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 345 through 461)

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

Thursday, February 16, 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:

On behalf of the Program Suppliers:

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On behalf of Multimedia Entertainment, Inc.:

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C O N T E N T S

WITNESS	EXAMINATION					
	VOIR DIRE	DIR	CRO	REDIR	RECRO	CRT
RICHARD V. DUCEY						
		352,				
By Mr. Stewart	--	359	--	455	--	--
By Mr. Lane	358	--	405	--	--	--

E X H I B I T S

NUMBER	FOR IDENTIFICATION	RECEIVED
MPAA/Program Suppliers'		
16-X (87 CA map-Iowa)	430	430
17-X (Copy of art fr Journal of Broadcasting Vol 27:2, Spring '83)	444	444

P R O C E E D I N G S

(10:10 a.m.)

CHAIRMAN RAY: Today we continue with the Phase II Cable Royalty Distribution hearing. And today we begin the direct case for NAB.

Mr. Stewart, do you have any comments?

MR. STEWART: Mr. Chairman, we appreciate the opportunity to appear before you, and I hope you will understand if I say also that we prefer not to be here.

CHAIRMAN RAY: Yes.

MR. STEWART: NAB strongly favors settlement of these proceedings. And we have stood ready over the years to settle for the amount awarded by the Tribunal in previous years. The burden of litigating these proceedings falls more heavily on parties such as NAB, which make a claim for a small portion of the royalty calculation --

(Off the record)

CHAIRMAN RAY: I would appreciate it if you would start this again, because it is important to have on the record.

MR. STEWART: Fine.

We have a brief opening statement. And I appreciate the opportunity to be here. NAB would prefer not to be here, NAB strongly favors settlement of these

proceedings. And, as in prior years, NAB has stood ready to settle the proceeding on the basis of the award made in the preceding year by the Tribunal.

What I was saying was the burden of litigating these proceedings falls more heavily on a claimant that has a smaller claim to the royalties, such as NAB-represented program suppliers. To put this in some perspective, based on MPAA's direct case submissions, which are based on its viewing study, NAB would ask the Tribunal to take away more than half of the award that it has made in previous years to NAB-represented claimants. We would have less than half of the royalties to distribute to the significant number of stations are represented in our claim.

At the same time, that amount of money that would be taken out of our distribution represents barely two weeks' of interest on the amount of money that MPAA has already distributed to its represented claimants.

Now, the Tribunal, in the first year that NAB made a claim to a share of the royalties for station syndicated programs, awarded 0.8 percent of the program suppliers' allocation. It awarded that either after hearing our settlement in 1979, 1980, 1981, 1982, 1983. In the 1984 proceeding, we presented you a bare-bones case, just a list of programs and nothing more. And we

asked you to continue awarding the 0.8 percent that you had for the prior five years, or that we had received for the prior five years. And you awarded us 0.7 percent, rather than 0.8 percent.

And you pointed out in your decision that there were two significant reasons for that reduction. The first was that you believed there was a reduction in the viewing share allocable to NAB-represented syndicated programs. And, also, you noted that the change in program classifications had not increased NAB's share as much as you would have thought in previous years.

And, secondly, you said that we had not provided you information about marketplace value. We had incorporated prior testimony and evidence about marketplace value of the programs, but you pointed out that there were new programs in our list for 1984, and you wanted to see evidence about the marketplace value of those programs, fresh evidence.

In addition to those two basic reasons for reducing our award to .7, you also noted that you had some questions, or concerns about the validity of our data.

In this 1986 case we have addressed each of the concerns that you have raised, not surprisingly, except for the viewing concern, we have not presented a direct case on viewing and how it compares to previous years,

because, in part, we don't believe that viewing is an appropriate measure of marketplace value and the other criteria in this proceeding, as we have stated time and again. But we have addressed the other concerns that you raised in the 1984 decision.

Our witness today is the Senior Vice President from NAB, Dr. Ducey, who has it happens, not only has professional qualifications as a doctor in communications and mass media, but also, as it happens, actually has some relevant actual experience in the cable marketplace. And he will be describing that today.

Finally, we have made a claim, stated a claim in our direct case for 0.8 percent of the copyright royalties allocated to program suppliers. We have done so because we believe we have addressed your concerns, that led you to reduce our award from 0.8 to 0.7 percent in 1984. And we reserve our right as we see the entirety of the evidence, through the rebuttal phase, to suggest a higher award in Proposed Findings, if that is justified.

But at this point we assert again our claim for 0.8 percent of the royalties.

CHAIRMAN RAY: Thank you, Mr. Stewart.

Before we start with your witness, unless there are objections, we will receive your corrections to NAB direct case, filed on February the 15th, and specifically

I refer to NAB Exhibit 11-2. Then with the specific amendments to NAB Exhibit 11-2, which is on page 2 of your filings -- page 1 of your filing, and amendments of 11-2 on page 2 filings.

MR. STEWART: Mr. Chairman, I take credit for having the confusing exhibit designation, but those are intended to be II-2, meaning Phase II.

CHAIRMAN RAY: Oh, I see. Thank you for correcting me. Thank you.

Okay, would you introduce your witness?

MR. STEWART: Would you stand and be sworn, please?

Whereupon,

DR. RICHARD V. DUCEY

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

CHAIRMAN RAY: Thank you, Dr. Ducey.

DIRECT EXAMINATION

BY MR. STEWART:

Q Please state your name for the record?

A Richard V. Ducey.

Q What is your current position?

A Senior Vice President, Research and Planning with NAB.

Q What position did you hold before you joined

NAB?

A I was a faculty member in the Department of Telecommunications at Michigan State University.

Q And describe your educational background for us?

A Okay, I earned a Bachelors Degree from the University of Massachusetts in Amherst in communications studies, a Master of Science Degree from Syracuse University in telecommunications, and a Doctorate Degree from Michigan State in mass media.

Q Have you ever worked for a cable system, Dr. Ducey?

A Yes, I have.

Q When was that, and where?

A In 1978 and 1979, in North Syracuse, New York.

Q What was your position at that cable system?

A My position there was the position of programming manager.

Q What were your duties?

A The three basic duties I had there in my job description, the first duty was to select replacement programming for distant signals whose programming was protected by local stations. In other words, had to blackout certain programming. This was in 1978-79, when the earlier syndicated exclusivity rules were in effect. So, I was obliged to blackout certain programming on

distant signals we were importing on our station.

And one of my job responsibilities was to select replacement programming off of other distant signals, which was not protected by local stations.

The second area of responsibility I had was developing, compiling and distributing program listings for the cable system, for our subscribers. And I would distribute that compilation of programming information to the local newspapers, and we had a character generated channel that would list upcoming programming for the next several hours.

And the third area of responsibility I had was in selecting, scheduling local origination channel programming for the cable system.

Q So the first one was selecting distant signal programs to substitute in the gaps left by syndicated exclusivity blackouts?

A Exactly.

Q On what sources did you rely to select those programs?

A To select those programs I used two major sources, one source was marketing surveys that the cable system did. And I got that information in connection with our marketing department, surveys of subscribers, finding out what their programming preferences were at the time.

And the second major source of information was subscriber contact, either letters, or telephone calls from people who subscribed to the cable system, indicating to me their preferences, and they are not always shy about indicating what their preferences are.

Q Have you done any research yourself in the area of cable marketing?

A Yes, I have, I have done -- in my academic career, I did a couple of studies that were published in the area of cable marketing, identifying market niches in the cable universe.

Q And are you familiar with other research in the area, in the cable field?

A Yes, and I am generally familiar with probably much of the research in the cable field. I think that is one of my professional responsibilities in my current position, to keep apprised of current research, dealing with cable and broadcast television.

Q Now, did you prepare a document that is entitled Statement of Richard V. Ducey, that has been exchanged in this proceeding?

A Yes, I did.

Q Do you have any corrections to that statement?

A I do, I have several corrections here, three of the corrections result from the corrections that were just

submitted to the record. And those occur in my statement on three pages: pages 7, 8 and 14.

Q And the first is page 7?

A Right. Turning to page 7 of my statement, the correction I would like to enter here is the third program, the third bullet up from the bottom of the page, page 7, KGWN. That program should be deleted.

On the next page, page 8, the third program from the top, Cumberland College, should be deleted.

COMMISSIONER AGUERO: Which one?

THE WITNESS: I'm sorry, WBIR in Knoxville, Cumberland College Christmas Program, on the top of page 8.

COMMISSIONER AGUERO: Cumberland College?

THE WITNESS: Right, exactly.

And then on page 14, just up from the bottom of the page there, WHIO, Dayton, Ohio, the Dayton International Air Show, that should be deleted from my statement.

BY MR. STEWART:

Q And that's the second one from the bottom on page 14?

A Yes, the second one from the bottom.

Q These are merely descriptions of the programs that were deleted from the program list, is that correct?

A That is correct, yes. And then I have just two more corrections. In reviewing this for a final time, I noticed several typos. There are two which I think are significant and need to be corrected for the record.

On page 9 of my statement, at the very top there, WSOC belongs in North Carolina, Charlotte, North Carolina, so South should be stricken, or deleted, and North on the first line there.

And on page 18, --

Q That's the very last page of this statement?

A Yes, the last page of my statement, just above the Statement of Claim, the third line up from there, "NAB believes that the CRT should -- and the next word "not" needs to be deleted. "NAB believes that the CRT should determine its award".

MR. LANE: That would add a lot to cross.

(Laughter)

THE WITNESS: And that takes care of the five corrections I would like to make to my statement.

COMMISSIONER AGUERO: On page 5 -- I received the 1985 MPAA list of syndicated programs, you refer to '85, not to '86.

THE WITNESS: Yes, Mr. Commissioner, I didn't have the opportunity to receive anything but the 1985 list.

COMMISSIONER AGUERO: Okay.

MR. STEWART: We submitted this on the same day that the '86 list was submitted.

COMMISSIONER AGUERO: Okay, fine.

CHAIRMAN RAY: Voir Dire?

MR. LANE: Yes.

VOIR DIRE EXAMINATION

BY MR. LANE:

Q Mr. Ducey, I take it that when you served for the cable system, were you still in school at that time?

A Yes, I was.

Q And what were the exact dates that you served, do you remember, what months -- I don't care about the date?

A Yes, the fall of 1978 through the summer of 1979, and I don't remember the exact months, it may have been -- well, I don't remember the exact months, it was fall of '78 through summer of 1979.

Q Now, there are two cable systems in Syracuse, are there not, the New Channel is one, and then -- did you work for the New Channels?

A This is in the Syracuse area you are speaking of?

Q Yes, in the Syracuse area.

A In the Syracuse area, right, there was two

different systems operating multiple systems in the area, New Channels, which is owned by Knowhows, and -- that's not the one I was employed at, I was employed at the one that was independently owned, Upstate Community Antenna.

Q And do you know what the name of Upstate is today?

A Yes, I do.

Q What is it?

A New Channels, Cablevision, or something -- New Channels. They have since been bought --

Q It was merged into the New Channels system?

A New Channels bought out Upstate Cable's interest.

Q So the New Channels system at your time involved a smaller area than it does today, is that -- and the new area is whatever your system served in 1978 and '79?

MR. STEWART: Which New Channels are you referring to?

BY MR. LANE:

Q Today's New Channels system. In 1978 and 1979, New Channels served some area, correct?

A Yes.

Q And Upstate Cablevision served -- I will call it the New Channels Area A, and Upstate Cablevision served Area B, correct?

A Yes.

Q And now is it your testimony that New Channels serves both Areas A and B?

A I haven't followed specifically, I am generally aware that New Channels acquired an interest in Upstate Cablevision, but I haven't tracked that up-to-the-minute. But that would be my impression, yes.

Q And with regard to your research, I understand it, am I correct, that you have had two articles published in this particular area?

A Dealing with cable marketing research?

Q Yes.

A Yes, two articles published in that area.

Q And could you tell us approximately the year those were published?

A I believe they were both published in 1983. I can check that though -- (perusing documents) -- I'm sorry, one was published in the Spring of 1983, and the other was published in the Summer of 1985.

MR. LANE: That's all the Voir Dire I have.

MS. IANNIELLO: No questions.

CHAIRMAN RAY: Mr. Stewart.

DIRECT EXAMINATION (Resumed)

BY MR. STEWART:

Q Moving along, Dr. Ducey, would you describe for

us what Exhibit II-1 is? This is a document that has been exchanged in this proceeding.

A II-1 is the questionnaire that we use to request information from stations listing a program for which they're filing a claim.

Q So, II-1 was the questionnaire. What is Exhibit II-2?

A II-2 is the compilation of the responses to our questionnaire, Exhibit II-1.

Q Describe how the information is set out on Exhibit II-2, please.

