes, there were metered markets in the NTI in 1986, but it wasn't people meters.

Q And in 1986, the metered markets were connected with the famous NAC diaries, right, Nielsen Audience Composition diaries?

A Yes, I believe so.

Q How do you obtain NTI information? How did you obtain it for your two exhibits?

A Well, we subscribe to the NTI service with Nielsen, and then we tell them the programs that we want special studies on and they do special studies on them. And those special studies are the basis for this list.

MR. LANE: Mr. Chairman, at this time I would like to introduce as MPAA/Program Suppliers Exhibit 15-X a one-page document entitled Nielsen Syndicated Service, Special Report to Multimedia, on New Music City USA, week ending 1-26-86.

(Whereupon, the document was

marked for identification as MPAA-Program Suppliers' Exhibit No. 15-X.)

BY MR. LANE:

Q Mr. Thrall, in discovery your counsel provided me with a packet of documents that are similar to this one, I simply chose one of them. And I would ask you to verify that 15-X is one of the special Nielsen studies that Multimedia had done, and used in preparing Exhibit 12?

A (Perusing document) Are you saying that 15-X is part of the packet of things which were used, but this particular -- I don't see this referenced in either --

Q But it is one of -- you used it as the basis for coming up with the New Music City USA -- oh, I'm sorry, you didn't list the New Music City USA in Exhibit 12.

A No, I think we based the information that we used on New Music City USA, on the ROSP.

Q It is not pertinent to my questions, as long as this is a Nielsen/NTI Special Report that is similar to the special reports you used for these two exhibits?

A That's correct.

Q Mr. Thrall, you see there an entry Base Count, with the number 1378, do you see that?

A (Perusing document) Yes.

Q Could you explain what that is?

A I believe that is the number of metered responses, or in the case -- in the demographic information, from the diaries, the number of diaries that would have been included in this sample.

Q And do you know how many television markets there were -- I mean, television households there were in 1986, according to Nielsen?

A I don't have the exact figure right here, somewhere in the 80 million.

Q This was also supplied by your counsel, would that help you? (Handing document)

A (Perusing document) 85,900,000.

Q 85,900,000?

A Yes.

Q So that the 1378 households counted on this particular exhibit represented 85,900,000 people? Is that how the special study works, the NTI works?

A (Pause) Yes.

Q And the first entry in the middle of the page, Total Audience Percent, what does that represent?

A Which page am I looking at?

Q 15-X.

A (Perusing document) Okay, Total Audience Percent?

Q Yes.

A That would be the total audience rating, that would be the percentage of the people in the homes in the television audience, 85,900,000 that were watching the program for at least five-minutes.

Q And the Average Audience Percent, the line right below that -- two lines right below that?

A That would be the percentage of the same 85,900,000 who were watching the program in an average 15-minutes throughout the duration of the program.

I don't know if I said that well, the average audience per quarter hour throughout.

Q And those two numbers are roughly 2 percent, if we rounded them both, they would come out to 2 percent, correct?

A In this case, yes.

Q And 85 million households -- well, let me ask you this, does that mean that of the 1378 people, somewhere around 2 percent of those people were watching this program in this time period?

A I am not privy to the Nielsen system, how they project. It is more sophisticated than being able to make a statement like that. They have weighting, and they do different things for different ethnic groups and for different language groups, and everything else. And I am

not sure -- I wouldn't pretend to be an expert as to -- I think Nielsen guards rather carefully how they weight this, to project this data.

You know, in some of their ratings they have an over abundance -- this, they claim, the diary keeping is more accurate than this, because these people do it over and over, and they become trained in diary keeping, and they do -- roughly a third of the people at the meters do the diary in a week. It is a very complicated formula that they use to project it to a total, and it would be an over-simplification to say that we can assume that if we took 2 percent of the 1378, that would be all that would be required to produce these results.

Q The total audience that they projected on this page is 1,000,890, correct?

A (Perusing document) Yes, that's households.

Q I'm sorry --

A 1,000,890 households. They would provide another document -- I think it is in this material that we provided, that would indicate there were 2 point some people in each of those households, so the total persons would be a little more than double what the households would be.

