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CHAIRPERSON BURG: All right, we will proceed.

Mr. Lloyd, who is your next witness?

MR. LLOYD: Mr. Garrett will take over at this point.

MR. GARRETT: Madam Chairman, I am Bob Garrett from the law firm of Arnold and Porter, and with my colleagues we represent the joint sports claimants.

At this time we would like to call Dr. Peter H. Lemieux.

CHAIRPERSON BURG: You were sworn yesterday, weren't you?

THE WITNESS: That's right.

MR. SCHEINER: A preliminary matter. The written testimony which appears above the names of Mr. Bowen and Dr. Lemieux contain some material which the sports interests have requested the Tribunal to take official notice of.

On behalf of the producers and syndicators, I have filed an opposition to that request for sufficient notice, and I would like to be heard on that opposition prior to any testimony from this witness.

(A discussion was held off the record.)

MR. LLOYD: If I may, I want to call the Tribunal's attention to the fact that we have filed a responsive document to Mr. Scheiner's request that you rule out of order our request for official notice; and I want to point out further

1 that the document style in request for official notice was
2 filed with you on March 24th. Since that time ground rules
3 that perhaps were not clear to us then have become clear
4 to us, because it seems to us that this package of materials
5 is now a part of the record along with the rest of our case.

6 More appropriately, we are dealing with motion
7 to strike.

8 CHAIRPERSON BURG: Mr. Scheiner, would you amplify
9 why you think this request is necessary or appropriate at
10 this time?

11 MR. SCHEINER: Yes, because the written testimony
12 that you have before you relies in rather substantial part
13 on a voluminous document, which I now point out to you, that
14 voluminous document consists of a number of pleadings filed
15 by cable representatives and cable systems.

16 The sports people are relying on that material
17 in the testimony you are about to hear. I happen to believe,
18 and I trust that I can establish for the Tribunal, that in
19 granting the request for sufficient notice would be gross
20 procedural prejudicial error, and I would like to be heard
21 on that score.

22 CHAIRPERSON BURG: We will take a short recess
23 on that, please.

24 (A short recess was taken.)

25 CHAIRPERSON BURG: Mr. Scheiner, the Tribunal

1 notes the pendency of your motion. We will take it under
2 advisement, but we do not wish to hear any oral argument at
3 this time.

4 MR. ELDRIDGE: Madam Chairman, I have just seen
5 these papers. They were mailed to our New York office, but
6 we came down here before they were received. I intended to
7 make a similar motion, but at the time any such evidence
8 was being submitted in fact through witnesses in terms of
9 reliance upon anything there, because I think the motion is
10 well taken, and NAB wishes to be on record making the same
11 motion that Mr. Scheiner has made on behalf of his clients.

12 CHAIRPERSON BURG: So noted.

13 MR. ELDRIDGE: Thank you.

14 CHAIRPERSON BURG: Mr. Lloyd?

15 MR. LLOYD: At this time, Madam Chairwoman, may
16 I just point out one thing --

17 CHAIRPERSON BURG: We didn't want to hear any
18 oral argument.

19 MR. LLOYD: I understand that, but because of the
20 tenor of the comments that were made by counsel for NAB --

21 MR. BRENNAN: Point of order --

22 MR. LLOYD: I am not arguing that. I just want
23 to point out that under the Federal Rules there are two
24 different issues, and the issue with the witness on the
25 stand is whether he can refer to material. That's all.

1 CHAIRPERSON BURG: Mr. Garrett, would you proceed
2 with your witness, please?

3 Whereupon,

4 DR. PETER H. LEMIEUX

5 resumed as the witness and, still under oath, was examined
6 and testified further as follows:

7 DIRECT EXAMINATION

8 BY MR. GARRETT:

9 Q For the record, Doctor, would you state your
10 name and position, please?

11 A Yes. I am Dr. Peter H. Lemieux. I am a research
12 manager with Kalba Bowen Associates in Cambridge, Massachusetts.

13 Q Prior to joining Kalba Bowen Associates, Doctor,
14 what positions did you hold?

15 A In 1975 I was appointed to the faculty at the
16 University of Rochester as an assistant professor of political
17 science. I held that post until 1979; however during the
18 1978, 1979 academic year I was a visiting fellow in the
19 Department of Economics at Harvard University under a
20 National Science Foundation Fellowship.