A In summarizing the responses to the questionnaire, this information has been organized in four columns. The first column in Exhibit II-2 refers to the station producing the syndicated programming; column two provides the location of that station; column three identifies the program titles, and column four identifies the stations to which that program has been syndicated.

Q And I see the word "Series" on the first page, and then over on page 8, near the top of the page, the word "Specials". Would you describe those headings?

A Yes, the first set of programs, those identified as Series, are programs which have ten, or more episodes. And the next set of programs, those identified as Specials, are those programs that have less than ten

episodes.

Q Now, in the column on the far right-hand side, the stations carrying each program, certain of these call signs are in boldface, as opposed to normal type face. Could you describe what the significance of that is?

A The boldface is used as a device to signal those stations which were not included in the 1986 MPAA Viewing Study.

Q So these are stations that were not in the list of stations that MPAA studied the viewing of for 1986?

A That's correct.

Q Now, have you taken a look at program lists submitted by NAB in previous proceedings?

A Yes, I have.

Q And in certain of those previous proceedings, some of the stations carrying the program in the far right-hand column are underlined. Do you know what that signified in previous exhibits?

A Yes, I do. The underlining signified that those are stations that were carried on a distant signal basis by a Form 3 cable system.

Q And why are there no underlinings in the 1986 version of this program list, Exhibit II-2?

A The reason for the underlining was to -- we were able to ascertain that these stations were carried on a

distant signal basis, at least by Form 3 systems, because those data were readily available. And we made the assumption in past years that those stations not underlined were carried by a Form 1 or Form 2 system, based on the responses to our questionnaire.

This year we are able to verify that all of the stations were carried on a distant signal basis.

Q That is all of the programs?

A Yes, all of the programs, right, all of the programs are carried on the distant signal basis.

Q And was that in response to a concern the Tribunal had raised?

A Yes, it was.

CHAIRMAN RAY: Were all the stations carried?

THE WITNESS: I'm sorry, I misspoke, I meant to say that the programs were available on a distant signal basis. That's what we verified.

BY MR. STEWART:

Q Did NAB undertake any other steps, in terms of verifying the data that is presented in Exhibit II-2, in response to the Tribunal's concerns?

A Yes, we did. The Tribunal had indicated concerns about the accuracy of the data. And this year we took the extra step, in addition to collecting information with the written questionnaire, we contacted the stations

again by telephone, to verify some of the key information reported in the questionnaire.

Q So that the program listing and data included in Exhibit II-2 have been confirmed by this additional means, is that correct?

A Yes, that's correct.

Q Now, let's turn back to your statement again, and beginning on page 5 of the statement --

A (Perusing document)

Q At the bottom of page 5, and running over to the next ten pages, I guess, through page 15, there are individual program titles and descriptions. Would you describe -- just summarize first what that evidence consists of?

A This is a characterization of the kinds of programming for which NAB represents, generally speaking, the programming is heavily weighted towards sports programming. Many of the titles are sports-related. The programming is strongly regional appeal programming, for the most part. And the programming is relatively unique, exhibits a great deal of variety in the kinds of titles that are included in our Exhibit II-2, as compared to the -- for example, the 1985 MPAA list, which I had a chance to review. Those programs tend to be off-network, sitcoms, and animated programs, or drama and adventure series.

The MAB programs, again, I would emphasize, tend to be of a strongly sports nature, looking at the number of titles, have a lot of regional appeal, and are unique. They are not available on a widely distributed basis elsewhere.

Q Have you looked at the 1986 list of syndicated programs represented by MPAA?

MR. LANE: Object to the question, this is rebuttal testimony.

MR. STEWART: It is a simple, yes, or no. And I would ask that I be allowed to ask that question and the following question. And then Mr. Lane may not have an objection.

MR. LANE: I will still have the objection.

Mr. Chairman, last year when the same questions and exhibits were involved, you indicated quite clearly it is part of rebuttal. They can say whatever they want about our case in rebuttal, and this is not the proper time to introduce evidence that was not part of their direct case.

As the witness already testified, he didn't have the '86 list when he prepared his direct testimony.

MR. STEWART: Mr. Chairman, I don't want to have to bring this witness back to answer one simple question, in terms of rebuttal. And as I say, this question, "Did you review it?" is not objectionable as rebuttal. And if I

am allowed to ask my simple follow-on question, then we can discuss whether that is truly rebuttal, or not.

CHAIRMAN RAY: Well, I think the key is the following question. You can ask it, and we will make the decision then.

Mr. Lane, your objection is overruled, until we hear the final question, and then you can attempt again.

BY MR. STEWART:

Q So the current question is have you reviewed the 1986 list of syndicated programs submitted by MPAA in this proceeding?

A Yes, I have.

Q And my follow-on question is, in general, is the character of those programs similar to what you have just characterized about the 1985 list of -- and don't answer yet --

MR. LANE: I will object to that question.

CHAIRMAN RAY: He told him not to answer.

Objection sustained.

MR. STEWART: Well, Mr. Chairman, as I stated before, we don't want to have to bring a witness back to answer that simple question. There is no reason, in terms of the efficiency of this proceeding, to preclude that question being asked today.

MR. LANE: Mr. Chairman, I think there is a lot

of reasons to preclude it, because whatever his answer is, I was not prepared for it. And I certainly would have a lot of questions about whether he was right, or wrong. And I would go through a comparison of the two lists.

CHAIRMAN RAY: Well, Mr. Stewart, this commissioner -- not speaking as the chairman now -- feels that there is not that great a difference between the list, there may be five, there may be six -- of course, I am drawing my own inference from that.

MR. STEWART: I understand. And we will abide by the ruling of the Chair on the following question.

Let's move on.

BY MR. STEWART:

Q Dr. Ducey, you mentioned sports programs, and there is a category that begins on page 9 of your statement, entitled Sports Programs. So that we don't have to go through your testimony, line-by-line, and you don't mention each one of these, would you describe, generally, what is in that category, beginning on page 9?

A Yes, as you suggest, I will just select a couple of examples. The sports program, again, as I indicated contains the largest number of titles. This is the biggest category in our list of programs. And throughout these programs I have provided some general descriptions of that program category, and then some additional

information about each of the individual programs, so you can get a sense what that program is about.

In the sports programs a few examples I would like to highlight here, KAKE, the first program listed as a bullet under the Sports Program category on page 9 of my statement has produced several programs, The Running Red Birds, The Kansas City Chiefs, and The Chicago Bears. These programs, generally, feature previews of the upcoming sports season, analysis of past games, interviews with players and coaches, and discussing prospects for the upcoming year.

What I would like to do is direct your attention, if I could -- direct the attention of the Tribunal to page 8 of my Exhibit II-2.

Q This is page 8 of the program list?

A Yes, page 8 of the program list. And right there at the top of page 8, programs numbered 47, 48 and 49, those are those three programs I was discussing, The Running Red Birds, Challenge Repeat; The Kansas City Chiefs, and The Chicago Bears, produced by KAKE, and syndicated to a number of different stations, as you see identified in that far right-hand column, Stations Carrying the Program.

Looking at, for example, The Kansas City Chiefs, and The Chicago Bears programs, numbers 48 and 49, the

Tribunal might be interested to see here that the coverage pattern, the pattern of stations to which the programming was distributed, is a little bit different, but fairly wide, certainly on a regional basis. For example, The Kansas City Chiefs program was distributed to stations ranging from Kansas and Missouri.

The Chicago Bears program was distributed through Kansas and through Illinois, and there are several stations here, I might draw your attention to, for example, WHAQ and WGN in that list of stations carrying that Chicago stations. And there is a Springfield station, WICS.

This is, in my analysis, a very good example of the kind of regional appeal that different programs might have. One of the programs goes throughout Kansas and Missouri. Another program has particular regional appeal to the Illinois area, and Chicago area.

The kinds of sports programs that NAB represents are fairly wide ranging within that category. For example, over on page 10 of my statement, near the bottom of the page --

Q This is back to your statement?

A Back to my statement, on page 10 of my statement, a couple of examples, near the bottom of page 10, four bullets up from the bottom, WCCO, Minneapolis,

Minnesota station, hockey is of intense interest to people living in the Minnesota area, and Minneapolis. WCCO provided coverage of the Minnesota State High School Hockey Tournament Championships, and that was 26 hours of coverage of high school hockey. And that is of very strong regional appeal throughout the area.

And the next program, just below WCCO, the program produced by WCBB in Boston, Massachusetts. I grew up in the Boston area, so I am somewhat familiar with candle pin bowling. Candle pin bowling is a regional kind of variation of bowling, using smaller balls and smaller bowling pins. And that program is really quite popular throughout the New England area.

On page 11 of my statement, I would like to draw the Tribunal's attention to two more examples here. The second bullet from the top of page 11, WGRZ, the Buffalo, New York station. Again, having spent sometime in Upstate New York, in the Syracuse area, I have personal knowledge of how important the Empire State Games are to New Yorkers, people in the state of New York. The Empire State Games, that's an olympic-kind of environment for high school competition, field and track competition. So that is a very important program with strong regional appeal. And, again, it appeals to people's interest in sports.

And the bottom of page 11, the station in Washington, WTTG, produced the Redskins Special. And the Redskins, as I think we all know here, is a strong regional favorite team throughout the South. And WSOC in North Charlotte, in North Carolina, picked up that station. A station in Pennsylvania picked up that program, The Redskins Special. So, again, that is a sports program of strong appeal throughout the regional interests.

CHAIRMAN RAY: Let me ask you a question on that, Mr. Ducey. Is it possible to pick up those shows on TV broadcast stations?

THE WITNESS: By that do you mean local television broadcast stations?

CHAIRMAN RAY: In other words, is it possible--is this shown on any other TV stations in those markets? In other words, WTTG in Washington, is it possible for these shows to be shown on a TV station in Charlotte, the same show? Rather than through cable? Over-the-air, is it available over-the-air?

THE WITNESS: I don't know specifically about this program, but that's a possibility certainly.

CHAIRMAN RAY: Well, if there is a regional TV network, then it would have an impact on the market value that we are concerned with on cable?

THE WITNESS: Oh, it would absolutely, right.

CHAIRMAN RAY: So that information -- you don't have that information? Your exhibits only show the originating station, TV station and it is carried into those distant markets by cable system. And as far as you know, people in the distant market cannot pick it up over-the-air, on any TV station that was networking this?

THE WITNESS: Well, in reviewing these data, there are example of situations where the program is available only on a distant basis.

CHAIRMAN RAY: Only on a distant basis?

THE WITNESS: Right. And there are other examples where it --

COMMISSIONER ARGETSINGER: Does this particular example appear, also, in your Exhibit 2? Is it listed?

THE WITNESS: The Redskins Special?

COMMISSIONER ARGETSINGER: Uh-huh.

THE WITNESS: (Perusing documents) That is on page 20, it is program number -- I'm sorry, of Exhibit II-2, page 20, program number 140.

COMMISSIONER ARGETSINGER: So it is picked up on those stations, WRLH and the rest?

THE WITNESS: Yes, it is.

COMMISSIONER ARGETSINGER: It is broadcast on those?

CHAIRMAN RAY: Broadcast.

THE WITNESS: Locally broadcast in the markets where those stations are located, in that fourth column.

COMMISSIONER ARGETSINGER: And I guess my question -- we don't know where those stations are, and we don't know where they might be picked up on cable?

CHAIRMAN RAY: That's right, we don't know from the exhibit.

BY MR. STEWART:

Q Let me follow-up on that. First, do you know whether those stations in Stations Carrying Program column, whether those stations were carried as distant signals?

A Each of the programs was carried on a distant signal basis.

Q And let's look back at page 6 of your statement.

A (Perusing documents)

Q This is a category labeled Coaches Shows. Would you first describe, generally, what that is?

A Coaches Shows, again, continue in this sports theme of the programming in our list. Coaches Shows here, generally, feature a university, or professional team coach discussing players and game strategies, and game highlights from past games. And just a couple of examples here, the first program listed, the Dan Reeves Show, which

is produced by KCNC in Denver, Colorado, features Dan Reeves,the Denver Broncos coach.

And there are examples of other professional teams and college teams down through the last program in this particular category. On page 7, about halfway down, WTTV, the Indianapolis, Indiana station, which produces the Bobby Knight Show.

Q Now, with respect to the question that Commissioners Argetsinger and Ray were just asking, did you look for every program listed in II-2, for where the cable subscribers were, who received those programs on a distant signal basis?

A Did I look for where --

Q Where the cable subscribers were, the distant cable subscribers for each program and every program on Exhibit II-2?

A No.

Q Did you do that with respect to coaches shows?

A For each coaches show -- I did it for a couple of examples.

Q And would you describe those examples, please?

A Sure. One example is -- well, for example, the University of Kentucky has a number fans throughout the state of Kentucky. One example, the Jerry Claiborne Show, which is produced by WKYT in Lexington, Kentucky. That

program, the Jerry Claiborne Show, is distributed to five other stations throughout the state, and was made available to subscribers, cable subscribers in Corbin, London, Hopkinsville and Warren County, all in Kentucky, only via distant signal.

