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P R O C E E D I N G S

1
2 CHAIRMAN BURG: Good morning.

3 Yes, Mr. Lloyd.

4 MR. LLOYD: If I may just get one housekeeping
5 chore behind me. I have distributed to the parties a copy of
6 the contract that the Minnesota North Stars used to grant
7 television rights to the Minneapolis Savings and Loan
8 Company for the 77-78 hockey season, which is the contract
9 that I referred to during my interrogation yesterday afternoon
10 of Mr. Wadler, and which Mr. King asked me to provide for the
11 record.

12 I have given a copy to the Reporter, and with the
13 permission of the Tribunal, I will have it marked Joint Sports
14 Claimants XX-3, and that will take care of that matter.

15 Thank you.

16 (Joint Sports Claimants' Exhibit XX-3
17 was marked for identification and
18 received in evidence.)

19 MR. KING: One additional matter. During the
20 course of Mr. Hughes' testimony reference was made to the
21 Exhibits which formed part of the presentation we filed on
22 Monday last, and inasmuch as they were referred to in his
23 testimony, I think they should be marked as Exhibits and be a
24 part of the record.

25 CHAIRMAN BURG: Okay.

1 MR. KING: I'm not sure of what number, but if they
2 could just be marked consecutively.

3 CHAIRMAN BURG: I didn't bring my list of Exhibits.

4 MR. BECHTEL: Madam Chairman, according to my list
5 the next number for the NAB is "P" as in Paul.

6 CHAIRMAN BURG: Where did you get that list?

7 MR. BECHTEL: I got that from you.

8 (NAB Exhibit P was marked for identification
9 and received in evidence.)

10 MR. SCHEINER: What are we marking as Exhibit P now?
11 The series or what?

12 MR. KING: Yes.

13 CHAIRMAN BURG: That's three, correct, Mr. King?

14 MR. KING: Yes.

15 CHAIRMAN BURG: Mr. Hughes, did you get all your
16 logs out until Tuesday, or were you just working on through
17 Monday yesterday?

18 MR. HUGHES: No. We're done through Tuesday.

19 Whereupon,

20 ROBERT HUGHES

21 was called as a witness and, having been previously duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. KING:

25 Q Would you state your name for the record please?

1 A. My name is Robert Hughes.

2 Q. Mr. Hughes, by whom are you employed??

3 A. I'm employed by WASH radio here in Washington.

4 Q. In what capacity?

5 A. I'm the program director.

6 Q. For how long have you been program director of the
7 station?

8 A. For seven years.

9 Q. Would you just tell us generally what the
10 responsibilities of a programmer are?

11 A. Okay. Well, I'm responsible for the design and
12 execution of the format of WASH, including the selection of
13 music that is to be played, the hiring and coaching of disc
14 jockeys. I supervise to some extent the operation of our
15 news department, our public service announcements, and I'm
16 responsible for the clearance of commercial matter.

17 In short, just about everything that's on the air
18 I have some responsibility for.

19 Q. And you have been doing that at that station for
20 seven years?

21 A. Yes.

22 Q. Prior to coming to station WASH, what were you
23 doing? Just give us a bit of your background.

24 A. Well, I joined Metromedia, the parent company, in
25 Washington here in 1969 as a news editor and correspondent with

1 our Washington news bureau. Prior to that I was attending
2 school in the New York area.

3 Q. WASH is an FM station; is that correct?

4 A. Yes, that's right.

5 Q. Does the phrase "the broadcast day" have any
6 meaning to you?

7 A. Yes. We consider our broadcast day to be from
8 12 midnight to 12 midnight. We're a 24-hour a day station,
9 and we prepare the program log to cover that period.

10 Q. In rough percents, what is the allocation of
11 programming during the broadcast day?

12 A. We're approximately 75 percent music, about
13 10 percent news and public affairs programming, and about
14 14 percent commercial matter.

15 Q. Are those percentages of program roughly
16 comparable to FM stations throughout the country, if you know?

17 A. Yes.

18 Q. You indicated earlier in your direct testimony that
19 you were responsible for the program format of the station.

20 A. Yes.

21 Q. What I would like you to do is -- first, answer
22 this. Did you play any role in the development of that
23 format?

24 A. Well, when I took over the programming at the
25 station seven years ago, the station was in its present format

1 and was interested in having a more successful and dominant
2 position in the market, and I undertook an analysis of the
3 present format and the position of the station in the market,
4 and essentially redesigned the format to be what it is today.