Q And the average audience is about 1.5 million households?

A Correct.

Q And each of those numbers --

CHAIRMAN RAY: Let's see, you said you have 85 million households --

THE WITNESS: 85.9.

CHAIRMAN RAY: That's right, 85.9 households, and each household has, what, 1.5 persons?

MR. LANE: 2.2, I think he said.

THE WITNESS: This Nielsen document says 2.2613 per 1,000 -- 2,613 total, two years age and over, per 1,000 households.

CHAIRMAN RAY: Where are you reading that from?

THE WITNESS: This is in one of the documents that we provided to counsel --

CHAIRMAN RAY: Okay, I was wondering --

THE WITNESS: -- during discovery, that he handed me to see if this was like --

CHAIRMAN RAY: I see less than what is on the paper, but I have never seen more.

(Laughter)

CHAIRMAN RAY: So, again, bear with me. You have 85.9 million households, approximately in the 1st of January 1987 -- I mean, in '86. And 1.8 million of those households were contacted?

MR. LANE: 1.890 million was the audience for

this show at this time period.

CHAIRMAN RAY: Okay. And the average audience 1.8 -- with the average audience --

MR. LANE: 1.550.

CHAIRMAN RAY: 1.550, okay.

MR. LANE: And I think, Mr. Chairman -- and Mr. Thrall can correct me, but I think if I multiplied 85,900,000 times 2.2, I would get 1,088,090. The same with --

CHAIRMAN RAY: Oh, I see. Thank you.

Continue.

BY MR. LANE:

Q Mr. Thrall, the base count number is in thousands, and the average audience is in millions in this, correct?

A (Perusing document) That's correct.

Q And so the base count -- let me understand this, the base count is supposed to be representative of all 85,900,000 households, correct?

A According to Nielsen, yes.

Q And that would mean -- I don't know the numbers, but it looks to me something on the order of -- each household would represent about 60,000 households, if we forget about weighting and all of that stuff, just if we did a strict arithmetical division, correct?

A Yes.

Q So if each household represents 60,000 households, each of the metered households, doesn't that mean we only have to have about 30 people watching this program to get this kind of a rating?

A Well, you will have to ask that question to a Nielsen expert. Nielsen has put this sample together, to supposedly be a true reflection of the universe. And so statistically, Nielsen says this is a valid sample, which can be projected to the universe.

Now, in the NSI, which is the basis of the MPAA Study, Nielsen, at least in my dealings with them, has said you can't project those figures nationally. They have said, they take the Metro, the diaries that come in from the Metro Rating, and they project those diaries to the Metro Area.

Then they create a donut outside of the Metro Area, which is the DMA. They take the diaries in that donut, and they project that to the universe in that donut. Then they take another donut, which is total survey area outside of that, and they take the diaries that came in from there, and project them to the universe in that donut, and then they add the three, the center and the two donuts together, to come out with what was in the total survey area, within their rate.

They don't feel that they can take the rating diaries in the Metro Area and just project them to the total area in an individual market.

In this case, while the sample is much smaller than the aggregate of all of the NSIs, which I assume is where you are going -- Nielsen says this is designed to be a sample of the universe that statistically can be projected, although there are obviously many fewer diaries in this, than there would be in 210 DMAs.

BY MR. LANE:

Q Mr. Thrall, do you know what the standard of error is for this, or any of these?

A I don't have it with me.

Q Are those provided to you by Nielsen?

A Yes, there is a book, and it is referred to in your study, and it is referred to in the documents that Nielsen sends out. There is a book that they put out, some 30 to 50 pages, that explains how to do that, and MIT, masters, graduates on the small computers can figure that fairly accurately.

It is not something the average layman does in an office.

COMMISSIONER ARGETSINGER: Certainly not the Tribunal.

(Laughter)

MR. LANE: You are not looking at average laymen.

CHAIRMAN RAY: Unless we use NAB's --

COMMISSIONER ARGETSINGER: I don't know how to take that.