Another example with the coaches shows is the Jim Valvano Show, and the Dick Sheridan Show, each of these produced by WRAL, also made available in 1986 to cable subscribing, NC State basketball and football fans in Albemarle, Black Mountain, Boone, Forest City, Lenoir, Morgantown and North Wilkesboro, North Carolina. Again, only via distant signal.

COMMISSIONER ARGETSINGER: In the fourth column, for example, -- and I am looking again at number 140, the Redskins Special, or any one of them this would apply to. The fourth column, of course, is the stations they show as syndicated to. Do you know -- and let's be specific on 140, for example, how many distant carriages there were? Was it just WTTG that was picked up distant, or do you know if any of the others were picked up distant?

THE WITNESS: The analysis I did was just to ensure that the program was available on a distant signal basis, on at least one.

COMMISSIONER ARGETSINGER: On at least one, okay.

THE WITNESS: It could be some subset, but I didn't --

BY MR. STEWART:

Q Do you know generally --

(Discussion off the record)

MR. STEWART: This was an issue that was addressed in several proceedings ago, and the definitions that the Tribunal adopted, or modified, so that if a program appears on more than one stations it is a syndicated program, even if one of those stations was the station that actually produced it.

So it is a syndicated program on all stations on which it appears, and isn't considered a local program.

COMMISSIONER ARGETSINGER: Why don't you ask the question and find out on the record, if you have a question?

MR. CASSLER: As far as you know, regarding the Redskins Special, it was originated on WTTG?

THE WITNESS: Yes.

MR. CASSLER: And do you know that WTTG was carried by a cable system as a distant signal basis?

THE WITNESS: That's correct.

MR. CASSLER: But you don't know whether WRLH, or WSOC, or WTVC, or WTBJ was carried by a cable system on a distant signal basis?

THE WITNESS: That's correct, I don't know if they were, or not.

MR. CASSLER: That's my question.

BY MR. STEWART:

Q Do you know, generally, Dr. Ducey -- have you identified the stations on the Stations Carrying list, that are carried as a distant signal, on a distant signal basis by Form 3 cable systems in your research in preparing this exhibit?

A I'm sorry, could you repeat that, please?

Q Have you identified the stations, or have you identified the stations in the Stations Carrying list that are carried on a distant signal basis, by Form 3 cable systems?

A Yes.

Q So Mr. Cassler's question about whether you knew specifically about these individual ones, you answered no. Do you have that information available?

A Do I have the information available as to whether these stations in the Stations Carrying Program column -- if each of those is available on a distant signal basis?

Q On a Form 3 cable system?

A On Form 3 cable systems?

Q Right.

A Yes.

MR. STEWART: Mr. Chairman, with respect to the question of whether that is a local -- that should be considered a local program, I would refer to the 1984 decision at 52 Federal Register 84-16, which defines syndicated programs in the way I described, as being broadcast on more than one station, regardless of whether one of those stations actually produced the program. And that it is considered a syndicated program on all of the stations on which it appears.

CHAIRMAN RAY: May I ask why -- the last time you indicated the stations that had been carried into a distant market by cable systems. I notice, Mr. Ducey specifically early on answered my question by saying the programs were carried. That's why I asked the question, because you do not indicate in this exhibit, the way you did in prior exhibits, whether any of these stations had been carried as distant signals, in the stations.

You specifically said "programs" not "stations". And I was concerned about that when I got the answer. Now I see -- I still don't understand, if you had that information when you did your research for '84, I believe, why you wouldn't at least indicate at least some of these stations were carried as distant signals. This time you did not.

Why didn't you do that, Mr. Ducey?

THE WITNESS: Well, for the Form 3 systems, we have access to data that I think indicates whether those stations are carried on a local, or a distant signal basis. So we could check there, whether those stations are carried on a distant signal basis.

And then for the examples which would not have been underlined in past years' submissions by NAB, we made the assumption that it was Form 1 or Form 2 systems carried those signals. And I went through and checked that those signals were available on a distant signal basis, that it was not a local station.

CHAIRMAN RAY: So you chose not to do it this time. I was just wondering why. But anyway --

MR. STEWART: Mr. Chairman, I refer you to the '84 decision, at 84-20, in which you said, "For those carrying stations which were not underlined, which meant they were not carried on Form 3 systems, NAB could only surmise that they could have been carried by Form 1 or Form 3 cable systems, but could not say so definitely. There were six programs for which both the originating station and the carrying station were not underlined, and therefore, could have been entirely outside of the universe of this proceeding".

And that was the issue that we addressed,

because the Tribunal had raised it as a concern.

CHAIRMAN RAY: I am still raising it as a concern. Maybe I am -- all right, go ahead.

BY MR. STEWART:

Q Let's focus on this, do you know for a fact, based on your analysis of the Form 3 data and other data, that each and every program on Exhibit II-2 was carried on a distant signal basis, during 1986?

A Yes, I do.

Q So the Tribunal's concern about the programs that may not have been in 1984, should not be a concern this year, in NAB's presentation?

A That's correct, it should not be a concern.

CHAIRMAN RAY: Thank you.

BY MR. STEWART:

Q Now, let's go back to your statement at page 7, and if you would continue on, again, not reading every program description here, but describing, or summarizing the testimony?

A Okay, what I would like to do, in generally characterizing these programs is to move into the next category I have here on page 7, about halfway down the page, Specials and Series With Regional Appeal. And here I would stress that although I labeled this category Specials and Series With Regional Appeal, I think I am

demonstrating that there is regional appeal for each of these programs. This is just kind of an Other category, things that didn't fit into the Sports area, for example, or one of the other areas that I chose to categorize programs in.

An example here is KHOU, the Houston, Texas station. One of the programs they produced, Ray Miller's Christmas in Texas, which is a special on Christmas and how it is celebrated in various areas around the State of Texas. Again, emphasizing the regional appeal of that particular program.

The next program right below that is by KING, K-I-N-G television, in Seattle, Washington, produced a documentary on salmon resources in the region, Salmon Story.

Over on page 8, the second program there, KPRC, Eyes of Texas. That was a magazine-type series, with regional appeal, where it was produced and programmed, regional appeal, magazine type series.

At the bottom of page 8, having spent sometime in the Mid-West myself, I know that state fairs are quite important, WRTV in Indianapolis, Indiana, produced a number of different programs dealing with the State Fair in Indiana.

And moving back to page 9, in this same

category, the third program identified there, WTTV's Indiana Outdoors, a special program dealing with the Indiana State Parks, featuring different kinds of nature and recreational items in the program.

Q Now, we have already gone over the Sports category which covers the next several pages. So would you move next to page 12, and describe those categories?

A (Perusing document) On page 12 I have two different kinds of program categories described here, the first category is News, Talk, Public Affairs Programs. These programs feature current news and discussion, commentary about matters of public interest. A couple of examples here, the ones that are fairly prominent example, WPIX, the New York station, with the INN programming. It is a progeny of the INN Evening News, the INDAY News, From The Editor's Desk, a news interview program, Christian Science Monitor Reports, 1986 INN Focus, Year in Review news program. And that is an example of a widely syndicated series of programs.

WTTV, right below the WPIX example, Report From the State House, from the Indiana State House, coverage of state legislative activities.

And moving on to another category --

CHAIRMAN RAY: Excuse me, before you move, would you say the INN Evening News is the only program under

this category that has national distribution?

The others are regional? WPIX is not the only one that is not regional, but national?

THE WITNESS: The question is WPIX produces programming that is of national interest, not regional interest?

CHAIRMAN RAY: Is carried nationally?

THE WITNESS: Yes, WPIX clearly has a much wider distribution pattern.

CHAIRMAN RAY: And that's the only one in your category that is carried nationally. The others are regional, right? Regional distant signals?

THE WITNESS: I think, largely, that is the case, yes.

CHAIRMAN RAY: How would you measure value--what would be the difference in the methodology of the end results, what impact would regional distant signals versus national distant signals, what kind of value would you give it, marketplace value?

THE WITNESS: Most of the programs in our list can be characterized, in terms of marketplace value, along those three dimensions that I mentioned earlier. I think the programs are unique, they have some regional interest, and again, largely the number of titles would indicate a strong emphasis towards sports programming. Those are

three dimensions that I think are important, in terms of assessing marketplace value for the bulk of the programs.

WPIX programming that you are discussing now is, I think, of a qualitatively different nature than the other kinds of programs, to some extent. Particularly, with respect to the regional aspect of it. Certainly it receives -- those programs receive broad distribution, indicating -- much broader than any one particular region's interest, but --

CHAIRMAN RAY: So, are you telling me then-- you have already indicated and we know NAB's position, and we know the CRT's position on viewership. But are you saying that the number of viewership -- the viewership is not that important in deciding what the award should be?

In other words, if you have a popular regional program, naturally it doesn't have the viewership of a popular national distant signal. So you are saying in evaluating these programs, there should be no difference in the award?

THE WITNESS: The issue of using viewership as a measurement, or a criteria of marketplace value is something I don't think has validity.

CHAIRMAN RAY: All right, but let me ask it this way, the number of systems, cable systems that will pick up a program, is that any indication of the value of that

program to cable?

In other words, if there are five cable systems, regionally they will pick it up, right?

Now, if that program was so popular in that region that five cable systems in an area distant from that regional district picks it up, would that give an indication that the program had a little bit more value to cable systems?

THE WITNESS: Mr. Chairman, I would say that, speaking as a person who used to program --

CHAIRMAN RAY: That's why I am asking you.

THE WITNESS: -- local cable systems, or a local cable system, I would make my decision whether or not to carry a particular program, on what I thought its appeal would be to our subscribers, again, based on our own system research and from subscriber phone calls.

So my decision to accept -- to have a program go through our cable system would reflect my judgment as a cable programmer to say it has value. If that happens a number of times throughout a region, I would say that that would be fairly indicative that a number of cable systems place value on that kind of program.

CHAIRMAN RAY: Then if it would happen in another region, 2,000 miles away, then you would really say it had value, or would you say that?

THE WITNESS: I would say clearly that it had value in more than one region.

CHAIRMAN RAY: Okay, thank you. I won't pursue it any further.

COMMISSIONER ARGETSINGER: You were starting to say you would give an answer why, I think you were saying viewership is not valid because -- and then you went off to something else. Were you going to give a reason why? Perhaps this is your reason, what you just said.

THE WITNESS: Mr. Commissioner, the marketplace value is not couched, I don't think, on measurements of viewing. There is -- I guess one of the most common criticisms of viewing as a proxy measure, or an approximation of what marketplace value might be, is viewing data, the amount of viewing is totally insensitive to intensity of preference.

And that has been one of the traditional criticisms of linking viewing to some concept of measuring value, which means that an example -- somebody might watch ten hours on one kind of programming, and one hour of another kind of programming, but given their choice, far prefer, have a much stronger intensity of preference for that one hour programming.

So it is not, in my experience, and in my research, I don't see that that viewing is a very good

assessment of value, from the cable operator's perspective, in a distant signal marketplace.

COMMISSIONER ARGETSINGER: What useful tool can you provide us to give some objective standard?

THE WITNESS: Well, I think in terms of a useful tool, the basis of our testimony really is characterizing the programming, providing descriptions and general categories, the dimensions that I think are very important in assessing how the distributions should be made.

Again, I would fall back on what I think are important measures of marketplace value, in general for our programs: the regional appeal, the unique value of the programming, and the heavy emphasis on sports programming, which has an intense appeal cable subscribers, and presumably, therefore the operators serving those subscribers.

COMMISSIONER ARGETSINGER: And you are saying the great bulk of your programming fits into that category?

THE WITNESS: Yes.

COMMISSIONER ARGETSINGER: It is not a rerun?

THE WITNESS: That's correct.

BY MR. STEWART:

Q Moving back to page 13, I guess, you were on, Children's Programs?

A The category beginning on page 13, Documentary and Instructional Programs, and there is a couple of items here, a couple of programs I would like to highlight. The KCBS, the CBS O and O, Breast Cancer, My Body, My Life, obviously a very important topic to a large portion of the public. KCST, and WJBK cooperatively produced programs about medical science topics. And based on the information they have provided to us, this would include topics such as laser, neuro-surgery, and emergency angioplasty.

On page 14 of my statement, a couple more examples in this programming genre, the second bullet from the top there, WCCO in Minneapolis, Minnesota. And I guess this would be an example of a program that has regional interest, but in more than one region. A couple of programs into the list, The I-Team, State of Texas, that was a special documentary produced about an innocent prisoner, and that program was produced by a Minneapolis, Minnesota station, but given its topic, its content, it was picked up by Texas stations.