5 Q. Would you tell us what the format was at the time
6 you became responsible for programming of the station?

7 A. In broad terms we're a middle of the road music
8 station on FM.

9 Q. What does that mean?

10 A. That was somewhat hard to define back then, and
11 that, frankly, was the problem. The station did not have a
12 distinct identity in the market and did not appear to have a
13 well-defined target audience.

14 Q. You testified that you fine-tuned the format.
15 Would you tell us as precisely as you can what you did?

16 A. Okay. Well, the first thing I did was I looked at
17 the opportunities presented by the marketplace, this being a
18 major metropolitan area inhabited by a couple of million
19 people, and the first thing I wanted to know was who exactly
20 were these people; what age groups did they fall into; what
21 kind of activities did they pursue; what kind of jobs did
22 they have; and what were their interests.

23 So the first place we started was with census data
24 to analyze the population. One of the things that we
25 discovered was that there were a large number of young adults

1 in the Washington area. So we began to look to see if they
2 were being adequately served by any radio stations in the
3 area, and what we found at the time was that there were
4 several stations that were serving a group that could be
5 classified as people from the ages of roughly 12 to 25, and
6 there was yet another group of stations whose audience was
7 predominately people over the age of 35, and it appeared to me
8 from that analysis that there was a group between roughly
9 25 and 40, adults who were not being adequately served by a
10 radio station that precisely matched their needs and interests.
11 So we set about to create such a station, and that at the
12 time was a new kind of format for radio.

13 Q Having identified a segment of the audience that
14 hadn't been reached and you wanted to reach, did you then
15 determine what type of programming to reach them with?

16 A Yes. One of the first things that I did was --
17 since the station already had some listeners, we asked those
18 listeners to help us with the music programming of the
19 station by dropping us a postcard and naming their three
20 favorite songs. We also asked them to include their ages, and
21 of course the places where they lived. This was a contest
22 kind of vehicle. We set about to tabulate the responses and
23 to break them down, to get a list of a couple of hundred songs
24 that were our audience's favorites and to see what kinds of
25 people liked each particular song.

1 What we found was that there were very definite
2 preferences. For example, men tended to like one kind of
3 music. Women tended to like another kind of music, and, of
4 course, there was some crossover. There were some songs that
5 were liked by everybody.

6 But we did that kind of analysis and saw that there
7 were some distinct musical differences and that the musical
8 tastes of this group that we wanted to serve, namely adults
9 over 25, was different from people who listened to the
10 so-called top 40 radio stations. So we made note of that, and
11 at the same time we began to analyze the need and desire for
12 other kinds of programming. Now, this didn't all happen at
13 once but over a period of time. In the seven years that I've
14 been the program director we have discovered a number of
15 things that our audience wants that distinguishes them from the
16 rest of the population.

17 Q In determining the target audience needs, did you
18 rely only on your own research or did you call on outside
19 research tools?

20 A Well, we used several sources. We used the reports
21 issued by Arbitron, to which we're a subscriber, because that
22 tells us quite a lot about the radio listening behavior of
23 people in this particular marketplace, and we also eventually
24 hired professional research companies to design and execute
25 studies for us regarding the tastes and preferences of

1 listeners in this particular area, and we also used the FCC's
2 ascertainment figures, the figures that we compiled for
3 license renewal. We looked at those very carefully as a valid
4 form of audience research and discovered some important things
5 there.

6 Q. You do have disc jockeys that play the songs?

7 A. Yes.

8 Q. Do you give any type of instructions to the disc
9 jockeys as to things they should say in light of the audience
10 that you wanted to reach?

11 A. Yes. In fact, one of the best exercises that we
12 ever did with the disc jockeys was to ask listeners to call in
13 and give their impressions generally about the kind of disc
14 jockeys they like to listen to and the kinds of things they
15 like to hear. We played that for our performers to give them
16 a very direct idea of what people wanted to hear. We also
17 conducted research studies which pointed out certain things
18 that we want our performers to say, and when we showed the
19 results of the studies to our disc jockeys, they could easily
20 see how a certain kind of comment delivered in a certain way
21 could be more valuable than some random kind of remark with no
22 particular purpose.

23 Q. Does your station employ what I will call, for
24 want of a better word, the clock hour concept?

25 A. Yes, we do.

1 Q Would you tell the Tribunal what that is?

2 A Well, one of the values that people seem to respond
3 to in radio programming is the idea that the station is pretty
4 much consistent within its format type throughout a day, and
5 one of the ways that this consistency is accomplished is by
6 planning for it. One of the devices that we use is a chart
7 which resembles the face of a clock, which is divided into
8 certain segments, and we place on this chart an indication of
9 the kinds of events that are supposed to take place at any
10 particular time.