(Laughter)

CHAIRMAN RAY: I was going to say, unless we use NAB's computer --

MR. STEWART: My calculator.

CHAIRMAN RAY: Your calculator.

THE WITNESS: I am sure Nielsen could calculate the standard deviation curve for us.

CHAIRMAN RAY: You know, it's great to pay a service for something that only they can analyze and evaluate. That's great. That's a good business.

THE WITNESS: A former governor made that speech in Pittsburgh, Pennsylvania in 1960, and chided the television industry for giving control of itself over to outside organizations, over which they had no control.

BY MR. LANE:

Q But the fact of the matter is, Multimedia uses these?

A The fact of the matter is advertisers for the barter show request this to justify their advertising buy, and so we're forced to use it. And the only place you

will not see any reference in our 1986 case, to any NSIs or NTIs on the space bids programs because there were no barter advertisers in there. There was no need to do it, so we didn't, in case you're missing why I didn't include some NTIs on those two space bid shows.

Q Mr. Thrall, I didn't realize this before, but you don't have a ratings figure for New Music City USA anywhere in your exhibits, do you?

A I think I made a reference to it in the testimony. On page 13 of the testimony.

Q But you haven't provided. In those data -- I'm confused here -- were the data specified on page 13 obtained from the NTI study?

A I believe those are from the ROSP, which is NSI.

MR. LANE: Can counsel clarify that for the record?

MR. LUTZKER: That was from NTI.

THE WITNESS: It was NTI? I stand corrected. It was NTI. I sit corrected.

MR. LANE: Mr. Chairman, while I have the record, that's all I have.

CHAIRMAN RAY: Okay. Thank you.

Mr. Stewart?

MR. STEWART: No cross-examination.

CHAIRMAN RAY: No questions.

Any questions from Commissioners?

COMMISSIONER AGUERO: No.

COMMISSIONER ARGETSINGER: No.

CHAIRMAN RAY: All right. Let's go to redirect. Mr. Lutzker?

REDIRECT EXAMINATION

BY MR. LUTZKER:

Q Mr. Thrall, you will recall that Mr. Lane directed your attention to, in the ratings and household data for Donahue -- let me turn to that exhibit -- that was Exhibit Number 5.

The data that you have in here is a reference between daytime households for the Donahue program during relevant periods and a comparison between '84, '85 and '86, is it not?

A That's correct.

Q I'd like you to review this document, which is the NSI report for the four periods of 1986. These documents were also provided to counsel for MPAA in the context of discovery.

Would you look at, with respect to the total households, and read into the record the total household figures, and also draw attention to the fringe times or non-daytime hours that appear in those --

A The whole column under Total Households?

Q The bottom line total --

A Total Day under Total Households.

Q Identify it with respect to the number of stations and the households reached in the principal time periods when Donahue airs outside of daytime.

A Okay. Under Total Households, the first column is Daytime, and that figure for February is 6,571,000 households, which is the same figure you'll see opposite February 1986 in Exhibit 5.

Early Fringe in February was 708,000.

Q And how many stations carried the program during the Early Fringe period?

A Seventeen.

Q Seventeen. Now, would you turn to the May --

A Okay. In May, under Households, the Daytime is 6,118,000, which is the same number that's in the May 1986 column here. The Early Fringe in that same period was 623,000. The number of stations in Early Fringe was listed at 16.

In July, the Total Households, Daytime, was 5,765,000, which is the same figure shown in the exhibit. The Early Fringe was 816,000, the number of stations was 17.

In November, the Daytime figure is 5,210,000 which, again, is the same figure that's in the exhibit.

The Early Fringe figure was 2,118,000. The number of stations was 27.

Q Now, you had previously indicated that during 1986 there was a shift of Donahue from -- by a number of stations in different markets, to a different time period than Daytime. Does this data support that statement?

A That shows that in November, there were about ten more markets carrying the program in Early Fringe than there had been in February, May or July.

Q I'll also ask you just to look at the Total Households for the four periods and indicate which of the rating periods had the highest total of households during the course of 1986.