And the program produced by WSB in Atlanta, Georgia, the last program in this list, The Boy King, a documentary about Dr. Martin Luther King. And this would again be an example of a program that has value in more than just one region. This program is fairly widely

distributed. But I think it is a fairly unique kind of documentary, relevant to other kinds of program lists.

Q Why don't you just keep going on the summary level, and review the other categories listed here?

A The next category on page 14, beginning about halfway down the page of my statement: Parades, Pageants and Special Events. And for each program provided, the carrying station again, and some brief indication of what the nature of the program was.

On page 15, Political Programs, programs featuring important debates and political discussions. And here I would indicate that these programs, these political programs would not just be of -- are not of the paid political advertisement kind of programming. These are significant program productions dealing with serious topics.

KNBC, the second example in this category, Kansas City, Missouri, the US Senate debate pitting "Kip" Bond against Harriet Woods. KTSP, the next example, the Phoenix, Arizona station covering the gubernatorial debates in 1986, and the Senate debates in 1986.

COMMISSIONER ARGETSINGER: Dr. Ducey, you are talking about these programs, and I have turned to Exhibit 2, is there any particular sequence that I can find -- I find them by random. Maybe there is a sequence, and I am

missing it.

THE WITNESS: I'm sorry, the sequence is, in Exhibit II-2, the Series occur first; and then the individual programs, within each of those categories, within the Series programs the programs are arranged by the producing station, alphabetically.

COMMISSIONER ARGETSINGER: Alphabetically, okay.

THE WITNESS: So it is two sets of alphabetical lists, for Series and for Specials. Excuse me, I should have identified that earlier.

COMMISSIONER ARGETSINGER: I should have figured that out.

BY MR. STEWART:

Q And finally, the last category?

A The Entertainment, Talk Specials. Reading through the list here, you can see that there are award shows and special shows, private -- Public Woman, Private Men, KDKA. Entertainment specials featuring well known people like Juice Newton and Marie Osmond.

Q Now, over on pages 16 and 17, you describe the analysis that we have already discussed here, you indicate where these programs are available only by distant signal. Did you only do that analysis with respect to Coaches Shows?

A No, I did some other analyses. The Jerry

Claiborne Show and The Jim Valvano, and the Dick Sheridan Shows are described, that those are available only on a distant signal basis to cable subscribers, in some circumstances identifying the communities.

There is another example I might offer here, the Face The State, news-interview program, which was produced by KTVQ and KPAX in Montana. Face The State, that program was available to cable subscribers in Kalispell and Williston, Montana, only via distant signal.

MR. STEWART: Mr. Chairman, I would say that if the Tribunal is concerned with Form 3 cable carriage by those stations carrying, NAB would be happy to provide the list of distant Form 3 carriage.

CHAIRMAN RAY: Would you please do that for the record, and make sure that the other parties have copies of that?

MR. STEWART: Yes, sir.

BY MR. STEWART:

Q Now, Dr. Ducey, you have discussed your views on marketplace value, but let's just summarize, what is your opinion about the marketplace value in the cable distant signal marketplace in 1986, of the programs listed in Exhibit II-2?

A Looking at the 1986 programs, I think that they have substantial marketplace value.

Q And what do you base that opinion on?

A My opinion is based on experience, having served as a cable programming manager, and in dealing with a lot of subscriber communications, letters and telephone calls -- it was part of my job to respond to these people, talk to these people on the phone. I got a very strong sense of the kinds of preferences they have in programming. And the somewhat interesting opportunity being a cable programming manager, during a time when the old SYNDEX rules were in effect, had the chance to deal with things on a very program-specific basis -- people generally think of television in terms of a station-wide, or channel-wide basis.

But dealing with individual programs you can see very clearly the relationship between subscribers' valuations of different programming and the kind of programming involved. And generally speaking, the things I draw from my experience and my research are cable subscribers value very highly variety, things that are very unique, sports programming, and things that are meaningful to them on a regional basis.

CHAIRMAN RAY: But, Doctor, on a comparative basis, from your experience and your research, if a subscriber had to make a choice between the movies and between the syndicated series, do you have any information

for us as to what you think that choice would be, if they had a choice between a channel with regional -- these regional programs that you have, compared to the movies and syndicated series? What do you think the result would have been?

THE WITNESS: Mr. Chairman, I assume you are speaking of a question that would be answered empirically, possibly by looking at viewing data -- how many viewers-- how many subscribers make the decision to view one kind of program versus another kind of program?

Or are you asking me to make a judgment --

CHAIRMAN RAY: What I am saying, we have to make comparative evaluations.

THE WITNESS: Yes.

CHAIRMAN RAY: From what you have told me in your experience, you didn't have to make those kinds of decisions -- well, you did have to make it for syndicated exclusivity and for its replacement.

THE WITNESS: Yes.

CHAIRMAN RAY: But the information that you got from your subscribers, they knew they had their movie channel, they knew they had their series channel. Were they just looking for other types of unique, diverse programming? How did you work from a comparative standpoint?

THE WITNESS: Well, Mr. Chairman, maybe this would be a satisfactory way for me to answer the question.

CHAIRMAN RAY: Okay.

THE WITNESS: As a cable programming manager, what I would do, in terms of selecting replacement programming for blacked out signals, because of local stations asking for protection on some of the distant signal programming we received -- the task I faced very often was what do I replace that blacked out signal with, what kind of programming. And I think this is the correct analogy to answer your question.

What I would do is see what was already available on the cable system. We carried the local stations, we carried some distant signals, not all of the distant signals at any particular time had to be blacked out. So, looking at the range of programming available, my job was basically to see what the local stations had programmed, what the distant signals we had on our cable system had programmed, and then see of those distant signals, what programs I had to black out for SYNDEX protection.

Then a third group of stations, we weren't allowed to carry all of the stations we wanted to, we could only carry a certain number of stations on a distant signal basis. Looking at the stations that were sort of

our reserve pool of stations, in my capacity as a programming manager, I received the program listings for all of those stations.

And my job involved going through those program listings and on those two inputs I mentioned earlier, our marketing research and cable subscribers, and cable subscriber communications, telephone or mail, look through that range of programming available on stations in our sort of reserved pile, and cherry pick, pick out programs that were of greatest interest to the subscribers.

And I would assess greatest interest by, again, those three criteria: if it is unique -- if I had a chance to replace, say, M*A*S*H was on, a local station had M*A*S*H, so I would black out M*A*S*H on the distant imported station, which tragedy would I use to replace that blacked out M*A*S*H program?

Well, M*A*S*H is a widely available kind of program and it is going to be around for a long time to come in the rerun market. Is that something that a cable subscriber -- one of my cable subscribers would value, or would they rather see some coach's show?

I mean, people graduated from schools and move all around the country, does it have strong regional appeal? And if I had the chance to pick up a coach's show versus another rerun, situation comedy, the coach's show,

I would think would have the greater appeal to the subscriber.

COMMISSIONER ARGETSINGER: Because it was unique?

THE WITNESS: Yes, exactly.

CHAIRMAN RAY: Well, Mr. Ducey, the reason we are asking you so many questions, at least the reason I am asking you, is that you are new, a new witness, and we are anxious to get new insight into the problem.

Thank you.

THE WITNESS: Well, I am very pleased to be able to be here in this capacity.

CHAIRMAN RAY: Thank you.

COMMISSIONER ARGETSINGER: The other witnesses have heard every question we can ask.

(Laughter)

CHAIRMAN RAY: And we have heard every answer they can come up with.

COMMISSIONER ARGETSINGER: They are prepared to evade or deflect.

BY MR. STEWART:

Q Are there any other considerations that you think the Tribunal should take into account in deciding on an award to NAB-represented program suppliers?

A Well, there is one thing that really might not

have come out of this discussion fully. And that is the sense that given the kinds of programs on our list, that have certain appeal, certain element of marketplace value, to encourage that kind of programming the Tribunal, in its decisionmaking about what distribution to award, might bear in might that that decision is going to have on encouraging further production of these kinds of shows.

And there is a couple of thoughts there I would like to pursue. One thought is that this kind of programming is rewarded for its marketplace value, which in my experience, I think the programming certainly does have. And I think we try to argue that in our case we prepared.

It would be great, I think, if that marketplace value is recognized and it would encourage the production of more such programming.

So, if that is something that cable subscribers and cable operators value, which I argue it does, in the distribution award, if that could be considered, I think that would be important. And it is not just the production of more such programs, looking at the example of WPIX, from a fairly humble start of -- as I believe John Cochran testified in 1984 -- starting from a relatively small base, WPIX came up with this idea for an independent news counter-programming kind of strategy, starting off with

just a couple dozen affiliate stations, then the program was syndicated, and it has grown to become widely available now.

And that program started from a relatively small basis, and now it is broadly appealing to wide ranging. That is one kind of an example, but also, that program spawned different kinds of programs, more news programmings, which WPIX also syndicates now: The Christian Science Monitor, From the Editor's Desk.

So by encouraging and recognizing the marketplace value of this kind of programming, it will get more stations more programming in that genre, and more different kinds of programming. Again, encouraging growth and unique and variety.

Q I don't ask you to repeat the discussion you had with Commissioner Argetsinger about viewing as an appropriate basis for measuring marketplace value, but beyond that, do you think that the Tribunal should base its award to NAB-represented program suppliers on the MPAA Viewing Study in this case?

A I don't, no.

Q For what reason?

A I have two reasons. One reason is conceptual in nature, and the other reason is methodological in nature. The conceptual reason is the reason I spent sometime

discussing here, I don't find the premise that viewing, quantity of viewing is an assessment of marketplace value to be valid. I don't think that viewing does represent marketplace value. That's my conceptual difference with using the MPAA Viewing Study as a measure of marketplace value.

And the second area of difficulty I have with accepting the MPAA Viewing Study is methodological. And there are a number of different examples that I think have been put into the record in the past about methodological concerns with the study. For example, some of the programs may be carried on stations programming them outside the sweep periods.

Our list of programs carried on the stations in Exhibit II-2 reviews the bolding highlight of those stations which don't even have the opportunity to be included in the MPAA Viewing Study.

And then there are other kinds of things, like it may have been programmed, but within -- a program may have been fortunate enough to have been on a station that happened to be in the MPAA Viewing Study. A program may have been lucky enough to have been on such a station, which was lucky enough to have been included in the study, but may or may not have been programmed during one of those sweep periods.

And you can build that back up again, a program may or may not have been lucky enough to have been on a program -- on a station that happened to have been picked up by the viewing study, that happened to have been scheduled during a sweep week.

Then starting again from the beginning, a program may have been lucky enough to have been picked up by a station that happened to have been picked up by the MPAA Viewing Study, which happened to have scheduled that program during a sweep week, which may, or may not have achieved a minimum viewing level to be reported in that study.

So, I think you can see there is a whole string of obstacles, methodologically speaking, which works against having one of our programs appear in that study.

COMMISSIONER ARGETSINGER: On that point, wouldn't you think that all parties are hurt equally by that lack of being included in the sweep periods?

THE WITNESS: In general, the principle would hold, I guess, certainly.

COMMISSIONER ARGETSINGER: Would a smaller party though be more prejudiced, or not, or would it be a wash?

THE WITNESS: A smaller party, in terms of --

COMMISSIONER ARGETSINGER: Smaller number of programs?

THE WITNESS: There are several layers of factors there. Depending on whether or not they fall into one of the stations that happens to be in the study, that happens to program during one of those sweep periods, depending upon whether that program happens to be on that station, happens to be scheduled during a sweep period, happens to have the minimum viewing criteria

My answer to that question, I think would involve some decisions on what happens in each of those levels. And theoretically, I think the answer would be yes, it could happen that way.

COMMISSIONER ARGETSINGER: I suppose a claimant who had many, many programs, there would be a tendency to wash out, is that what you are saying?

THE WITNESS: Well, I don't know if that is true. If, for some reason there was a symptomatic reason that all of the programs got scheduled outside the sweep weeks, that it would not be a wash. It would be devastating.

If, on balance, some of the programs were scheduled in the sweep weeks, some of the programs are on stations that happen to be in the viewing study, I don't know that it is a wash. I don't know how to make that judgment without seeing some more data, I can't make that judgment. I don't see the generality there. It could

happen that way, but I can't see that that is a likely case, necessarily.

CHAIRMAN RAY: But, Dr. Ducey, are you aware that the CRT uses other criteria?

THE WITNESS: Yes, Mr. Chairman, I am aware of that.

CHAIRMAN RAY: And you understand that we use this as a starting point.

Do you have any suggestions? No other party has given us the kinds of information as to even where these programs have been carried in distant that you are giving us now, and into a distant market. And we have no idea of the incidence of carriage. This is why, except for the Nielsen Reports.

So, what would you substitute for that?