11 For example, we would mark off the period from the
12 top of the hour to five minutes after the hour and mark that
13 as a news position and news is to occur there every hour.
14 Then the next two, let's say, three-and-a-half to four minute
15 time periods would be a position in which music is to be
16 played, followed by a set of commercials, followed by two
17 more music positions, followed by another set of commercials
18 and so on throughout the hour.

19 Also into this we place our public service
20 announcements, weather forecasts, traffic reports, station
21 promotional announcements and that kind of thing. So that
22 there is essentially a blueprint for each hour for our
23 performers to follow.

24 Q Will the choice of music from one hour of the day
25 to another hour of the day differ, and, if so, what are the

1 considerations that go into that?

2 A. Well, one of the things that we discovered in
3 closely analyzing Arbitron data was that if you looked at all the
4 people over the age of 12 who listen to radio and considered
5 this on an hour-by-hour basis, you could chart throughout the
6 day the rise and fall of the audience according to time
7 periods.

8 For example, radio listening, if you start at
9 5 a.m. in the morning, is at a relatively low level and builds
10 quickly to a peak around 7 to 8 a.m., and then proceeds to
11 fall throughout the day to another slight little peak around
12 noontime and then falls a little bit more, and then there's
13 another larger peak during the afternoon traffic period, and
14 then it tapers off as television becomes a medium of choice
15 from 6 o'clock in the evening on.

16 Now, not only is this true for all listeners, but
17 it's true for each demographic group within the total
18 population. In other words, you can actually chart the
19 listening on an hour-by-hour basis for any particular
20 demographic group that you might want to reach.

21 This we did. For example, we discovered that when
22 listening peaks at 7 a.m. in the morning, it is primarily
23 adults over the age of 35 who are responsible for that peak.
24 They are the ones who are doing the most radio listening at
25 7 a.m. However, when listening peaks in the afternoon around,

1 let's say, between 3 and 6 p.m., it's primarily teenagers who
2 are responsible for that.

3 So, it occurred to us that it might be a good idea
4 if we were to modify the programming of music and other
5 elements on the station to take advantage or to exploit these
6 rises and falls in the individual demographic groups, and since
7 we had the data to do it on an hour-by-hour basis, we in fact
8 did that. We could see that the best time for us to try and
9 reach older adults is in the morning, and younger adults
10 become much more important to us later on during the evening.
11 So we change the musical selections available to be played
12 throughout the day to take advantage of this phenomenon.

13 0 Are you able to determine the type of music that
14 would appeal to men, say, over the age of 35, between 35 and
15 50 as opposed to women between that age, and so what you're
16 saying is as the audience shifts during the course of the
17 day, you are playing music best calculated to appear and take
18 advantage of those changing shifts?

19 A. Yes. I don't want to represent this to be an exact
20 science because it certainly isn't. There's a fair amount of
21 intuition and judgment involved in the selection of these
22 songs. We do base the choices primarily on the kinds of
23 research that we're able to do.

24 For example, one good thing is when people call the
25 station to request a certain song. We try to determine how old

1 they are and where they live. That gives us some indication
2 of the kinds of people who are requesting particular types of
3 music. The survey technique tied to a contest that I
4 described earlier was another way. We can tell you, let's say,
5 for example, "Bridge Over Troubled Waters" by Simon and
6 Garfunkel is the most popular song among our listeners. We
7 can tell you what the most popular song among men is of any
8 particular age group, among women, and so on.

9 So, it's this kind of analysis that allows us to
10 classify music according to its demographic appeal, and then
11 to play selections from those categories in the right
12 proportion each hour of the day.

13 Q In one of the conversations that we had before your
14 testimony today, you stated that listeners can actually
15 perceive differences in stations. Will you tell the Tribunal
16 the basis for saying that?

17 A Well, in our research -- I guess what I should do is
18 describe the form of the research. One of the techniques we
19 use is called focus group where we will select people who are
20 representative of the target audience that we want to reach and
21 invite them to a location to discuss radio programming. They
22 don't know who it's being conducted for. What we've done for
23 them is we've played samples of various radio stations'
24 programming in this particular market and asked them to tell
25 us what they think the difference is. Generally its described

1 through the attitude of the performers on the station, the
2 type of music that's being played and the way in which it is
3 being played. Also, the engineering of the radio --

4 Q Excuse me. Just let me interrupt so we can clarify
5 something. You said the type of music being played and the
6 way in which it is being played.