21 Q Would you describe your educational background,
22 please?

23 A Yes. I graduated from Harvard College in 1971
24 with a Bachelor's degree in Government, and I have a PhD in
25 political science from the Massachusetts Institute of

1 Technology, which I received in 1977.

2 Q Doctor, would you also describe your background in
3 statistical research, please?

4 A Yes. I joined the faculty at the University of
5 Rochester principally to teach statistical methods in the
6 Political Science Department. While there I taught courses
7 in both basic and advanced topics in statistics for graduate
8 students in political science.

9 I have also authored two articles concerning the
10 applications of statistical methods in the social sciences,
11 and I have a book length manuscript which is under review
12 in the same area.

13 In my own substantive work I have used statistical
14 methods quite widely, including both survey data and other
15 forms of aggregate data, and I might note that the thesis
16 which I wrote for my doctoral degree, which used both of
17 these kinds of data, was awarded a prize from the American
18 Political Science Association.

19 Q Doctor, the joint sports claimants have provided
20 the Tribunal in these proceedings with a study prepared by
21 the A.C. Nielsen Company. This study measures the viewing
22 of 24 stations of distant cable households. Are you familiar
23 with the study, Doctor?

24 A Yes, I am.

25 Q And did Kalba Bowen Associates commission this

1 study from the A.C. Nielsen Company?

2 A. Yes, we did.

3 Q. Why did you commission this study?

4 A. Kalba Bowen Associates was given the responsibility
5 of measuring the value of distant signal programming to cable
6 viewers.

7 We knew at the time that time as a measure of
8 value was not sufficient, and we believed that audience is an
9 importance factor which has to be considered, so we commissioned
10 this study of audience viewing; however, we also believed that
11 other factors are important in measuring the value of this
12 programming, and those factors will be addressed by my
13 colleague Mr. Bowen.

14 Q. Why did you choose the A.C. Nielsen Company?

15 A. A.C. Nielsen is the industry standard with regard
16 to the collection of audience data. They have been in this
17 business almost as long as television has existed, and the
18 industry relies on it in making the day-to-day marketplace
19 decisions with regard to advertising and other sorts of
20 programming decisions that are made in the television industry.

21 Q. Did you select the sample of television stations
22 which was presented to Nielsen?

23 A. Yes, I did.

24 Q. And is the methodology which you used to select
25 these stations set forth in Appendix E to the Kalba Bowen

1 study entitled, "The Comparative Value of Non-Network Distant
2 Signal Sports Programming on Cable Television"?

3 A. Yes, it is.

4 Q. Briefly, Doctor, could you describe how you
5 selected this sample?

6 A. Yes. Using acceptable statistical procedures
7 we selected a sample of 25 stations from the universe of
8 some 650 American stations that generated cable royalties.

9 Q. Did each of the 650 signals which you looked at
10 have equal probability of being selected?

11 A. No, they did not. Before we selected the stations
12 we weighted each of the stations with respect to its
13 contribution to the royalty pool.

14 The result of this was to give stations that are
15 major market independents a higher probability of being
16 selected since they contributed a much more substantial
17 amount to the royalties that are being discussed here today.

18 Q. How did you determine its contribution, each
19 station's contribution, to the royalty pool?

20 A. We used the analysis that was prepared by the
21 Motion Picture Association of American and which has been
22 testified earlier to in these proceedings.

23 Q. Is it your opinion, Doctor, that it is reasonable
24 to weigh each signal according to the royalty contribution
25 for which that station is responsible?

1 A. Yes, it is.

2 Q. And what do you base this opinion on?

3 A. We believe that the royalty fees are the best
4 available objective measure of the carriage of distant
5 signals to cable subscribers. In other words, the size of
6 the royalty fee depends upon the number of subscribers that
7 can view a particular signal and the availability of qualifying
8 programming on that signal.

9 As a result, we believe our study is an accurate
10 measurement of the viewing patterns of qualifying distant
11 signal programming by cable subscribers.

12 Q. Aside from the weighing process, Doctor, which you
13 have just described, did the royalty contributions for which
14 the stations were responsible in any other way enter into
15 the study which Nielsen provided you?