A Considering all of the time periods where Donahue was aired --

Q No, this is for the total -- the bottom line total of households.

A In February, 7,221,000; in May, 6,565,000; in July, 6,331,000; and, in November, 7,227,000.

Q So, when MPAA was referring to the totals as a gradual decline with respect to the Daytime totals, was it not a fact that the total persons reached by the Donahue program, in fact, increased during the course of the year and reached their zenith in November?

A In November, yes. What you would see is a

normal seasonal fluctuation in the May and July ratings, with the two highest ratings being in February and November and, in the case of Donahue, the highest was in November. The highest number of households was in November.

Q So, rather than suggesting a decline --

A It suggests a shift of programs into Early Fringe.

COMMISSIONER ARGETSINGER: Mr. Thrall, I'm just curious why you didn't design your exhibit that way.

THE WITNESS: Because we had presented it in previous years as Daytime, and the Early Fringe was not a significant item and, in fact, to compare apples-to-apples, we stayed with it. I apologize. We, in retrospect, would have been wise to have done that.

COMMISSIONER ARGETSINGER: Perhaps, though, this exchange has made a bigger impression on our minds, who knows.

THE WITNESS: We didn't plan it that way.

MR. LANE: Well, Mr. Chairman, before I let that go, then I think that we should have the '85 numbers for the total periods as well because the point is, as Mr. Thrall just said, if you're comparing apples-to-apples, it's daytime-to-daytime.

MR. LUTZKER: We would be pleased to provide it

for the record.

CHAIRMAN RAY: You'll have a chance to do that in rebuttal. That's what counsel is saying.

MR. LANE: No, sir.

CHAIRMAN RAY: No, no. We will have them provide the information to you, to use in rebuttal.

MR. LANE: Thank you.

MR. LUTZKER: Just for the record, this information was exchanged in the 1985 proceeding in the course of discovery, so both parties have access to it, and we would be pleased to submit it for the record. I'd have to go back and see whether it has been previously submitted in another form.

BY MR. LUTZKER:

Q I'd like to turn to this Exhibit 14-X, and focusing -- although Mr. Lane was questioning you about a 50-percent change, that was predicated upon his Exhibit 12-X whereas, under the Multimedia --

MR. LANE: Mr. Chairman, I'm going to object to that question. That was not predicated on -- it was predicated on the difference between their '85 study and their '86 study, and I'll give Mr. Thrall the exhibit-- it had nothing to do with my cross-examination exhibit. It's the difference between what they showed in their advertising study in 1985 and what they showed in '86.

CHAIRMAN RAY: I believe that is true.

BY MR. LUTZKER:

Q Mr. Thrall, directing your attention to -- I'm looking for the percentage increase -- okay. Mr. Thrall, on page 11, you indicate that in the advertising study there was a 35 percent increase in advertising value over 1985.

Looking at the calculations presented in this Exhibit 14, is there -- which state raw increases of approximately 15 percent between '85 and '86. Is the percentage increase gain of 35 percent at all inconsistent with the revenue gain that's noted in this exhibit?

A No, it's not inconsistent. There are many things that are part of the figure in Exhibit 14-X. Donahue would be one of those things. And, so, it's impossible to go in and say that -- you could make a percentage point-by-percentage point comparison of what our operating revenues were and what Donahue's value was year-to-year but, certainly, the increase in the revenue would not be inconsistent with the figures that we presented in the advertising study.

Q And the 35 percent reflects revenue gain not simply to Multimedia, but to all broadcast stations carrying the program?

A Carrying the program in the United States, yes.

Q I'd like to turn to the Program Suppliers/MPAA Exhibit 13-X. This document was offered based upon a corrected exhibit of Multimedia, which is corrected Exhibit 4.

In preparing the corrections -- excuse me -- in preparing the original exhibit and arriving at the 13.93 percent number, did Multimedia inadvertently use 1985 rather than 1986 market percentages?

A Yes.

MR. LANE: Mr. Chairman, I object to that question. That could have been brought up during direct and I would have had cross on that, but to wait until redirect to specify a reason why you made a correction that should have been noted during direct is just improper.