7 A Yes.

8 Q What do you mean by the way in which it is being
9 played?

10 A Well, for example, WPGC, a top 40 station in this
11 particular market, is perceived by listeners to be raucous.
12 They've described it to us as being jangling, nervous,
13 uptight, and the elements that seem to lead them to that
14 conclusion are the presentation of the announcers and the kind
15 of music that's played. Generally the station has a
16 fast paced tempo and a very loud texture to it. This is
17 achieved through various electronic means, audio processing.

18 They've described other stations that also play
19 another variety of rock 'n' roll as being sort of dopey sound-
20 ing as if there's perhaps a drug influence, or the announcers
21 are asleep or that kind of thing.

22 They have described other stations as sounding
23 old fashioned or tired.

24 Q Is it true that all stations can draw upon the
25 same reservoir of music?

1 A. Yes.

2 Q. Even though they can all draw upon the same sources,
3 nonetheless these listeners are able to perceive distinctions
4 among stations?

5 A. Yes, that's very definitely true. I've had people
6 tell me that they notice when listening to other stations that
7 play music similar to ours that they feel nervous or upset
8 in some way and they don't really know what causes that, but
9 they know that they can only stand to listen to the station
10 for a shorter period of time. Whereas, with our station they
11 can leave it on for a longer period of time. And this effect
12 is exactly what we intend through the selection of music, the
13 order in which it is played and the audio processing of the
14 station.

15 Q. If you had to define one goal in constructing the
16 broadcast day or the format of the station with respect to
17 your particular station, what would it be?

18 A. Well, our basic goal is to attract the audience that
19 we seek, which is essentially adults 25 to 49. We're looking
20 to provide them with the entertainment and information that
21 they need at any particular moment that they might tune into
22 the radio and still have the station's sound recognizable to
23 them.

24 Q. Do you remember the conversations we had a day or two
25 ago using the restaurant analogy?

1 A. Yes. I like very much to compare radio stations to
2 restaurants because I think there are a lot of instructive
3 parallels, especially for our performers. In this particular
4 city there are many fine restaurants, but I think most people
5 who are patrons of one or the other would perceive differences,
6 and the differences are the way the food is prepared, the kinds
7 of creations of the kitchen, and the service and attention to
8 detail, the small elements of presentation. Those are the
9 things that, to me at least, seem to distinguish one restaurant
10 from another, and also one radio station from another.

11 Q Would you tell us just a little bit about how you
12 select and go about producing the non-music programming on the
13 station?

14 A. Sure. I guess the largest single non-musical
15 element is our news and public affairs programming, and that
16 is produced by our news department with guidelines from me and
17 our general manager using the kinds of research data that we
18 have been able to collect.

19 One of the things that we have told the news
20 department is that they should concentrate on news that is most
21 important to the people who live within the sound of the radio
22 station, and that if there is a news event from a foreign
23 country that needs to be reported, that it should be reported
24 in a way that a listener to the station can easily perceive
25 that this is something that affects them or that they need to

1 be concerned about.

2 For example, as horrible a catastrophe as it might
3 be, a bus crash in India that killed 60 people is of no
4 particular significance to the listeners of this radio station
5 unless, let's say, a local resident is involved or it has some
6 horrible implications for foreign policy. So we tend to select
7 those items that have a very severe impact on this market.
8 Cost of housing is one thing. This kind of selection is based
9 on the kinds of data we collect from the ascertainment process.

10 About three years ago we instituted traffic
11 reports, using a traffic plane and reporter on the station,
12 and this was as a direct result of the ascertainment process.

13 Through the research we've done we've found that
14 people are interested in health. So we created a feature
15 called "Medical Journal" which runs daily, which tells people
16 about new developments in the medical arts.

17 Public service announcements -- we use the same
18 kind of demographic audience flow analysis to classify and
19 present public service announcements at a time when the
20 audience for them is actually present on the radio station.

21 All of this is an effort to provide those services
22 at a time when they are needed and wanted by the people who
23 listen to the station. We feel that it's of no particular
24 value to us to be presenting a service to an audience which
25 does not have its radio on.

1 Q. To wrap this up, what steps do you take to monitor
2 and keep abreast of the broadcast day, institute changes, and
3 so on?

4 A. Well, personally I do an awful lot of listening to
5 the station to make sure that things are running as we want
6 them to run, and, for example, in the music area, we conduct a
7 weekly music meeting where we review the music that's being
8 played on the station, especially the current material, and we
9 make changes in that particular list.