16 Q. No, they did not.

17 Q. Why was it necessary to select a sample rather than
18 to measure the viewing at all 650 stations?

19 A. It would simply have been too expensive to collect
20 this data for all 650 stations. As it was, the Nielsen data for
21 the 25 stations we have here alone cost us some \$50,000.

22 Q. Why did you draw a sample which consisted of
23 precisely 25 stations rather than some other number?

24 A. It is a commonly accepted practice in statistics
25 that 25 elements constitute a reasonable small sample size

1 that provides a valid measure of the universe in which it is
2 chosen.

3 Moreover, as I just mentioned, the economic
4 constraints in gathering this data were quite substantial.

5 I might also note here that one of the stations
6 for which we sent to Nielsen, KMUB, we did not receive data
7 from, because it was not viewed sufficiently by cable house-
8 holds to provide us with accurate measures of their viewing
9 patterns.

10 Q Did your sample include any network affiliates
11 or non-commerical educational stations?

12 A One of the stations in our sample, WREP in Charlotte,
13 North Carolina, was a network affiliate part of 1978. There
14 were no non-commerical educational stations in our sample.

15 Q How do you account for this result, Doctor?

16 A As I explained, all the stations were selected
17 on a random basis; however, because of the weighting procedure
18 it was a fact that the network affiliates and the educational
19 stations accounted for a very small fraction of the total
20 royalty pool. As a result, their chances of being selected
21 by our procedure were much smaller than the chances of major
22 market independents.

23 Q Does your sample also include any Spanish language
24 stations, Doctor?

25 A Yes, there were three Spanish language stations

1 in our sample.

2 Q Again, how do you account for that result?

3 A Again, it was simply a matter of chance; they
4 happen to come up in the draw.

5 Q Do you think that the fact that there was only one
6 network affiliate, no non-commercial educational stations,
7 does this in any way affect the conclusions that you have
8 reached in this case?

9 A No, I don't believe so. We believe that viewers
10 choose programs when they turn on their television set; they
11 don't choose stations. Our study is concerned with measuring
12 the relative attractiveness of three kinds of programming to
13 cable subscribers.

14 We don't believe that the relative appeal of
15 sports programming vis-a-vis movies, for example, would be
16 very different on a network affiliate than it would be on an
17 independent station. It is the attractiveness of the program-
18 ming and not the location of the programming that is
19 important.

20 Q In your opinion, Doctor, is the study which you
21 have performed here with the Nielsen data a statistically
22 reliable measure of distant signal cable viewing?

23 A I believe it is, yes.

24 Q The 24 stations which were chosen for this sample,
25 Doctor, how much of the 1978 cable television royalty pool

1 did they account for?

2 A. Nearly 50 percent.

3 Q. Briefly, Doctor, could you describe what you asked
4 the Nielsen Company to do?

5 A. Yes. We asked Nielsen to measure the amount of
6 distant cable viewing on each of our 24 stations that
7 categorizes viewing into the three broad categories of
8 sports, movies and syndication, and local programming.

9 A. And did Nielsen do so?

10 A. Yes, they did.

11 Q. The results of their study are contained in this
12 document entitled the "Nielsen Station Index Special Study
13 for Kalba Bowen Comparative Viewing of Qualifying Programs,
14 25 Signals, 1978"?

15 A. Yes, it is.

16 Q. What was the definition of a "distant signal"
17 that was used in this study?

18 A. We define as a distant signal one which was viewed
19 outside of the so-called designated market area or DMA or
20 that local signal.

21 Q. What is the DMA?

22 A. DMA is a term used by Nielsen which reflects
23 the categorization of counties in the United States into
24 television markets; that is, counties are assigned to markets
25 on the basis of the viewing patterns that they have; they are

1 assigned to those markets whose stations they view most
2 consistently.

3 Q And the term "DMA" is an accepted standard used
4 in the communications field; is that correct?

5 A Yes, it is. It is a standard measure of market.

6 Q Nielsen uses this same definition when it
7 supplies its reports of viewing to its other clients such as
8 broadcasters and others who receive its reports?

9 A Yes, it is the fundamental Nielsen definition
10 of a market.

11 Q Doctor, are you familiar with the FCC's definition
12 of "distant signal"?

13 A Yes, I am.

14 Q Is the definition which you have used in this
15 study precisely the equivalent of the FCC's definition of
16 "distant signal"?