MR. LUTZKER: The document was offered as a corrected document. There was no questions or challenge to the document. If the Chair feels, after the explanation that's offered, Mr. Lane is entitled to further cross, I would not object to that.

The document that they have prepared as Program Suppliers' Exhibit 13-X is inherently deceptive because it is predicated upon wrong information, and the information perhaps could have been gleaned from the exhibit, but it wasn't, and this document needs to be corrected on the

record.

MR. LANE: Mr. Chairman, when I started out on that exhibit, I asked Mr. Thrall to take the two exhibits, the original and the corrected, and I went through every number. I asked him about every number and if every number on my exhibit was correct, so all the numbers not only could have been, but were gleaned from the exhibit.

MR. LUTZKER: The market difference between Exhibit Number 4 as originally submitted and Exhibit Number 4 as corrected --

MR. LANE: Mr. Chairman, I would ask that counsel not make factual statements in the record until you have ruled on this, and he's attempting to get in what I'm objecting to.

CHAIRMAN RAY: What was the question, again?

MR. LUTZKER: What I intend to do is to clarify the -- essentially, conduct redirect on this exhibit.

CHAIRMAN RAY: Did you have a specific question to the witness, that Mr. Lane objected to?

MR. LANE: Yes, he did.

CHAIRMAN RAY: I know, but I want to know what the specific question was.

MR. LANE: I don't remember now.

MR. LUTZKER: Let me start over again.

BY MR. LUTZKER:

Q Mr. Thrall, is the entry under the line Adjusted to Project Reaching 97 Percent of the U.S., the denominator of 0.05 in the MPAA exhibit, a correct number?

THE WITNESS: Is this what you're objecting to, or do I answer that?

CHAIRMAN RAY: He has reworded it.

MR. LANE: He has reworded the question. I'll let that question go --

CHAIRMAN RAY: For the time being.

MR. LANE: -- for the time being --

MR. LUTZKER: Is that entry correct?

MR. LANE: -- if he confines it to a yes or no answer.

THE WITNESS: No.

BY MR. LUTZKER:

Q Should the entry be 0.146 percent?

A Yes.

Q Excuse me -- 0.164 percent.

MR. LANE: Mr. Chairman, this demonstrates, in my view, exactly what is wrong with this whole exchange. If there is a different number, if there is an entirely different basis, we should know about it on direct, before we get to redirect.

The numbers -- when Mr. Thrall says "No, it's not correct" -- you can look at those two pieces of paper

that they gave out and, as I did, you asked Mr. Thrall if the difference between 13.93 and 13.98 percent, which are the two numbers shown on this page, is 0.5, and it is. He testified already, to that, to the accuracy of that.

MR. LUTZKER: That is an accurate number, however, the only difference in markets is the addition of the Jefferson City market. Mr. Lane had received on discovery, the basis upon which Multimedia prepared this corrected exhibit, and the market value for Jefferson City is 0.164 percent of the United States. There was an error in calculating the remaining markets because 1985 rather than 1986 data was used. And the numbers are obviously close, but in terms of the difference between Exhibit 4 and Exhibit 4-Corrected, was the addition of the Jefferson City market, and he could have looked at our discovery material and determined what percentage of the United States the Jefferson City market represented.

MR. LANE: Mr. Chairman, that means that all their exhibits, when they correct them, you can't believe that they are correct. What are you, the Tribunal, supposed to believe? I got the same information that you had, and I used it.

They're saying, sure, it was correct, but it really wasn't corrected, and if I had just known it wasn't really corrected, I could have done something else. I

agree with them. If I had known it was a different correction, I would have come up with a different exhibit.

CHAIRMAN RAY: Do you want to redirect any questions on this?

MR. LANE: Well, Mr. Chairman, the problem is that I prepared an exhibit based on what was provided and the explanation that was provided to me and to you. I got the same thing that you got and, if I had known that there was some other basis, I would have provided a different exhibit, and I'm not going to have that chance, even if I have a chance to recross.