10 On a quarterly basis we completely review all of the
11 music being played on the station and change that to reflect,
12 perhaps, changes in the season. For example, now we're beginning
13 to add songs that have a summertime flavor or were popular in
14 previous summertime periods.

15 Q. Do your station personnel attend concerts, rock
16 concerts, to determine audience reaction?

17 A. Yes. We encourage all of our performers to get out
18 in the public and watch what people are doing, to observe them
19 when they're attending concerts or when they're in, let's say,
20 a bar or restaurant, like the many in this particular area that
21 play music.

22 We were having lunch yesterday and I noticed at one
23 particular place that a song that we were playing was played
24 about five times on the jukebox during the period that we were
25 having lunch. That was significant to me because that meant that

1 we had made perhaps a correct choice for playing that song.

2 Q In your testimony just moments ago you mentioned that
3 music will be changed to reflect or anticipate certain seasons.

4 A Yes.

5 Q Do you find that that will happen even during the
6 course of a week where as you approach the weekend the music
7 may change?

8 A Very definitely, yes. In fact, we made an effort to
9 specially program weekends so that the weekends have a
10 different flavor and appeal because we think that's a good
11 idea to attract people who may not listen to it during the
12 week because they're too busy. So we make special efforts on
13 weekends, and even during the day the announcers are encouraged
14 to play songs that relate to events that are occurring right
15 then. For example, if it's raining they may play a song that
16 has rain in it or that kind of thing.

17 MR. KING: I have no further questions.

18 CHAIRMAN BURG: Who has questions for Mr. Hughes?
19 May I caution both Mr. Duncan and Mr. Koenigsberg not to inquire
20 which song it was that was played five times. We don't want to
21 mix up our proceedings.

22 MR. KOENIGSBERG: I was only going to ask Mr. Hughes
23 why he wasn't here on Monday, Madam Chairman.

24 (Laughter.)

25 CHAIRMAN BURG: Go ahead, Mr. Koenigsberg.

1 MR. KOENIGSBERG: Thank you.

2 CROSS-EXAMINATION

3 BY MR. KOENIGSBERG:

4 Q Mr. Hughes, I'm Fred Koenigsberg, counsel for ASCAP.
5 Sir, do you know what a compilation copyright is?

6 A If you're going to ask me to interpret the law, I'm
7 sorry, I'm unqualified to do that.

8 Q No, sir, I don't want to ask you to interpret the
9 law. I just want to ask you if you know what it is.

10 A By my own direct knowledge, no.

11 Q Just to follow up on that, would you have any idea
12 of what the relevance of what a disc jockey says would be to
13 the question of whether broadcasters are entitled to claim a
14 share of cable royalties based on a compilation copyright?

15 MR. KING: I would object to the question.

16 MR. KOENIGSBERG: I merely asked if he has any idea
17 as to the relevance of it. He can answer no, and that's the
18 end of it.

19 MR. KING: I think if he's not a lawyer -- the
20 question has a legal supposition in it, and he can inquire as
21 to facts, but I think that what he's really doing is testing a
22 legal supposition. The answer could only be relevant if the
23 witness understands it.

24 CHAIRMAN BURG: I'm afraid I'm going to sustain that
25 objection.

1 BY MR. KOENIGSBERG:

2 Q Sir, by your testimony, without music you would
3 have no programming for 75 percent of the time; is that right?

4 A Under the present format of the station, that's
5 correct.

6 Q Do you know, sir, if you have been granted the
7 right by the owners of the music that you perform to make a
8 compilation?

9 A Well, I think you're asking me to talk about a
10 particular aspect of a license that we may have with ASCAP or
11 BMI, and, I'm sorry, I don't know anything about those. Those
12 are handled by our corporate legal department.

13 Q So your answer is you don't know?

14 A Yes.

15 Q Sir, do you record the full 24 hours of programming
16 that you put on every day?

17 A Yes, we do.

18 Q Do you know if you have been granted the right to
19 make that recording by the owners of the music that you
20 broadcast?

21 A I don't know that.

22 MR. KOENIGSBERG: I have no further questions,
23 Madam Chairman. Thank you.

24 CHAIRMAN BURG: Mr. Lloyd.

25 CROSS-EXAMINATION

1 BY MR. LLOYD:

2 Q Mr. Hughes, I'm David Lloyd and I'm representing
3 the Joint Sports Claimants, the professional team sports
4 here. I just have a few questions.