17 A No, it is not. In some cases it is exactly
18 equivalent; however, in other cases there are some household --
19 we classify as distant -- which would be considered to be
20 local under the FCC's rules.

21 Also there are some signals which we consider to
22 be local that are considered to be distant under the FCC's
23 rules. So that we have all three kinds of possibilities.
24 There's exact fits; there are fits which work more to our
25 advantage in terms of what we consider to be distant; and

1 then there are other situations where, what the FCC consider
2 to be distant, we consider to be local.

3 Q In your opinion, Doctor, does the fact that there's
4 not a precise correlation between these two terms in any way
5 affect the analysis which you have performed of distant cable
6 viewing?

7 A No, not in the aggregate

8 Q Doctor, we have also referred to the term here
9 "viewing." Would you describe to the Tribunal what that means,
10 please?

11 A Yes. "Viewing" is the product of two components.
12 One of them is the amount of time during the broadcast day
13 that a program occupies, and that's measured in quarter hours;
14 and the other component of viewing is the amount of audience
15 in thousands of households which that program attracts. The
16 viewing is the product of those two. It is audience hours
17 or audience quarter hours.

18 Q Doctor, you mentioned that the viewing data was
19 segregated into three categories: sports, movies and syndi-
20 cation, and local programming. Could you tell us, please,
21 who decided what programming to come within each of these
22 categories?

23 A Yes. The initial program classifications were done
24 by A.C. Nielsen. Nielsen has in his computer program codes
25 attached to most of the network, movies, syndicated programming,

1 and sports programming that it normally classifies; so that
2 it was quite able to classify most of this programming using
3 its normal procedures.

4 We then reviewed Nielsen categorizations and in
5 some cases after reviewing their decisions we made some
6 changes in the categorizations reflecting other sources of
7 knowledge that we have.

8 Q. Were there many changes that were made?

9 A. No; they were very few in some categories. For
10 example, in sports programming Nielsen was quite accurate.
11 Most of the changes had to do with borderline programming
12 between what was considered to be local and what was
13 considered to be movies or syndication.

14 In addition, on the Spanish language stations,
15 quite a large amount of the programming was considered by
16 Nielsen originally to be local, because they didn't know how
17 to deal with the Spanish language stations. We then checked
18 with officials at Spanish language stations, and we classified
19 a large portion of that back into movies and syndication.

20 Q. Very generally, Doctor, describe what programming
21 was included in the sports programming category?

22 A. Sports consists essentially of the complete
23 television coverage of any professional, collegiate, or amateur
24 sporting event.

25 Also we include programming which consists of

1 highlights of those games, compilations of highlights, such
2 as this week in baseball.

3 Q I assume, Doctor, when you say that, a local news
4 show that would include highlights was not included in the
5 sports programming category?

6 A That's correct.

7 Q Doctor, what portion of the viewing of the
8 programming in the sports programming category can be
9 attributed to the telecast of professional baseball, hockey,
10 soccer, and the basketball?

11 A Well, I can't give you an accurate numerical
12 answer to that, Mr. Garrett. However, when we reviewed
13 Nielsen's categories in the first past, my recollection is
14 that the overwhelming proportion of the viewing was accounted for
15 by the four joint sports claimants.

16 Q Doctor, did you or anyone else at Kalba Bowen
17 Associates make any changes in the reports provided you by
18 Nielsen?

19 A Yes. We made one change. We increased the amount
20 of quarter hours of viewing in July by a factor of four-thirds.

21 Q And why was this done?

22 A In 1978 the July sweep period consisted of only
23 three weeks, while the other three sweep periods each consisted
24 of four weeks.

25 We believe that we needed to make this adjustment

1 in order to count all four sweep periods on an equal basis.

2 Q Am I correct, Doctor, that beginning with July
3 of this year that Nielsen will be measured in four weeks in
4 July as it does with the other three measurement periods?

5 A It is my understanding from officials of the A.C.
6 Nielsen Company that that's true, yes.

7 Q Were there any other changes made in the data
8 provided you by the Nielsen Company, Doctor?

9 A No, we did not make any other changes.

10 Q Taking the one adjustment that you have just
11 described in your account, Doctor, could you describe the
12 general conclusions which you draw from the Nielsen data?

13 MR. GARRETT: Madam Chairman, with your permission,
14 we thought it might be easier if we used the viewgraph in all
15 of the data we are referring to as included in the Kalba Bowen
16 Associates report.