THE WITNESS: Well, looking back at what I was reviewing earlier CRT proceedings, my impression of what NAB's task was to do, to establish support for its claim, was to demonstrate marketplace value. And, again, in my experience and in my judgment, the key criteria for establishing marketplace value, or one of the things I have been discussing, the uniqueness, the variety, --

CHAIRMAN RAY: Well, first you have to demonstrate carriage, don't you?

THE WITNESS: You have to demonstrate carriage

to establish --

CHAIRMAN RAY: Into distant markets, for us, I mean.

THE WITNESS: Well, I think I agree with that premise, you do have to demonstrate carriage, and as I have testified, each of these programs --

CHAIRMAN RAY: Yes, I said you are doing this, but not to the degree that the Nielsen Study does.

THE WITNESS: Not to the degree the MPAA-Nielsen Study quantifies viewing as a measure of something.

CHAIRMAN RAY: Incidental carriage of viewing, yes.

Well, anyway, thank you very much for your answer.

BY MR. STEWART:

Q If a station carried programming on a strip basis five days a week, throughout the year, do you think it is more likely that it would have a chance of showing up in the MPAA survey, than a program that is not carried five days a week throughout the year?

A Assuming that strip programming is carried on a station that happens to be selected for the MPAA study, clearly the answer is yes.

Q Do you know what proportion of the programs listed in Exhibit II-2 could not have appeared in the MPAA

study under any circumstances?

A I believe it is about half of the programs that have appeared in the MPAA Viewing Study.

Q And how can you tell that from the exhibit?

A Well, if you go through and look at the stations listed in that last column, if the station list is in all boldface, that program could not have been carried by the MPAA -- would not appear in the MPAA study.

On page 1 of Exhibit II-2, program No. 11, for example, KPTM's production of the Tom Osborne Show, the three stations carrying that all are designated in boldface, those three stations could not have appeared in the 1986 MPAA study. But I would even go beyond that, too, if you again think back to that chain of probability to be included in the study I constructed, between whether or not it is carried on a station, whether or not it is a program in one of those sweep weeks, and so on. If you go to the first program listed in Exhibit II-2, KCNC's production of the Dan Reeves Show, in reviewing that station list, three of those four stations are in boldface, meaning that three of those four stations do not have a chance to be in that study.

So about half of the shows don't have any chance at all. But just by inspection, walking through this list, you can see that the chances of the remaining half

of the programs is not necessarily that good either, to be included in the MPAA study.

MR. STEWART: Thank you. I have no further questions on direct.

CHAIRMAN RAY: Why don't we have a break for about ten minutes, and then we will do the cross?

(Whereupon, a short recess was taken)

CHAIRMAN RAY: Back on the record.

Mr. Lane?

CROSS-EXAMINATION

BY MR. LANE:

Q Dr. Ducey, would you turn to the last page of your exhibits, that is page 20?

A (Perusing documents) This is of Exhibit II-2?

Q Right. Do you have that?

A Yes, I do.

Q Now, your answers this morning, as I understand it, have repeatedly stated that each program has been carried on a distant signal, correct?

A That's correct.

Q So that, sticking with our favorite, Redskins Special, we know for certain, because you have not bold-- put in bold WTTG, therefore, WTTG is in the sample -- that Redskins Special was carried on a distant signal, correct?

A Yes.

Q Now the question that I have, and I believe that the commissioners have, is if I looked to WRLH, forgot about WTTG -- pretend that is not in the list -- do I know that Redskins Special was carried as a distant signal on WRLH? I should say "Do I know", because I don't know, do you know?

A The question is do I know if WRLH was carried on a distant signal basis by a cable system?

Q Correct.

A Yes.

Q You know that. Do you know whether the Redskins Special in 1986, was only carried on five stations?

A I know that is what it said in the questionnaires we received back, that from WTTG, these five stations were indicated on the questionnaire. So on that basis, I concluded that five stations carried the Redskins Special.

Q Well, I am sure that is what you concluded. Do you know whether more stations carried that?

A I can -- well, I can go back to my previous answer, the questionnaire indicates that from WTTG the five stations carried it. And my conclusion is that five stations carried the Redskins Special.

Q Does this -- just sticking with this one, does this exhibit purport to state that only the stations that

were carried on distant signals, that showed Redskins Special, are listed here?

A The exhibit states that these five stations carried it. It doesn't state whether more, or less than these five stations carried it.

Q So we don't know whether other stations carried this, but they just didn't happen to have any distant signal carriage, right?

A I suppose that is correct, we don't know about it.

Q And we don't know the markets that those other stations that aren't listed here, are in, do we?

A Assuming --

Q From your exhibit?

A Assuming that the situation you presented and the premises of the follow up question is correct, then the follow up premise is correct.

Q So we don't know, as you stated -- you stated earlier that the Redskins are popular in this entire region, correct?

A That's correct.

Q And that they are carried on a number of stations -- wouldn't it follow -- I believe I just read that WMAL has something -- just signed a new network for the radio, that is something like 83 stations. Have you

read anything about that?

A I am not familiar with that.

Q In fact, doesn't it surprise you that with this wide spread interest in the Redskins, that only five stations would carry it?

A In the implication of your question is that 83 radio stations is a much larger number than five TV stations --

Q No, if that is the implication, I don't mean that at all. I just was pointing out an entirely different situation, in radio there seems to be a very large number of stations, much larger than five. But I divorce that.

MR. STEWART: Objection. Is this the Redskins program that you are talking about, or the actual game? And are you talking about whether the game was -- the Redskins games were syndicated, which is not a part of this exhibit?

MR. LANE: Well, John, since I know that the games are carried on network stations, and I know that network programming is not --

MR. STEWART: I would object to this line of questioning. He's premised this on a radio network of live telecasts of sports games, not the Redskins Special television program, or even a comparable radio program.

And I don't see how that is relevant.

MR. LANE: Mr. Chairman, the implication that was suggested by the witness, I apologize, that was not the implication that I was trying to draw. I was trying to draw on his earlier comments, which the witness made, that the Redskins are very popular, not only in this area, but I believe he said throughout the Southeast.

And I am trying to explore that, if that premise is correct, wouldn't he expect it to be carried on more stations in that area, more television stations.

CHAIRMAN RAY: Your objection?

MR. STEWART: My objection is simply premising questions on the live telecasts of the games, which are different from the program he is talking about here. And he has presented evidence about here.

COMMISSIONER ARGETSINGER: Is your objection--does it still stand, after the explanation?

MR. STEWART: As long as the premise is clear, then I don't object to the witness answering.

CHAIRMAN RAY: Well, would you please answer?

THE WITNESS: Sure. The number of stations carrying a program, five, is -- I guess I would say it does not surprise me that it is not more stations.

BY MR. LANE:

Q And why is that?

A The TV stations have a much broader coverage area in their area, and then to be retransmitted on a channel system, it extends the area in which that programming is available. So it is not a clear cut conclusion, I would think, to look at the number of TV stations and conclude that it has more, or less appeal, based just upon the number of TV stations listed, as the only criterion for that judgment.

Q So is it your testimony that a station -- a program could be carried on one station, and have more appeal than a program carried on 20 stations, if the circumstances are appropriate?

A You are asking me if a program carried on one station could possibly have more appeal, than any program carried on 20 stations?

Q Correct.

A You would have to define for me first what you mean by appeal?

Q Marketplace value, as you define it in your testimony.

A (Pause) A program carried on one station might have -- it would depend upon the individual program. It would be hard for me to make that judgment. A program carried on one station may have identical appeal, using the criteria I have suggested for assessing marketplace

value, or depending upon the individual program, it could have more or less appeal, I suppose, as opposed to a program carried on 20 stations.

Q So that just by looking at the number of stations, we could not tell what the marketplace value of a particular program is, could we?

A The criteria I have suggested for assessing-- helping to assess marketplace value did not include the number of stations. I would say looking at the number of stations is a relevant kind of -- a relevant piece of information, but that is not what I am suggesting would be the major components of marketplace value for assessing these programs.

Q So we could ignore the last column in your exhibits, for purposes of defining marketplace value?

A Well, the marketplace value we are thinking of is the distant signal marketplace. That last column establishes that these programs are carried on a distant signal basis, which I think is central to the exhibits. I would not exclude the fourth column.

Q Well, let me ask you it this way, if we knew a program were carried on one station -- could we say a program carried on one station that is retransmitted as a distant basis has more value than a program carried on four stations that are retransmitted on a distant basis,

or five programs?

A Can we say that a program carried on one station has --

Q More value, less value?

A Than a program carried by four stations?

Q Yes.

A I would just refer back to my earlier answer, switching from one station to 20 stations, I think that same answer holds, whether it is one station, compared to four stations.

Q Uh-huh. So, for example, the fact that Cherry Blossom Parade is carried by three stations --

A You are referring to program No. 139?

Q 139, correct. And program 140, Redskins Special, is carried by five stations, we can't say that the marketplace value of Cherry Blossom Parade is less than that of Redskins Special, can we, under the way you have just defined --

A I would not make that conclusion that we could say it is less value.

Q Now, this sort of draws me into some questioning that Commissioner Ray asked you about INN News. Would you refer to page 16 of your written testimony, please?

A (Perusing document) Yes, I have it.

Q Do you see in the first full paragraph that you

talk about INN News having very -- and I am quoting here, "Very broad appeal and broad distribution"?

A Yes, I do see that.

Q And is that type of very broad appeal, in your view, qualitatively different from the strong appeal to cable operators and subscribers within a particular state and region, in which they are transmitted, that is referred to two lines below that?

A Yes.

Q And would you say that INN is very -- I don't know how to put this -- is very broad, means it has more appeal than those programs?

A It depends what you mean by "more". When you say more appeal, how are you quantifying appeal?

Q I am just using the words in your testimony, and you can tell me however you want to define it, as you have stated it, and written it in your testimony.

A Okay, that's fine. I would say that broad appeal is a different concept than regional appeal. But I don't know that I would try to rank order broad appeal versus regional appeal. It is sort of -- ends of the same continuum, you can't really say one is more than the other, or one is less than the other. It is qualitatively different kinds of appeal.

Q Let's assume for a moment that MPAA took its

over 6,000 programs and sent out a questionnaire, similar to yours and got a list of stations for all of the programs, whatever it would be. And then we presented that into evidence, and Multimedia did the same thing, we all had evidence just like what you have in the back, in your two exhibits. And that was the only thing in front of the Tribunal.

How would you compare those various lists of stations and programs?

MR. STEWART: Objection. Mr. Lane has precluded this witness from testifying about what he refers to as the "over 6,000 programs". Unless we are going to let this witness look at the 1986 list --

MR. LANE: I will withdraw the reference to the 6,000 programs, and say whatever number of programs we have, we presented a list, and next to it we had the originating -- well, we wouldn't have the originating station, because we would all have producers and syndicators. But we would have this list, stations carrying programs.

So there is this list, and there is your list, and Multimedia has the same list. And we all came in together. That was the only evidence.

BY MR. LANE:

Q How would you go about weighing those?

A Are you speaking of -- well, I suppose in an ideal world, one would have some measure of, or measures of marketplace value for each of the individual programs, whatever number of programs there are.

Q Let's assume it is not an ideal world, and all we have is the parties lists, what do we do then?

A If it is -- in preparing the NAB exhibits, the goal there has been to outline important dimensions of what I think are marketplace values in the distant signal marketplace. That's the point of this. And given NAB's claim in this proceeding, the goal was to maintain at least the level of award that we have received most often in the past. That was the intent of the preparation of our exhibits, to demonstrate on a qualitative basis marketplace appeal, which is what the Tribunal has asked for in the past.

Q Well, do you know how the number -- first of all, do you know many different stations are included in your two exhibits?

A I don't have the exact number.

Q Do you have a ballpark number?

MR. STEWART: Would you want him to count them? Or would you like to count them?

MR. LANE: If you know it, I would love it, the different stations?

MR. STEWART: You could count from the exhibit.

THE WITNESS: From II-2?

BY MR. LANE:

Q I am talking about in the -- I would love you to count, but I think we have a limited -- I am talking about in the right-hand column, Stations Carrying Programs, the number of different stations. I just want to know if you know that, if you don't I will --

A I don't know the exact number, no.

Q Do you know roughly how many there are?

A Oh, dozens.

Q Do you know how many -- forgetting about different stations, how many entries are in that column?

A I don't know the exact number of entries in column four.

CHAIRMAN RAY: If you know, Mr. Lane, would you please tell us?

MR. LANE: I was hoping he would know, that's why I asked the question.

CHAIRMAN RAY: Well, we would not like to take the time in this proceeding to calculate that.

MR. LANE: I think to do the number of different stations, you probably couldn't do it, unless you had a computer, or something that would sort it, because --

MR. STEWART: Or my calculator.

MR. LANE: Yes, or John's calculator.

Well, it has done amazing things before, John, so --

MR. STEWART: Yes, I know.