MR. STEWART: As an impartial observer --

CHAIRMAN RAY: Oh, I'm sorry, I didn't see your hand. Go ahead.

(Laughter.)

MR. LANE: Notice which side he's sitting when he says that.

CHAIRMAN RAY: I'm sorry. Go ahead.

MR. STEWART: I don't see -- I can't imagine that the Tribunal would not allow the correct information to be on the record so that the Tribunal can decide the issue on the basis of correct information. The only possible objection to redirect, it seems to me, is resolved by Mr. Lutzker's offering for further cross.

If Mr. Lane wants to keep in the record an

exhibit that he prepared, that is, that falsely represents the information, it seems to me that's something the Tribunal shouldn't allow to happen.

MR. LANE: Mr. Chairman, my point is, this does not falsely represent any information, that if you look at those -- if you just put those two exhibits in front of you and you look at them, my Exhibit 13-X correctly reflects everything on those two exhibits. And all that this will prove is the point that I was trying to prove all along -- that if you come up with a different set of numbers, you're going to come up with a whole different set of advertising studies. Sure, I can put in whatever number Mr. Lutzker says is the correct number, and I'll come up with yet a different result.

MR. LUTZKER: Well, if Mr. Lane would hear the bottom line number, he might be forced to reassess that conclusion.

CHAIRMAN RAY: The objection is overruled, with the proviso that you should have a right to recross at a later time.

BY MR. LUTZKER:

Q Mr. Thrall, let me first direct your attention to the original Exhibit 4 and then to the corrected Exhibit 4. In the original Exhibit 4, which lists 13.9 percent of the United States, what market entry is St.

Louis?

A Seventeen.

Q And what market entry is St. Louis in the corrected Exhibit 4?

A Eighteen.

Q In the original Exhibit 4, what is the entry for Cincinnati?

A Twenty-seven.

Q And what is the entry for Cincinnati in the corrected exhibit?

A Twenty-eight.

Q What is the entry exhibit for Orlando/Daytona Beach in the original exhibit?

A Thirty.

Q What is the entry for Orlando/Daytona Beach in the corrected exhibit?

A Twenty-seven.

Q In the original exhibit, what is the entry for Sioux City?

A One hundred thirty-nine.

Q And in the corrected exhibit?

A One hundred thirty-three.

Q What is the entry for Casper?

A In the original exhibit, 181.

Q And in the corrected?

A One hundred eighty-seven.

Q Does Jefferson City appear in the original exhibit?

A No.

Q Does it appear in the corrected exhibit?

A Yes.

Q Turning to MPAA Exhibit 13-X, you indicated that the error in the line Adjusted to Project Reaching 97 Percent of the United States should be 0.164 percent in lieu of 0.05 percent, is that not correct?

A Yes.

Q And if you compute the calculations, what does the bottom line percentage equal, with that change?

A I'll have to do that.

Q The first item that would change would be the 366 million?

A Yes, which I get --

Q Let me ask you -- rather than going through the calculations, which we can do -- in looking at the 0.5 and the 1.6, would it be your expectation that the bottom line number would be approximately three times as large using 0.05, as the 0.164?

A Yes.

Q So, rather than 4.36 percent, the number would be closer to 1.5 percent?

A One and a half percent, approximately, without doing the math again.

MR. LANE: Mr. Chairman, I guess I will insist that we do the math, since we have gone this far. And I certainly don't want to have anything unclear or incorrect in the record.

CHAIRMAN RAY: All right. We'll do the math.

THE WITNESS: Can we take a break and do that? I perform much better mathematics off the witness stand than on.

CHAIRMAN RAY: All right. We'll take five minutes.

(Whereupon, a short recess was taken.)

CHAIRMAN RAY: Back on the record.

BY MR. LUTZKER:

Q Would you read into the record the correct calculations, starting with the Adjusted to Project Reaching U.S. line?

A Okay. Adjusted to Project Reaching 97 U.S. line, the 188,760 is correct. Below the line should be .164. Projecting that to 97 percent should replace the 366.194 number with 111,644,634.