17 (Viewing projector is being used during the
18 following questions and answers.)

19 BY MR. GARRETT:

20 Q For the record, the two tables that Dr. Lemieux
21 will be referring to are tables 4.2, which is included on page
22 37 of the Kalba Bowen report, and table 4.3, which is on page
23 38.

24 First of all, Doctor, could you compare the
25 average audiences which each of the program types attracted

1 during a quarter hour?

2 A. Yes. As you can see from the top table here,
3 sports programming accounted for an audience on the average
4 of 24,000 households in an average quarter hour of sports
5 programming.

6 The equivalent average quarter hour of syndication
7 and movies do audiences of 12,000 households on the average.

8 The average quarter hour of local programming through
9 then an audience of about 6,000 households.

10 Q. Doctor, these are all cable households that are
11 located outside the local DMA of the stations being analyzed?

12 A. Yes, they are.

13 Q. So that sports received on the average twice the
14 audience?

15 A. Yes. Sports obviously receives on the average
16 twice the audience of movies and syndication, and four times
17 the audience of local programming.

18 Q. Doctor, the next table which we have there is
19 table 4.3. What does that show?

20 A. (Still using viewing projector.) We divided up
21 the hundred percent of time, that is the total number of
22 quarter hours, from all the stations in our sample, and the
23 hundred percent of viewing that is the product of time and
24 quarter hours and audience shares to get these numbers down
25 here, which are the percentages of viewing and time respectively.

1 And as you can see, while sports occupies only
2 five percent of the program year, it gets 11 percent of the
3 total viewing.

4 Movies and syndication are essentially equal,
5 getting 81 percent of the time and 82 percent of the viewing;
6 while local programming, while it is on the air for 14 percent
7 of the time, gets only 7 percent of the viewing, because,
8 as you can see by the previous table, it is not viewed by
9 very many non-DMA cable households.

10 Q. Doctor, have you also summarized the Nielsen data
11 with respect to the superstations?

12 A. Yes, we did.

13 Q. Would you define for the Tribunal what you have
14 meant by the term "superstation"?

15 A. Yes. We counted not only the station that was
16 on the satellite in 1978, WTCG, but also stations for whom
17 applications had been filed with the FCC for satellite carriage
18 in 1978. They are six other stations you will see here in
19 a minute.

20 Q. All right. Why do you feel it is important to look
21 at the viewing patterns on these seven stations, Doctor?

22 A. Essentially because the decision has been made
23 to carry these stations on the satellite; that is, we believe
24 that the marketplace has decided that these are the seven
25 stations that are most valuable to cable systems to carry

1 for their viewers, because they are indeed being carried on
2 satellite carriage.

3 Q. So you have measured then in this next graph that
4 we are about to show you the amount of viewing on those
5 stations which are at least the marketplace is determined to
6 be the most valuable stations to cable system operators
7 throughout the United States?

8 A. Yes.

9 Q. Once again for the record, the table we are
10 referring to here is table 4.4, which is on page 40 of the
11 Kalba Bowen Associates report entitled "Share of Viewing
12 Superstations."

13 A. Table 4.5.

14 Q. And the other table on the bottom is table 4.5,
15 also on page 40 of the Kalba Bowen report.

16 Doctor, could you show us what each of those
17 tables represents, please?

18 A. Yes. Up above we have the shares of viewing for
19 each of the three kinds of program. It is the same number
20 we have presented before with 11 percent aggregate. This is broken
21 down now on a station-by-station basis for the different
22 superstations.

23 We see here that there is some reasonable amount of
24 variability in the amount of viewing of sports, all the way
25 from it being quite popular on WSBK, which carries the

1 Redsocks and the Bruins, and WOR which carries six different
2 kinds of sports, six different teams, four different kinds of
3 sports.
4

5 It is less viewed on TCG, WPIX, and WGN, although
6 still above our overall aggregate number. And on two of the
7 superstations sports only constitutes a smaller than the
8 aggregate overall average share, six and five on the two
9 West Coast stations.

10 Q. Table 4.5, Doctor?

11 A. Table 4.5, if you look at the actual households
12 that these kinds of programming attract, we can see that
13 consistently sports programming on all of these stations
14 outdraws either of the other kinds of programming types.