5 Do you know to what extent the WASH signal is
6 carried by cable?

7 A I know we're carried by some cable operators. I
8 don't know to what extent.

9 Q Where?

10 A Well, I'm dealing here with letters that we've
11 received from various listeners who have written to us from
12 places in Maryland, Pennsylvania, Delaware and Virginia saying
13 that they hear us on their cable systems.

14 Q Where?

15 A Maryland, Delaware, Virginia and Pennsylvania.

16 Q The whole state? I want to know where.

17 A Well, we're talking about, you know, five or six
18 different letters, and I don't remember the exact locations.

19 Q When did you receive the letters?

20 A From time to time over the last couple of years.

21 Q How many letters were there?

22 A I guess we may have had five or six, maybe as many
23 as ten.

24 Q How many of them were from Delaware?

25 A I don't remember. I do remember one.

1 Q How many of them were from Virginia?

2 A One or two.

3 Q How many from Maryland?

4 A I can't remember.

5 Q What did any one of the letters say?

6 A Well, the letters were offhand comments along the
7 lines of, you know, "We listen to WASH on the cable."

8 Q Anything more explicit than that?

9 A No.

10 Q Do you know what this proceeding here today is
11 about?

12 A In general terms, yes.

13 Q Do you know why you were asked to testify?

14 A Yes, I do.

15 Q How many radio stations are there in the country?

16 A About 8500.

17 Q How many markets have you worked in in the country?

18 A Four.

19 Q What are they?

20 A Altoona, Pennsylvania; the New York area;
21 suburban New York, which I classify as a different market than
22 New York metro. I've worked both in the New York metro area
23 and the Long Island, Westchester area, and here in Washington.

24 Q When did you work in the Altoona market?

25 A In 1964, '66 and '67.

1 Q. You programmed radio stations in Altoona?

2 A. No, I did not.

3 Q. Did you program radio stations in New York?

4 A. Yes, one I did.

5 Q. Which one?

6 A. An educational station licensed to Fordham
7 University, WFUV FM.

8 Q. Is that while you were in school?

9 A. Yes.

10 Q. Did you program stations in suburban Long Island
11 and Westchester County?

12 A. No.

13 Q. Did you program any stations in Washington other
14 than WASH?

15 A. No.

16 Q. Is the effort which you make in programming WASH
17 to the audience which it serves and which you have quite
18 eloquently described here today, Mr. Hughes, typical in your
19 judgment of the 8500 radio stations in the country?

20 A. In general terms, yes.

21 Q. Why do you say that?

22 A. Well, because the techniques of programming are
23 pretty widely known. For example, the clock chart technique
24 that we use has been around essentially since the dawn of
25 top 40 radio. We're talking about, you know, 25 years or so.

1 That kind of thing has been around for a long time.

2 Q Do you know how many of the 8500 stations have
3 program directors?

4 A No, sir, I don't.

5 Q Do you know how many of the 8500 stations have
6 staffs in excess of ten people?

7 A No, but I know it's not very many.

8 Q Do you know how many stations have local news
9 departments?

10 A Most of them have some local news.

11 Q What is the basis for your statement that most of
12 them do?

13 A Well, the basis for that statement is my general
14 knowledge of the requirements for being granted and holding
15 a license.

16 Q Is it your testimony, sir, that there are require-
17 ments that a radio station have a local news staff?

18 A No, it's not a requirement as such.

19 Q What is the basis for your testimony that most of
20 them do, and let me go back before that and ask you what do
21 you mean by "most", a bare majority or something more than
22 that?

23 A I mean more than a bare majority.

24 Q Slightly more or greatly?

25 A I don't know.

1 Q Now, what is the basis for your statement that
2 most of them have local news staffs?

3 A My general knowledge of the industry.

4 Q Do you know how many radio stations in the country
5 program public affairs programming other than on Sunday?

6 A No, I do not.

7 Q Does your station?

8 A Yes, we do.

9 Q Every day?

10 A Yes, we do.

11 Q What time?

12 A Throughout the day. We use the vignette method,
13 whereby we'll prepare short vignettes addressing issues that
14 arise from our ascertainment, and those are programmed in our
15 news blocks.

16 Q Do you have any public affairs programming other
17 than on Sunday in excess of one minute in length?

18 A Not as a general rule.

19 MR. LLOYD: Thank you. I have nothing further.

20 CHAIRMAN BURG: Are there any other questions?

21 (No response.)

22 CHAIRMAN BURG: As Peggy Lee might sing, "Is that
23 all there is?"

24 (Laughter.)

25 CHAIRMAN BURG: Mr. King, I guess we are ready for

1 your redirect.