The next two lines are okay. Then where the 366,194,400 number appears in the next to last line, that should be replaced with the 111,644,634, and the result,

although our hand-held calculators don't go quite as many points out as this size of figure would require, we come out with 1.33 as the bottom figure, rather than 4.36.

Q And recognizing that this is a projected based, in effect, upon the Jefferson, Missouri market, which is ranked 146, does this nevertheless, in your view, support the other figures which are in Multimedia's case regarding the advertising value of the program?

A Yes, it certainly is not what appeared to be an out-of-whack number in the 4.36 if we had projected Jefferson City to the full 97 percent of the United States.

Q And just returning to the purpose of this advertising data and reflecting on Chairman Ray's original comments, do you feel that this figure, while it is based on the broadcasting transmissions, broadcasting revenue, still, nevertheless, serves as a reasonable measure of marketplace value for Multimedia programming?

A Yes.

MR. LUTZKER: That is all the redirect I have.

CHAIRMAN RAY: Mr. Lane?

RECROSS EXAMINATION

BY MR. LANE:

Q Mr. Thrall, as I understand your testimony, the selling price for 30 seconds during the fourth quarter of

1987 in Jefferson City for Donahue was $35, is that correct?

A That's correct.

Q And how much does that represent of the total-- is that $35 in 1987?

A Yes.

Q And do you know how much that represents of the total selling price for all these markets?

A I can do that very quickly. The 33 or the 35?

Q The 35.

A .0072 percent.

Q And you indicated previously that Jefferson City represents .164 percent of the total U.S., is that correct?

A That's right.

Q So that in Jefferson City, the percentage share -- excuse me -- the .164 percent, how does that relate to the -- that is of the total United States, correct?

A In 1986, that market was credited as being .164 percent of the U.S., in its coverage area.

Q And $35 then is actually the .0072 number that you gave me, is only of the 13.98 percent advertising revenue, correct? It's not of the whole United States.

A Maybe I misunderstood you. That was the percentage of the 4835 total selling price for 30 seconds,

before we did the projection.

Q So, actually, the $35 you received in Jefferson City, if we looked at that as a portion of the entire United States, or the entire 97 percent of the United States, would be something in the order of one-sixth -- no -- actually, one-seventh of the .007, correct?

A I'm not sure I follow you there.

Q The $35 is the correct figure for Jefferson City, is it not?

A Based on the information, yes.

Q And the 4835 is the total selling price for only the markets you've listed here, correct?

A That's correct.

Q So that if we projected the 4835 to the entire United States, instead of going through your steps and getting 183 million, we could have just projected that up to the entire United States, correct?

A The 4835?

Q Yes.

A We could have done that, but we adjusted it for inflation to bring it into '86.

Q But let's just say -- well, the 35 and the 4835 are comparable numbers, are they not?

A That's correct.

Q So, we could have boosted that up, and if we had

boosted that, we would have to increase the 4835 by approximately seven times, to account for the whole United States, since we are only accounting for 13.98 percent, correct?

A You're losing me on that step.

Q Mr. Thrall, 4835 is the total selling price in the 22 markets on this exhibit, is that correct?

A That's correct.

Q And these markets represent 13.98 percent of the United States, correct?

A Yes.

Q So, one can assume that if we sold the entire United States one 30-second for all the Donahue in the United States, it would cost more than 4835, right?

A Yes.

Q And because the ratio between 97 percent, which is what Donahue has carried throughout the United States, and 13.98 is somewhere in the order of seven times, wouldn't it be fair to say just that if we multiplied 4,835 by seven times, we might an approximate figure? We'd get the figure that you guys would come up with, using this formula, correct?

A That would be another way of doing it.

Q So, if we did that, the Jefferson City share of the total United States would not be .007, it would be

only one-seventh of that, is that correct -- just for rough approximations?

A Since the invention of the hand calculator, I do very poor rough mental calculations. If I'm following you here -- and I'm not trying to be difficult -- you're saying that approximately seven times the 13.98 equals the 97.

Q Right.

A And, so, if I took the $35 times seven --

Q The $35 is the price for Jefferson, correct?