BY MR. LANE:

Q One other point that I was unclear on, and I am just focusing you again on this Station Carrying Program column. At one point I thought you said this morning-- and I must admit it confused me, because I didn't think that is what you had stated earlier.

Do you know that all of these stations were carried by Form 3 cable systems?

A I know whether they were carried by Form 3 cable systems.

Q You do, and how is that -- I'm sorry, you do know?

A Yes, I do know.

Q And that is the list that -- that isn't all of the programs, I mean, all of the stations that are listed in this column, I take it?

A There are more than just stations carried on Form 3 systems listed in column four.

Q Do you know how many of these stations are carried just on Form 3 systems?

A I don't have the exact number, but the vast

majority of stations are carried on Form 3 systems as distant signals.

CHAIRMAN RAY: Is it possible to do that?

MR. STEWART: Yes, we will provide that.

BY MR. LANE:

Q The vast majority of these stations are carried by Form 3 systems?

A That's correct.

Q You referred this morning, on page one of your exhibits, to the Tom Osborne Show, correct?

A Page one of Exhibit II-2?

Q There is only one page one of both of your exhibit --

MR. STEWART: Are you talking about II-2?

MR. LANE: Right.

THE WITNESS: Program No. 11 on Exhibit II-2?

BY MR. LANE:

Q Correct.

A The Tom Osborne Show, yes, I see that.

Q And do you know whether any of those stations were carried as a Form 3 system, for example?

A Not offhand.

Q How did you determine what type of systems carried these stations on a distant basis?

A Using data supplied from a vendor, Larson Data.

Q Did your question to the stations -- I'm sorry, I should just look at your exhibit -- would you look at Exhibit II-1, please?

A (Perusing documents) Okay, I have that.

Q Now, did you draft this questionnaire?

A Pardon me?

Q Did you draft this questionnaire?

A This is a questionnaire that basically NAB has been using for a number of years, and we have used basically the same form throughout.

Q Did you review it? You haven't been involved in this proceeding throughout -- I mean, involved in this process throughout the whole long history of these distribution proceedings, have you?

A I have not, that's true.

Q And so when you first saw this questionnaire, did you review it, and kind of give it your professional once-over?

A Yes.

Q And you had no problems with the way it was worded, or the information it sought for the task?

A That's correct.

Q And what did you expect the station to put down, all the stations that carried each program it listed, whether they were distant signal, or not distant signal?

A Well, just following through the set of instructions provided, one, two, three -- at the top of the exhibit, all of those criteria, I would have expected to have been met. In order to be listed, all of those criteria would have been met.

Q And so the questionnaire, as I read it, does not ask the station to make any judgment about distant signal carriage, does it?

A The questionnaire does not ask the station to make that judgment.

Q And who made the judgment about distant signal carriage?

A I did, or supervised a procedure by which that decision was made.

Q And could you describe that procedure, please?

A Using the source of data from the vendor, the Larson, that would list programs that were carried on a distant signal basis by Form 3 systems, and then using the CRT claim forms, and other available industry sources, ascertained whether the remaining programs were on cable systems on a distant signal basis. And then that would be -- Form 1, or Form 2 cable systems.

Q So, let me understand this, do you have data from Larson that is a listing by programs, and you went down, and if you saw the Dan Reeves Show, that program was

then assumed to be on distant signal carriage, and then you went on to the next program, is that how you did it?

A The stations were listed as being carried on just the linkage of programs and the stations with Larson. I was able to determine whether or not that was carried, the station was carried on a Form 3 system.

Q Let me ask you this, did you use an alphabetical listing of call letters, or did you use a listing of programs? How was the listing, whatever you used, grouped?

A We have -- I am not sure I recall that specific detail. We had data broken out in various ways, from different vendors, different sources. But the essential point in my mind is that we were able to verify whether these stations were carried on Form 3 systems, on a distant signal basis, or on a local signal basis.

Q Let's assume that it didn't show up on the Form 3s, how did you make a decision for the Form 1's and 2's that it was distant signal, not local?

A Well, going through in some detail the operational procedures, if it was not -- if the station was not listed as being carried on a Form 3 system, on a distant signal basis, again, using the claim forms, and some other sources, the TV Digest, Cable TV Atlas, for example, went through and identified which cable systems

carried the station. And then looked through that cable system in the community, or the county that that cable system was located in, to determine what off-air channels were significantly viewed.

If a station was carried by that cable system, which was not listed in the Form 3 listed cable systems, and therefore, was a Form 1, or Form 2 cable system. If the station was listed there, then the next check was to see what off-air stations carried the program.

If there is no station on an off-air basis that carried the program, that would have put a signal over that cable community, that was significantly viewed, then there would be no local station that would have it. So that station that we were checking on would be carried-- if that station that we were checking on is not significantly viewed in the county, then it would be a distant signal, not a local, must-carry signal.

Q Did you make any check -- are you aware that systems file statements on a semi-annual basis?

MR. STEWART: File statements where?

MR. LANE: Copyright Office, Statements of Account?

THE WITNESS: Yes, I am sure they are aware of that process.

BY MR. LANE:

Q And did you -- a large majority, in number-- not a large majority, but the majority of these are Specials, correct, of the programs on your two exhibits?

A Yes, by our definition, they don't fall into our definition of Series, which we define as ten or more episodes of a program.

Q Did you check to ascertain whether these programs -- whether the stations were carried in the same period that the program ran? That is, if a program ran during the first six months, but the station was not carried by the system during those six months -- did you check that, or just on a whole year basis?

A The procedure was to check both sets of data for both filings, in the Statements of Accounts.

Q And if you found it on either one, you would count it as a distant signal carriage, is that correct?

A If the station appeared as being listed as a distant signal, on a Form 3 system in that data base, yes.

CHAIRMAN RAY: Mr. Lane, about how much more time do you need?

MR. LANE: I think I am going to be like Mr. Stewart, and probably if I had a lunch break, it will be shorter than if I keep going on.

CHAIRMAN RAY: Okay.

Ms. Ianniello, do you have --

MS. IANNIELLO: I don't think I am going to have any questions.

CHAIRMAN RAY: Well, then let's take a break and come back at 2:00 o'clock.

Did you say that you would prefer a lunch break?

MR. LANE: I think it is going to come down to that. It will be longer -- I think I will try to organize it, and it will seem like, gee, why didn't we stay, and not take the lunch break.

COMMISSIONER ARGETSINGER: So it will be shorter, if we take a lunch break?

MR. LANE: It may be longer, whatever you want.

CHAIRMAN RAY: So we will take a lunch break.

Mr. Stewart, is that okay?

MR. STEWART: Yes.

CHAIRMAN RAY: We will take a break then.

(Whereupon, at 12:30 p.m., the luncheon recess was taken, to reconvene at 2:00 p.m.)

AFTERNOON SESSION

(2:03 p.m.)

CHAIRMAN RAY: Mr. Lane?

MR. LANE: Thank you.

BY MR. LANE:

Q Mr. Ducey, how do you resolve questions where two claimants would be involved in claiming for the same program?

A Would you give me an example of that.

Q Well, there are certain programs on your list that also -- let's take -- well, I'll give you a good example -- Cumberland College Choir. Do you know -- why did you exclude that from your list -- wherever that is.

MR. STEWART: On page 13 of Exhibit II-2.

THE WITNESS: That was -- that's a program that was claimed by another party in this proceeding, Multimedia.

BY MR. LANE:

Q And do you have a decisionmaking process where you decide that one claimant versus another has a better claim or a prior claim to a program?

A Well, generally speaking, our goal has been to present a conservative view of the programs that can be on our list. So, we have programs on our list that remain on

the list, that we have unequivocal authority to make the claim for.

Q So, is it your testimony that all the programs that are now on the list as corrected, you have unequivocal authority to claim?

A Yes, to my knowledge.

Q Just staying on page 13, is WCBS in Chicago, Illinois?

A No, it's not.

Q Did you review this exhibit carefully, to make sure --

A Not carefully enough, apparently.

Q Did you review the station listings to identify stations that were not -- call letters that did not represent stations in 1986?

A I think this is what you mean. The call letters we have were checked to see -- to verify they were valid call letters of on-air stations.

Q And what source did you use to check those?

A Broadcasting Yearbook and TV Fact Book.

Q Would you turn to page 2 and, specifically, item 12 -- let me ask you, is the 1987 Cable Television Coverage Atlas one of the books that you used to prepare this list?

A Yes, I believe it was.

Q And in the front of this book there is an alphabetical listing of call stations -- call letters, is there not?

MR. STEWART: The last question was, did he use this for the call signs?

MR. LANE: I asked him if he used -- was that one of the books that he used.

MR. STEWART: For the thing you asked him about before, or for some other purpose?

MR. LANE: I asked him if that was one of the books he used in putting together this exhibit.

MR. STEWART: Okay.

BY MR. LANE:

Q Is it correct there is an alphabetical listing of stations?

A That's correct.

Q And to follow up on Mr. Stewart's questions of me, is that the one that you used?

A We used several sources, as I said. Broadcasting Yearbook and TV Fact Book are among those. Channel Sources is for a number of different verification steps.

Q And do you have any reason to suspect that that particular alphabetical listing of call letters would be different from another 1987 listing?

A It's been my experience that different industry

sources, such as the ones we're talking about here, often have some inconsistencies in their listings.

Q Would you look in that source and tell me if you can find WAWA which you've listed under item 12?

A In the '87 Cable and Station Coverage Atlas?

Q Yes.

A (Perusing document) I don't find a listing here for WAWA.

Q Was that identified in the station -- that is, the originators' list of stations?

A Yes.

Q And I take it it's your testimony that you have independently, aside from looking in an alphabetical listing someplace, found that WAWA was carried in 1986 as a distant signal on some system?

A At least -- we're going to be producing an exhibit that will do that more specifically but, in general, the stations listed as carrying the program-- we'll be able to identify which of those were carried as a distant signal on a Form 3 system without -- or, therefore, either Form 1 or Form 2 systems. Without the benefit of that exhibit in front of me, I can't answer specifically for this station.

Q But I thought it was your testimony this morning that every single station on all these pages in your two

exhibits, was carried as a distant signal by one cable system.

A Correct.

MR. STEWART: Objection. Well, he's answered the question.

BY MR. LANE:

Q Are you saying now that you can't be assured of that until you have this further list?

A Perhaps I misunderstood the question. The statement -- I heard the statement that each of these stations was carried at least once as a distant signal.

Q And so that WAWA, according to the research done by you or under your supervision, was carried as a distant signal in 1986?

A Yes, to the best of my knowledge, yes.

Q Do you know how many times WAWA appears on this list?

A I haven't done that analysis.

Q Are you aware -- let me ask you this. What was the research done to assure yourself that the call letters represented stations in existence in 1986?

A Well, I think I've answered that. We verified the call letters with several industry sources. Ones that came to mind immediately, as I said, were Broadcasting Yearbook and TV Fact Book.

MR. LANE: Mr. Chairman, if I might ask counsel if there is some other source document in the room that the witness could look at for WAWA.

MR. STEWART: We're attempting to get additional source material. The witness testified as to the books he used. They weren't the book that Mr. Lane showed him, and we'll try to get to the bottom of this as we can, but the witness has testified, in general, what he's done, and I don't see the point in pursuing a single call sign.

CHAIRMAN RAY: Okay. Mr. Lane?

MR. LANE: I'll move to another area, in light of that.

BY MR. LANE:

Q I'd like to ask you some questions about some coaches' shows, and particularly on page 6 of your testimony, about the Hayden Fry Show. It also appears on page 2 of your Exhibit II-2.

Mr. Chairman, at this time, I'd like to introduce as MPAA/Program Suppliers' Exhibit 16-X, a one-page document from the 1987 Cable Atlas, and it is a map of Iowa, and it has the various contour lines.

(Whereupon, the document was marked for identification as MPAA/PS Exhibit No. 16-X.)

Are you familiar with these types of maps?

A Yes, in general, I am.

Q And you'll notice that I have circled each of the stations that you've identified as carrying the Hayden Fry Show. Could you verify that for me?

A Yes.

Q And looking at this exhibit -- and I think this follows up on a question that Commissioner Ray had -- when I look at this and I look at Iowa and I look where the contours are, I see that pretty much the whole state is covered -- that is, is reached by local stations that carry the Hayden Fry Program, would you agree with that?

A Yes, it looks like most of the state is covered.

Q Now, the state immediately to the west of Iowa is Nebraska, is it not?

A Yes, it is.

Q And you have listed on page 1 of your exhibit, at item 11(a), a program, the Tom Osborne Show, correct?

A Correct.

Q And he is the coach of the Nebraska football team, correct?

A Correct.

Q Now, first of all, do you know whether Iowa and Nebraska play in the same conference?

A I'm not much of a sports fan, I must confess.