15 For example, on WTCG the average sports program
16 gained 62,000 households as compared to 49,000 households
17 for movies and syndication, and only 12,000 households for
18 quarter hour for local programming.

19 On a station like WSBK the advantages are even
20 more substantial. Sports gets three times the audience in
21 movies and syndications and almost ten times the audience
22 of local programming.

23 So overall we believe that this shows quite dramati-
24 cally the popularity of sports, not only in the aggregate,
25 but on these seven stations which the marketplace has decided
are quite valuable for cable operators to carry.

1 MR. GARRETT: That's all the questions we have
2 at this time. Would any member of the Tribunal care to
3 question the doctor?

4 CHAIRPERSON BURG: The Tribunal has no questions
5 at this time. We will proceed with you out there. Who does
6 have questions for Dr. Lemieux.

7 CHAIRPERSON BURG: Mr. King?

8 CROSS-EXAMINATION

9 BY MR. KING:

10 Q. Doctor, when did you commission the Nielsen survey?

11 A. I believe that I remember selecting the samples
12 sometimes in December of 1979, and I think that we commis-
13 sioned the study about that time.

14 Q. Did the Nielsen people draw upon data that they
15 had compiled during the year for the year 1978?

16 A. Yes. This is their standard records for the 1978
17 programming year.

18 Q. Who precisely determined the sample? Was it you
19 or you in conjunction with somebody else?

20 A. The list of the stations themselves, that was my
21 entire responsibility.

22 Q. Did you have access to the Nielsen data at that time?

23 A. No.

24 Q. What precisely was your object in selecting the
25 stations for the sample?

1 A. We wanted to adequately measure as best we could
2 the patterns of viewing of distant signal programming by
3 cable households.

4 Q. Well, more precisely was your object to ascertain
5 the popularity of sports?

6 A. No. Our effort was to examine comparative viewing
7 of each of the three basic programming types that were shown
8 here.

9 Q. In other words, you would try and get a sample
10 that would reflect actual viewing as to all program segments;
11 is that correct? Programming components, syndicated
12 programming and movies, locally produced programming in
13 sports; is that what you were trying to do?

14 A. Essentially, yes.

15 Q. Is it what you were trying to do or is there some
16 qualification?

17 THE WITNESS: Can you read the original question
18 back?

19 (The court reporter read back the record.)

20 THE WITNESS: We wanted to choose a sample of
21 stations -- I mean I chose a sample of stations by a
22 procedure which was essentially disconnected from the question
23 of what kinds of viewing there was going on on these stations.
24 As we established a process of choosing stations randomly,

25

1 we followed that process; we got the list of stations that
2 You see here. I believe this is a sample that adequately
3 reflects viewing patterns in distant households.

4 Q. You believe it is a sample that adequately
5 reflects viewing patterns for locally produced programs,
6 motion pictures and syndicated properties, and sports?

7 A. Yes.

8 Q. So that it is fair in equal shares?

9 A. I believe so, yes.

10 Q. Let me ask you this: If you were asked to
11 construct stations for a sample that would accurately
12 reflect nationwide viewing patterns for locally produced
13 programming, would you have gone about it the same way?

14 A. Are you asking me if I am interesting in measuring
15 that as distant signal viewing in cable households?

16 Q. Yes.

17 A. Yes.

18 Q. You would use the precise station selection
19 procedure that you employed in this case?

20 A. To measure distant signal qualifying programming
21 viewing, yes.

22 Q. Isn't it true that a major element for the selection
23 of the stations for this particular sample was the fact that
24 they carried sports?

25 A. No. As I said to you, I used essentially an

1 objective procedure. I drew random numbers from the table
2 until I got the list of 25 stations we have here.

3 Q. If you were going to do it on a random procedure,
4 why were you so concerned about variance? Why wouldn't it
5 have been strictly a random procedure?

6 A. Well, as you know, Mr. King, the shares of
7 contributions that these stations generate were quite
8 different and simply would not have been the case that if we
9 took, say, any 25 stations at random, we would have very
10 adequately reflected the true situation in the world.

11 We needed to reflect the fact that some of these
12 stations were viewed by substantially larger audiences than
13 other stations, and that is picked up by the royalty fees.