A Yes.

Q If you took the 4835 and multiplied it by seven, you'd have the total U.S., correct, for one 30-second spot on Donahue?

A Yes.

Q Then if you divided $35 by whatever that number is -- 28,000 or 30,000 or whatever the number is -- you would come up with the percentage value in Jefferson City.

A Well, if I did this right, I got .0010 instead of .0072.

Q That's about one-seventh, right?

A Yes.

Q And that number, is it not, about 164 times lower than the percentage of the U.S. represented by Jefferson City?

A We could come to that conclusion if we wanted to go that route, yes.

Q I mean, just as a mathematical question.

A We could also take any other market and do the same thing, and we would have a wide range of figures. And if we then averaged them all together and divided by the total number of markets, we'd be back to what's in the original exhibit.

Q But your exhibit is based on the theory that a percentage of the United States, 1 percent of the United States is equal to the same amount of advertising dollars throughout the United States? If I took 1 percent in the northeast, I would get the same population as 1 percent in the southwest or anyplace I looked, correct? That's what your ratio is on your adjustment?

A I'm not suggesting that you can take any one market and project it to the whole United States.

Q I didn't say that was what you were suggesting. I said you are suggesting that you can take any 1 percent --

A No, I'm not saying you can take any 1 percent. You can calculate a 1 percent based on a sample that has the diversity in it that would -- you can't take, you know, 1 percent in the far west.

Q Well, Mr. Thrall, I don't know where these

markets are, but 1 percent of these markets -- what you're saying is, I could take 1 percent from any one of these markets, all of these markets, and move it into anyplace where these markets aren't and I'm going to get the same 1 percent. That's the theory, that's the logic of your adjustment, isn't it?

A No. No. We certainly made no projection on Jefferson City.

Q I didn't say Jefferson City. I said all the cities, the 22 cities at the top of the page.

A Which represent a diversity in geographic areas, a diversity of market size, a diversity of competitive situations, all taken together create a figure which can be projected.

Q And that projection is that in any other market or group of markets, the same 1 percent would equal the same advertising dollars, correct?

A No.

Q No?

A No.

Q Then how do you get to your 97 percent ratio?

A By taking all of these markets, the 13.98 percent, and then projecting that to 97 percent. So, we're not going from 1 percent to 97 percent, we're going from 13.98 percent to 97 percent.

Q Mr. Thrall, if I divided 26,443,560 by 13.98, would I get the exact same figure as if I divided 183,478,206 by 97?

A No, but that's the difference in projecting Jefferson City --

Q No? Your answer is, no? You won't get the same number?

A If I followed you.

Q I'd ask you to make those two calculations.

A Okay. What is it --

Q You see at the bottom of your corrected exhibits? If you divide the two numbers on each side of the equal sign.

A (Complying) Yes, I get the same figure.

Q Same figure. So, it follows, does it not, that that means that 1 percent equals the same amount of money on both sides of the equation?

A Yes.

Q And, so, it follows from that that 1 percent of the advertising dollars in these markets, in your view, is the same as 1 percent in a whole other different 22 markets someplace else in the country, right?

A Yes.

MR. LANE: Those are all the questions I have on recross.

CHAIRMAN RAY: Commissioners?

COMMISSIONER AGUERO: No.

COMMISSIONER ARGETSINGER: No.

CHAIRMAN RAY: Well, thank you, Mr. Thrall, thank you very much.

(Whereupon, the witness was excused.)

CHAIRMAN RAY: And this concludes the direct case for Multimedia. We will recess until tomorrow morning when we will start the direct case for NAB, at 10:00 a.m.

(Whereupon, at 4:35 p.m., the hearing was adjourned, to reconvene on Thursday, February 16, 1989, at 10:00 a.m., in the same room.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: CRT - 1986 CABLE ROYALTY DISTRIBUTION PROCEEDINGS - PHASE II

Before: EDWARD W. RAY, CHAIRMAN

Date: FEBRUARY 15, 1989

Place: WASHINGTON, D.C.

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

Phyllis Young

PHYLLIS YOUNG