Q Well, you know that Iowa plays in the Big Ten and Nebraska plays in the Big Eight?

A Yes, right.

Q So that they play in different conferences, correct?

A Yes.

Q And if I -- do you think it's much more likely that if I lived in Iowa, that I would probably be an Iowa fan and not a Nebraska fan --

COMMISSIONER AGUERO: It all depends.

MR. LANE: -- or if I lived in Nebraska --

COMMISSIONER AGUERO: I live in New York and I like the Boston Celtics.

(Laughter.)

MR. LANE: You've just never been to Iowa. You don't know how those -- they've got pigs and they've got the football team, and that's about it.

(Laughter.)

THE WITNESS: I think there is an interest regionally, for whatever the team is, but there's also an interest in other teams. People are attracted to winning teams, and that may or may not be the closest team.

For example, I stated earlier in this morning's testimony, the Kansas City station doing a special on the Chicago Bears. Obviously, there's great interest in

Kansas City with respect to the Chicago Bears, even though they have their own Kansas City Chiefs NFL team.

Sports tend to be of interest, but I'm not sure it's on the most nearby team basis.

BY MR. LANE:

Q Well, do you think that the interest of the Iowa people would be more in the Big Ten teams that they play and where they stand in the Big Ten Conference, and not in Nebraska or the Big Eight teams that they play?

A I would say, in general, that people who were interested in football, and in college football in particular, would be interested in Big Eight football and Big Ten football. So, I mean, I don't think interest in one works to exclude interest in the other.

Q Do you know how many cable systems outside of Iowa receive the Hayden Fry Show?

A How many cable systems receive the Hayden Fry Show -- you mean, from broadcast signals?

Q Yes.

A No, I don't know.

Q And if I were living in Iowa and I happen to be an Iowa fan and I wanted to watch the Hayden Fry Show, pretty much I could watch it over-the-air if I lived almost anywhere in the state, except for a few places, isn't that correct?

A Yes, it seems to be.

Q And do you know the Tom Osborne Show, where those particular stations that you've listed in your exhibit, what state they're in?

A I'd have to check. I don't know off-hand, without looking at the call letters.

Q Would it surprise you if they were all in Nebraska?

A Well, you're asking if all the call letters listed in column four beside program 18, if those were all in Nebraska would I be surprised?

Q Yes.

A I'm not real sure what basis to make that judgment on.

Q Well, I'll have to make a judgment.

MR. STEWART: I think the witness said all the programs listed opposite program 18 on this list were from Nebraska, and I think there may have been a misunderstanding when you said yes. That's the way I heard the question.

MR. LANE: I thought the question was about number 11, program number 11, if they were all in Nebraska, the Tom Osborne Show.

THE WITNESS: Oh, okay.

MR. LANE: Rather than make an exhibit, I'll

just ask you if that helps you (handing document).

THE WITNESS: (Perusing document) I see that these call letters that you've circled here have coverage patterns in Nebraska. In some cases, I'm not sure where the station actually is, but I'll take your word for it that it is in Nebraska.

BY MR. LANE:

Q And the examples that you listed in your testimony on pages 16 and 17, they were all -- in the case of the Jerry Claiborne, they were all Kentucky County.

A In that example, yes.

Q In all the cases for the Jim Valvano and Dick Sheridan Shows were all in North Carolina, correct?

A Yes, in that example -- those two examples.

Q Okay. If you'll turn to page 12 of your written testimony -- I'm sorry, I meant page 15. These are the political programs that you have identified. In these, for example, in Arizona you have one program that's a gubernatorial debate and the other that's a Senate debate. I assume these are debates among candidates for the Arizona Governorship, is that correct, or the Arizona Senate?

A It seems reasonable to me.

Q And, similarly, with Missouri and Nebraska, for those debates? Each of them would be limited to

candidates for office in that particular state, correct?

A That's my expectation.

Q Do you know how much of the distant carriage of those programs is outside the particular states?

A Not off-hand, no, I don't.

Q I'd like to turn to your experience as a cable program manager. Could you explain how SYNDEX worked in a cable system, when you were there -- in the cable system, when you were there?

A Well, in general, the local stations acquire rights to programs, and under the former SYNDEX rules applicable at that time, they would notify cable systems in their market, which programs they had a right to and wanted to claim protection against having that program imported by the cable system, via distant signal, and cable operators would be obliged to black-out that programming on distant signals.

Q And could you substitute a program for a blacked-out program?

A Yes.

Q Now, these rules only worked for syndicated series and movies and specials, correct?

A The Syndicated Exclusivity Rules, yes.

Q So that in your example this morning of M*A*S*H, if the local television station told you "We're carrying

M*A*S*H, you must black it out", that -- well, M*A*S*H is generally a strip program, is it not?

A Yes, it is.

Q So, that means it's on five days a week, or maybe even more, in some markets. And was that the vast bulk of the black-out that your cable system had to follow?

A The vast bulk in terms of program titles, or incidences of blacking out?

Q Incidences of blacking out.

A I'm not sure I could quantify that, at this point.

Q And you also had to black-out movies, correct?

A Yes, that's correct.

Q And that, I assume, was the vast bulk of the titles, was it not?

A More likely, yes.

Q Now, isn't it true, at least with series-- let's start with series -- that the syndicated product generally runs in certain day-parts?

A You mean programmed by stations and, therefore, it's local station day-parts?

Q Yes.

A Yes.

Q And, so, that if a station told you it wanted to

cut off M*A*S*H and its various other syndicated product, and assuming that you had it on your distant signals, there's going to be pretty much a chunk of time out of there every day of the week, at pretty much roughly the same time for the series, is that correct?

A Well, to make sure I understand you question, in my position at the cable system as the programming manager, one of the things I was responsible for is to ensure that programs were, in fact, blacked-out. At the cable system, at the head end were received the TV signals, I made a log of which stations -- which programs we had to protect from distant stations and, if at 4:00 o'clock a particular program was coming up on one of the distant signals, there would be a switch in the cable controlling office to literally -- toggle switches literally turn off the station for the duration of that program, and if that program was scheduled at 4:00 o'clock on a Monday through Friday basis, the log would reflect that and the station would be turned off.

Q But in general, you knew pretty much from day to day that if it was M*A*S*H, it was going to be 4:00 o'clock Monday, 4:00 o'clock Tuesday, 4:00 o'clock Wednesday, and so on.

A In the case of syndicated series such as M*A*S*H, yes, that time period would be creditable for the

certain duration of time.

Q Now, when you switched off that program, that doesn't mean that the cable subscriber couldn't see that program, he just couldn't see it on that particular cable channel, right?

A Or at that particular time.

Q At that particular time, but he could see M*A*S*H at some other time on the local channel, if that was our example.

A Yes.

Q So that the cable subscriber never lost the opportunity to see M*A*S*H during the SYNDEX rules.

A Assuming equal availability in the audience, yes, that's correct.

Q Now, did you black-out the channels during the periods, or did you try to schedule alternative programming in that time period?

A Both.

Q Both? And how did you decide what to do?

A In terms of scheduling alternative programming?

Q Yes.

A Well, I guess, to describe this in some graphic detail, just sit down at a desk somewhat like this, with program listings from a variety of stations which we had access to, either via microwave or off-air reception, have

their program listings, and I would go through and take a red marker and red-out the programs, movie titles, specials to which local stations had the rights and were claiming those rights.

From the remaining entries in the program listings of the distant stations, pick out a station whose program -- pick out a station that had programming that would have value to our cable subscribers, and then allow that to be transmitted to the cable system.

Q Now, in the case -- let's just stay with series that are taken off the air every day at the same time. Did you, each day of the week throughout the year, go down and look at this list and say, "Well, today, I'm going to pick out this particular program", or did you try to just pick out another series of roughly the same length of time, to just run in that slot?

A I used different strategies. There's one of the things that, particularly in the environment for cable subscribers in those days, with syndicated exclusivity, it was fairly frustrating for a subscriber never to know which channel was going to be turned on, when, at a given time. They'd get their program listings for WPIX, for example, and turn to WPIX on our cable system at a certain time, and that may be when they were broadcasting a protected show, so it would just be a blank channel.

We were allowed to replace it with different programming, and it's nice to have stability. So, they know if it's 4:00 o'clock, or 6:00 o'clock, or 7:30, PIX is always blocked. It's nice to have, in some cases, a replacement program that would be, perhaps, also stripped. So, if PIX is blocked, there's some value to having a program that would run on a strip basis, on an alternative cherry-picked signal but, on the other hand, in reviewing what was available, most of the time I would pick out another series similar in time, maybe somewhere in general appeal, if there was some special that was available, or some other kind of programming that was available, on a one-time basis or several-time basis, that would be an opportunity to make that kind of programming available for cable subscribers.

So, I'd say just audience stability, replacing one series with another series, to the extent that there was special programming available on one of these so-called cherry-picked stations would also be a relevant factor in my decisionmaking.

Q Wouldn't it be more likely, or wasn't it more likely, in your experience, that in the movie time slots that were blocked out, where you had a longer period of time and you might have a little more flexibility in exactly what time period they're running each day, that

you would be more likely to pick up a special or some sort of an event program?

A I don't recall specifically, but that movies not on a strip basis, it would require less effort to select replacement programming for a movie than it would be on a strip basis, coming up with five individual programs, sort of checkerboarding of sorts, as a programming strategy.

So, I suppose -- and, again, I don't quite recall specifically, but that certainly is possible.

Q So, for the movies, you would try to replace it -- if there was an 8:00 o'clock movie that ran every day, you would try to replace it with another 8:00 o'clock movie that ran almost every day or every day?

A That was one strategy. Again, drawing back on the research we did of our subscribers and subscriber communications, phone and mail, there was -- and just general knowledge of what cable subscribers wanted, movies is one of the areas of high interest to cable subscribers, particularly -- other areas, news and specials and variety.

So, balancing a number of different factors would be important in making that kind of programming selection decision.

Q Do you remember what channels that cable system carried?

A I could check but, generally, the local stations; of course, the Syracuse stations; three affiliates, and a public station, and then we picked up stations from Buffalo, stations from Rochester, Utica and downtown New York, and we picked up WSBK, channel 38 from Boston, WPIX and WOR from New York City, and I think there was a Canadian station we had also -- I believe it was CKWS.

Q Was 1979 before the system had satellite capabilities?

A We had satellite -- well, let's see -- we had pay programming, but I can't quite recall if it was via microwave or via satellite that we received it, for the pay channel.

Q And the substituted programs that you had available had to come from these sources?

A Yes, those are among the sources. There may be one or two I missed, but we had over a dozen broadcast stations, and that was -- that we were able to receive either off-the-air or microwaved in, and that would be the station from which I selected programming.

Q With regard to your research, has your research looked into the question of the comparative value of, say, movies versus series on cable? Your published research-- let me put it that way.

A My published research has not specifically looked at movies versus series.

Q Well, has it looked at the comparative value of programming, basic programming on cable?

A In general, some of the things in the published research that I've done, again, at different kinds of programming appeals. Variety is an important kind of thing, as evidenced by people's subscribing to cable, particularly to get better reception of off-air stations and more different kinds of programming, more variety of programming. We rated those kinds of things in the research I've been involved with that was published.

MR. LANE: I want to talk about one of your articles which I'll ask to be introduced as MPAA/Program Suppliers' Exhibit 17-X.

(Whereupon, the document was marked for identification as MPAA/Program Suppliers' Exhibit No. 17-X.)

BY MR. LANE:

Q Why don't you tell us what this is.

A It's a study published in the Journal of Broadcasting, and I was a member of a three-person research team doing this research, and the title of the article is Predicting Market Segments in the Cable

Industry: The Basic and Pay Subscribers.

Q Now, is this article one of the articles that you relied upon for stating that viewership has little or no significance in marketplace value?

MR. STEWART: Objection. Lack of foundation. It's not been stated that research is exclusively the basis for his view on the relevance of viewing as a measure of marketplace value.

MR. LANE: Mr. Chairman, I believe this morning it was stated quite clearly that experience and his research were the two foundations for his idea of marketplace value.

MR. STEWART: My objection goes to foundation, and if you would ask the question then I wouldn't have an objection to asking the follow-up question. That is, I'm only objecting that he doesn't ask the question, what's the basis -- is your opinion based in part on --

BY MR. LANE:

Q All right. What's the basis for your opinion about the marketplace value of programming? What are the bases for your opinion.

A My experience in the industry, and my own personal research, and research I've read from other sources that have been produced.

Q And is this article that's been marked as 17-X

part of your personal research?

A Yes, it is.

Q And isn't it true that this article refers, in various footnotes, to various other research that you obviously had to have read and studied in reaching your conclusions in this article?

A Yes, it does.

Q So, now I get back to my question -- is this article one that you rely on for your stated proposition that viewership has little, if any, value in determining marketplace value?