2 MR. KING: I have nothing.

3 CHAIRMAN BURG: Mr. Koenigsberg.

4 MR. KOENIGSBERG: Madam Chairman, I would just like
5 to make a brief comment for the record, if I might, and I
6 might lead off by asking you the question that Commissioner
7 Brennan asked you yesterday, and that is to say, is the
8 record now closed on this question of compilation as far as
9 the presentation of the case by the NAB is concerned?

10 CHAIRMAN BURG: The answer to that is yes.

11 MR. KING: As I indicated yesterday, we have yet to
12 come up with a value to attach a percentage value to the
13 question, and we will have that next week I expect. So, with
14 that exception, that's the only --

15 MR. KOENIGSBERG: If I may finish, Madam Chairman,
16 Mr. King perceptively gets to the gist of what my remarks were
17 going to be, and that is to say that there is not one shred of
18 evidence in the record, which is now closed, on the value of
19 this so-called compilation copyright as to the percentage of
20 the total that should be allocated for it, and so on. I just
21 wanted to make that comment for the record.

22 MR. KING: I'd like to respond.

23 There is ample evidence in the record, not only
24 from the witnesses that we have produced but the witnesses that
25 have been produced by other parties that the compilation has

1 value. There's no question about that.

2 The difficult question is translating value into
3 precise numbers, and we do not want to put before you a
4 formula that we cannot live with. Now, this is a problem.
5 It is not peculiar or unique to our situation, and we saw it,
6 I think, rather graphically displayed during the testimony by
7 NPR. They did not have a formula for the royalties they were
8 claiming and there was no question raised about it, and we are
9 here in a very complex situation, and I think that we will
10 have a formula. But the record, I think, is replete with
11 testimony that the compilation has value. What we have to do
12 is present to you a formula that we can live with and we
13 think that you can live with.

14 COMMISSIONER COULTER: Mr. King, I was wondering
15 whether somebody would raise the point that Mr. Koenigsberg
16 did.

17 As you mentioned yesterday, this issue, as a
18 a numerical problem, has been before the Tribunal since the
19 first of December, and the presentation of the NAB so far or
20 its claim to validity so far in its regular case has been that
21 the use of time could be numerically defined and the amount of
22 royalties paid by a system could be numerically defined. The
23 compilation, by definition, is a qualitative concept, by your
24 own definition, I believe.

25 Therefore, if you were to define it in a monetary

1 sense, you would have to embark upon a formula which would have
2 to at least in nature be somewhat similar to that presented
3 by either ASCAP or the sports interests, which is not a small
4 task, and I must say that in what we've heard so far, nothing
5 to that effect has been even remotely attempted.

6 CHAIRMAN BURG: Mr. Lloyd.

7 MR. LLOYD: I have a problem not only with
8 compilation. I have a problem with syndicated exclusivity,
9 and I have a problem still, notwithstanding the discussion
10 yesterday, I must confess, on the sports issue. I guess the
11 problem fundamentally is this: I have in hand an order of the
12 Tribunal that says among other things that I must tend to
13 today is providing a description of anything I care to submit
14 rebutting the case that the Tribunal permitted the NAB to
15 present or to attempt to present on those three issues.

16 My inclination of the moment, and I do think I have
17 a few hours to confer with my colleagues about this, is to do
18 nothing because of my perception, which I won't argue today,
19 of the value of the testimony that we've heard in the last
20 two days on those issues.

21 I don't think the NPR analogy is at all fair,
22 because I have yet to hear that NPR contended that later as a
23 part of an evidentiary presentation, in contrast to an argument
24 advanced in brief, but as part of an evidentiary presentation
25 it would be putting more in as a part of its direct case.

1 In my judgment the procedures established by the
2 Tribunal were clear. They were precise. I think now, as
3 I contended at the time the direct cases were put in, that
4 NAB, of all the parties, has proceeded in disregard of the
5 procedures established by the Tribunal. It has presented its
6 cases in a fashion which risk, at least, serious prejudice to
7 the other parties, and I would urge very strongly that it is
8 totally appropriate, both given the nature of the notice
9 previously provided, given the statutory mandate that we're
10 all operating under to proceed with expeditiousness, the
11 substantial amount of time that has transpired since this
12 issue was first raised, and, certainly the ample time that the
13 NAB had to prepare itself for today, that the Tribunal rule,
14 in essence, that enough is enough. NAB has had its opportunity,
15 and it is bound by the record compiled to this point in time.