A I rely on this article, generally, to make the statement that -- in my assessment of what marketplace value is in cable.

Q Isn't there a statement on the last page of this article, I think it's page 161, that says "Amount of viewing was not a factor in determining who purchases the pay service in this research"?

A Correct.

Q And was that one of the points of this research, to look at the amount of viewing?

A Yes, it was.

Q Do you base your conclusion in this proceeding, based on the statement there in the research that back that statement up?

A My entire statement, no. This is one of a number of different inputs which lead me to an understanding of what marketplace value is in the cable distant signal marketplace.

Q Now, isn't it true that the statement on this page refers to the absolute hours of viewing?

A The way the question -- the way the variable is operationalized in the study for viewing, it broke viewing out into several day-parts -- weekday TV viewing, weeknight TV viewing, Saturday TV viewing, Sunday TV viewing.

Q Let me give you what I interpret this sentence to mean, looking at the table on page 158, and then if I'm wrong you can tell me, but let me just put it in my own words.

If I look down the list at weekday TV viewing, at basic and HBO, and I look at all those, there isn't a whole lot of difference between those three numbers, and what you are saying is, both groups watch about the same amount of programming, and you can't predict who is going to take HBO, by seeing how much programming they watch.

A Correct.

Q Now, does that tell you anything about the comparative value of viewing movies versus viewing a coaches' show, the marketplace value of those two types of

programs?

A In general, what this tells me is something about the way cable subscribers value television that they have access to. The particular point you are emphasizing here, that none of the television consumption variables--that is, television viewing of various day-parts--knowing how much TV we view weekdays, weeknights, Saturday or Sunday does not help me to predict whether or not you are a cable basic subscriber or a cable pay subscriber, and yet there is a difference in the marketplace.

A pay subscriber pays an additional fee beyond the basic fee. Their viewing, as measured in this study, is not statistically significantly different but equal amounts of view, and yet one type of subscriber is paying more to the cable operator. So, that is the general principle I see emerging from this data.

Q But it doesn't give us any indication, does it, of the value, the marketplace value, of movies or series versus coaches' shows or political shows or Indiana Outdoors?

A Well, I guess the first part of the question, the marketplace value of movies, clearly, in this time period when the data were collected, movies was the major service on the pay channels. So, to the extent that people would pay extra money to get more movies, it would

seem to me to be a fair conclusion that people valued movies more if they were a pay cable subscriber than if they were a basic cable subscriber.

As to doing intra- or inter-program comparisons, that was not the objective of this particular research and, so, from these data, you couldn't make that kind of very specific between-program comparisons. There is a general principle that emerges, again, as I say.

Q Well, I guess one of the things that I'm hearing from your testimony is that people -- they have enough movies, they don't want to watch more movies, they want to watch something unique. Isn't that an idea that you'd like the Tribunal to think about in this?

A You're saying that I said that people would like to watch more movies?

Q No, I'm saying just the opposite. They've got enough movies, and they want to see this unique programming. Isn't that what you want the Tribunal to draw from your testimony?

A No. My statement was that there's different kinds of marketplace values associated with different programming. I didn't link that to a viewing construct. People value different kinds of programming differently. Cable subscribers and cable operators sell you different kinds of programming differently.

Again, the point to emphasize here, that you yourself are making, viewing consumption is not a good predictor of marketplace value. If it was, then like we observe in this study, that people paying an extra amount of money to receive pay channels don't watch differently, different amounts of television.

Q Well, I guess the reason I'm making that statement is because, in another part of this article, you suggest -- you and your co-authors suggest -- that the people who have a greater orientation towards movies and watch them more, are more likely to become HBO subscribers. Isn't that a conclusion that's in this article?

A It is, and I already made that statement earlier, just now.

Q And, so, doesn't this article suggest that as much as people like unique programs, if they like them at all, they also like what they see every day, and some of it they want even more of it, and they are willing to pay additional money for pay services that provides them the same type of programming they are getting on basic?

A I don't agree with that conclusion. I think your statement there that suggests that what's available on the pay channels is the same as what is available on the basic channels, and I disagree with that analysis of

the programming environment.

The other part of your question, I think, does have merit, which is to the extent people like movies, they value movies to the extent where they are willing to pay an additional amount per month to get more movies on the pay movie channel. That part of your statement has merit, I agree with that.

Q But you don't think then, that people are interested in getting additional distant signals that have, say, a strong movie line-up?

A I do. I mean, that's --

Q A basic channel, I'm talking about, a distant signal.

A Sure, basic channel of distant signals. Again, the kinds of programming that subscribers most value fall into several general categories. Movies is one of the top reasons why people subscribe to cable.

COMMISSIONER ARGETSINGER: Excuse me -- how do we know this?

THE WITNESS: Well, from a variety of different research, going beyond this one article, to some of the things cited here, and other kinds of research that's been done.

COMMISSIONER ARGETSINGER: Such as?

THE WITNESS: Oh, I'm sorry. NCTA, National

Cable TV Association, did a cable viewer satisfaction study in 1984 that was published, and in there they go into a number of reasons why cable subscribers subscribe to cable, why they subscribe to cable in the first place, what do they value, what aspects of being a cable subscriber are valuable to them, are important.

What emerges from studies like that and some of the research here is that people subscribe -- one of the reasons is to get movies, another reason is to get sports or sports programming, another reason is to get more news, more specials.

COMMISSIONER ARGETSINGER: If you didn't have to worry about resources, what sort of objective evidence would you bring in to show the different degrees of viewer desire to have programming?

THE WITNESS: I'm sorry -- if I didn't have to --

COMMISSIONER ARGETSINGER: If you weren't worried about just the cost, how would you prove that to us?

THE WITNESS: How would I prove that cable subscribers value those types of programming?

COMMISSIONER ARGETSINGER: Value different types of programming.

THE WITNESS: Well, I mean, I guess I would rely

on what's available in terms of research. When asked of a cable subscriber, what's important to you, in research funded by the cable industry, they discovered access to variety was important, and some of the findings here, reception, people subscribe to cable to get better reception of TV stations they may be able to get somewhat off-air, but they can get much better pictures with the assistance of cable.

COMMISSIONER ARGETSINGER: So, you would say these attitudinal surveys that we've had in past proceedings would have some bearing on that?

THE WITNESS: I think so, yes.

BY MR. LANE:

Q You talk, on page 5 of your testimony, about a lobster dinner analogy, do you recall that?

A I do.

Q Now, I take it the lobster dinner represents the programming contained in your exhibits, is that accurate?

A I guess that would be one way to think of the example, yes.

Q So that there may only be on a few stations and may only come up a few times a year, but it's really special?

A Yes.

Q Well, I guess the question I have is -- let's

say I go out to a lobster dinner once a year. The rest of the year I go to Ma and Pa's Diner, and I either have fried chicken or meatloaf. And the whole rest of the year, 364 days, I eat meatloaf or fried chicken.

How do I measure the value of the lobster dinner versus what I eat the rest of the year?

A The restaurant bill.

Q So, I take the total for the whole year, of the restaurant bills that I got at the one place versus the value of the dinner at the other restaurant -- the lobster dinner?

A I think that's the established marketplace mechanism for dinners at restaurants.

Q So, you are equating the value of the consumer with the value that the restaurant places on it, am I correct in that?

A Yes. There's a transaction that occurs between a restaurant diner and the restaurant. If the price seems acceptable for the menu item, the customer orders it and gets it, and exchanges value, dollars for a meal.

MR. LANE: Thank you. That's all the questions I have on cross.

CHAIRMAN RAY: Ms. Ianniello?

MS. IANNIELLO: No questions.

CHAIRMAN RAY: Commissioners?

COMMISSIONER AGUERO: No.

COMMISSIONER ARGETSINGER: No.

CHAIRMAN RAY: Mr. Stewart?

REDIRECT EXAMINATION

BY MR. STEWART:

Q Pursuing this fried chicken and meatloaf versus lobster analogy --

(Laughter.)

A I'm getting hungry for lunch again.

Q Would a measure of viewing be analogous or be represented in Mr. Lane's example, by a simple count of the number of times you ate each kind of food?

A Yes, that would be my interpretation of the example.

Q And your suggestion that you look at the bill is a suggestion that that kind of measure doesn't reflect the actual value?

A Exactly.

Q Now, Mr. Lane gave you an Exhibit 16-X, and I would ask you -- this is a map of Iowa, with some circles drawn on it. I would ask you if you analyzed whether KPTM -- let's go back to your Exhibit II-2 -- this will be a good test of your memory.

Did you analyze whether KPTM was carried as a distant signal in Onawa, Iowa?

A Yes, I did.

Q Can you find Onawa, Iowa on the map, 16-X?

A Yes, it's right about the 9:00 o'clock area, on the edge of the state.

Q And that's just across the Nebraska border, between -- south of Sioux City?

A Yes.

Q And would you look at the KTPM circle. KPTM is sort of due east of Council Bluffs?

A Yes.

Q And does the KPTM signal get into Onawa?

A It doesn't appear to, on the basis of this map.

Q So, the Tom Osborne Show gets into that Onawa, Iowa cable community as a distant signal, and isn't received off-the-air from KPTM?

A That is my analysis.

Q Mr. Lane questioned you about distant carriage of -- distant cable carriage of political debates outside the states where the producing station was located, do you remember that?

A Yes.

Q And KTSP Phoenix, Arizona, do you know whether the gubernatorial election in '86 was of interest beyond the State of Arizona?

A Generally speaking, gubernatorial elections are

of some interest to other states.

Q Do you know who the Governor was of Arizona then?

A Meecham.

Q Do you know whether there was some broader interest in Meecham's governorship than just the typical debate?

A There appeared to be, yes.

Q Mr. Lane questioned you about your article on people who like movies paying to receive more movies, do you recall that?

A Yes, I do.

Q Does HBO provide the same movies that are available on distant signals?

A Not -- well, there's different dimensions to different movies. They provide movies earlier than would be received on these other -- I mean, ten years down the road, it may be the same movie, but there's also timeliness to a movie, so you would see a movie, a major theatrical movie earlier on HBO than you might elsewhere. So, the titles actually may literally be the same over a period of 20 years, but it's a different service. You get movies sooner.

Q Is the timeliness of a program one of the elements of the value of a program in the cable

marketplace, in your view?

A Yes, actually, it is. I guess I would add that to my concept of what marketplace value is, timeliness.

Q Mr. Lane asked you this morning, a number of questions premised on the assumption that you looked only at the number of stations carrying a particular program, to determine marketplace value, or you looked only at lists of programs and not any other evidence, to divide up the royalties among the different claimants here.

Is what you've presented to the Tribunal only a list of stations or only a list of programs?

A No. I think that -- not at all. I mean, the marketplace value, I think, is much more reflected in the programming itself -- the regional nature of it, again, the unique nature of it, and the preponderance of sports titles, which is an intense area of interest for cable subscribers and cable operators.

So, my judgment of marketplace value is much more directed towards the nature of the programming.

Q And, finally, is it your testimony that the Independent Network News programs, the variety of programs distributed by WPIX, has no marketplace value?

A Oh, no, not at all. Earlier, Mr. Lane was questioning me, asking me to rank, for example, that the relatively broad appeal of WPIX' programming versus the

more regional appeal of some of the other programming, saying which is more, and my response at that point was that that regional versus broader interest valuing by cable subscribers and cable operators is sort of into the same continuum, but there's -- broad appeal programs have great marketplace value as well as regional appeal programming.

MR. STEWART: Thank you. I have no further questions.

CHAIRMAN RAY: Thank you very much, Dr. Ducey.

THE WITNESS: Thank you.

(Whereupon, the witness was excused.)

Before we recess, for the record, this completes the direct Phase II case, and we will -- I believe on February 27th, the Phase II rebuttal case will be due, and then on March 2nd, Thursday, at 10:00 a.m., we will begin the rebuttal case with Marsha Kessler testifying, MPAA's rebuttal case first.

Then, on the following Monday, will be Mr. Cooper, March 6th, and then the 7th, Multimedia. Do you think you'll need one day or two days?

MS. IANNIELLO: Probably one day. I'll check and I can let you know.

CHAIRMAN RAY: Well, anyway, we have a schedule from the 6th to the 10th. The second party will be

Multimedia, and then we will finish with NAB.

MR. STEWART: Mr. Chairman, I might just note that Mr. Lane has been accommodating concerning Ms. Kessler's earlier appearance, and has offered to exchange her rebuttal testimony at an earlier time, so that we have approximately a week before she appears, so that that would be filed before the February 27th date, and we appreciate that accommodation.

MR. LANE: Happy to do it.

CHAIRMAN RAY: Okay. If there's no other comments, we stand adjourned. We will recess until the time stated.

(Whereupon, at 3:10 p.m., the hearing was adjourned, to reconvene Thursday, March 2, 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 16, 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