16 It may, I would hope the Tribunal would rule, as
17 all other parties may do, submit rebuttal testimony next week.
18 Rebuttal testimony is, as Mr. Scheiner made clear yesterday,
19 testimony which is directly responsive to the case of another
20 party. It is not shoring up deficiencies in one's own case.
21 It is not coming in now with the claim that we can precisely
22 quantify local programming, as Mr. King suggested yesterday.

23 I confess to being at a loss to know what position
24 there could be that would be fair other than to cut them off on
25 all three of these issues right now. If Mr. King is correct

1 that there is ample testimony -- I believe that is the term he
2 used -- as to the value of compilation and the other
3 theories that they espouse, then fine, he can argue that
4 testimony on brief. But to leave all the other parties up in
5 the air waiting for next week, when presumably we will be
6 trying to present our rebuttal testimony, to get direct
7 evidence of the value of claims that NAB is making, seems to me
8 to be totally out of order.

9 I'm sorry for the length of my comment.

10 MR. KING: I'll do this as briefly as I can. I
11 would like to address each of these issues.

12 First sports. As I said yesterday, on the
13 eleventh hour, one of our witnesses for business reasons said
14 he couldn't testify, so we had to put in Mr. Wadler. I
15 explained to you yesterday the problem that I foresaw of
16 introducing every contract and having that as a matter of
17 litigation. There simply wasn't time to do it. I was in a
18 quandary as to what to do. So I thought that what I would
19 recommend is that there be discussion over elements that would
20 be taken into consideration in interpreting the contract, and
21 Mr. Lloyd and I could agree as to which contracts would be the
22 subject of dispute, and then we could focus on them.

23 Now, as far as our share to sports and the award to
24 sports, it was my feeling that there would be an award to
25 sports generally, and that would not differ whether it was

1 owned by a baseball club or a radio station, and whatever is
2 determined that the stations are entitled to could just be
3 carved out of that award.

4 My feeling was that the same thing would hold true
5 with the question of exclusivity, and that therefore it
6 wasn't necessary at this stage to come in with a formula as to
7 what percentage of syndicated exclusivity. There's going to be
8 an award to syndicators, and if we are correct on the issue
9 of syndicated exclusivity, we would be entitled to a portion
10 of that award. And that was the feeling I had, and that's
11 closely analogous to the sports situation.

12 The testimony, I think, is complete on the
13 compilation aspect of it, with the exception of the
14 percentage, which we can give you in very precise form. It's
15 the only thing open.

16 MR. SCHEINER: I've remained silent throughout this
17 discussion because the matters in dispute were not clear to me,
18 and I confess they are still not clear to me.

19 I understood the Chair to rule explicitly that the
20 record is now closed, and if the record is closed, there is
21 no further evidentiary material to be submitted. We now
22 proceed to the next stage, which is rebuttal, and rebuttal is
23 what I have previously described and, again, summarized by
24 Mr. Lloyd.

25 I don't know what the dispute is about at this

1 time. I have heard no request for reconsideration of the
2 Chair's ruling. I think it would be inappropriate. I think
3 the Chair was imminently correct. I think NAB has been
4 afforded endless opportunities to come in with its case.
5 We have its case before us, such as it is. We can address
6 that in your proposed findings. But the record is closed on
7 its claims of exclusivity, compilation and sports.

8 CHAIRMAN BURG: While we have you all here, the
9 Commissioners will take a brief recess, and we will be back
10 to tie up any loose ends, if any loose ends indeed are present.

11 (A short recess was taken.)

12 MR. KING: Could I be heard for two seconds?

13 CHAIRMAN BURG: All right, Mr. King.

14 MR. KING: The fault of our not having a formula
15 for compilation is mine, and I don't think that all of these
16 stations, if there's any merit to our argument of a
17 compilation, that they should be penalized because of my
18 failure to put a formula.

19 I think that there's no question that I was
20 influenced by the decision made in NPR. Arguments can be
21 made that they're not entirely analogous, but I think that the
22 situations are, and I did think we would have an -- when
23 NPR's testimony concluded, it was simply stated that at some
24 point they would submit a percentage to which they feel
25 they're entitled with some rationale for it, and I thought that

1 we would be extended the same opportunity.

2 Now, if I'm wrong in that, I don't think that all
3 of these stations should be penalized for my mistake.

4 CHAIRMAN BURG: Thank you, Mr. King.

5 The record is closed. We will adjourn until next
6 week.

7 (Whereupon, at 11 a.m., the proceedings
8 were adjourned, to reconvene at 10 a.m.,
9 Tuesday, May 27, 1980.)

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