14 Q. In determining the monies generated by the stations,
15 you used the MPAA analysis; is that correct?

16 A. For the fees, yes.

17 Q. In selecting the stations?

18 A. Yes.

19 Q. If you wanted to accurately assess viewing patterns
20 nationwide, wouldn't you want to take into consideration
21 the amount of locally produced programming in terms of time
22 and viewership of the network affiliates?

23 A. As I stated before, our objective was to measure
24 the viewing of qualifying distant signal programming in cable
25 households. It simply is the case that there are very few

1 network affiliates that are viewed by very many cable
2 subscribers on a distant basis.

3 Q Are you saying that --

4 MR. KING: Could I have that answer repeated?

5 THE WITNESS: I meant that in terms of number of
6 subscribers.

7 MR. KING: I would just like the answer repeated,
8 please.

9 MR. GARRETT: Doctor --

10 MR. KING: Excuse me.

11 MR. GARRETT: You interrupted him when he was about
12 to talk. Did you have something to add to that, Doctor?

13 THE WITNESS: Yes. I meant was in terms of the
14 number of subscribers. I am well aware that there are a large
15 number of network affiliates in the 650 stations, but they
16 did not generate very many royalty fees.

17 BY MR. KING:

18 Q Isn't that because you used the MPAA analysis
19 of how the stations generate fees?

20 A I don't know if you can say it depends upon the
21 MPAA's analysis.

22 Q But I mean that analysis is weighted in favor of
23 independent stations, is it not?

24 A I believe so, in the sense that it follows Congress'
25 definition of a distant signal equivalent.

1 I mean that's a legal conclusion in the sense that it follows
2 Congress' design. That's one of the things the Tribunal
3 will have to decide.

4 A. Yes, I understand that.

5 Q. But it is a fact -- and let's get it clear --
6 that the MPAA analysis is weighted in favor of independent
7 stations; correct?

8 A. I don't believe it is fair to say it is weighted
9 in favor of independent stations. It measures the contri-
10 bution of independent stations, network affiliates, and
11 commercial or non-commercial educational stations as they
12 are reflected, as they are measured by the copyright law.

13 Q. But the MPA analysis does not assess an hour of
14 network time the same way it assesses an hour of independent
15 time, network affiliate time?

16 A. That, as I understand it, is because Congress
17 believes that a very small fraction, 25 percent, of the
18 programming on those network affiliates would have been
19 qualifying, and that's why they structured the law the way
20 they did.

21 Again, as I said before, we were trying to measure
22 the viewing of qualifying programming.

23 Q. Well, locally produced programming on a network
24 affiliate is qualifying programming, is it not?

25 A. Yes, it is.

1 Q Do you know how many network affiliates there are
2 in the country?

3 A No, I don't know exactly.

4 Q Do you know how many independent stations there are
5 in the country?

6 A Not exactly, no.

7 Q Do you have any idea?

8 A I believe there's about 100 or 200 independent,
9 something like that. I am not sure exactly.

10 Q In determining whether or not the stations that you
11 selected would accurately reflect viewing patterns throughout
12 the United States, did you give consideration to the number
13 of independent stations and the number of network affiliates?

14 A No, I did not.

15 Q And you ignored that?

16 A As a direct criterion for the sample, yes.

17 Q And the direct criterion for the sample was the
18 MPAA methodology?

19 A The fees that those stations generated, yes.

20 Q There were 25 stations in your sample, as I recall?

21 A Yes. Except only 24 stations from which we got data.

22 Q Okay. And I believe that of the 24 there were some
23 17 or 16 flagship stations?

24 A That may be. I don't know.

25 Q You are the person who selected the sample?

1 A. Yes.

2 Q. And you don't know how many flagship stations are
3 included in it?

4 A. No. I selected the sample.

5 Q. Let's assume that they were all flagship stations.

6 A. I have no way of knowing whether they were all
7 flagship stations or not.

8 Q. Let's assume that they were; would you still
9 represent to this Tribunal that the Nielsen sample accurately
10 reflects viewing patterns throughout the United States?

11 A. Mr. King --

12 Q. Would you answer that yes or no?

13 A. Yes.

14 Q. You would still represent it is an accurate
15 assessment of viewing patterns --

16 MR. GARRETT: I am going to object to that,
17 Madam Chairman. It is not the fact that all of the stations
18 are flagship stations. And regardless of what the viewing
19 patterns or what the data would show if that were the case,
20 that's not in evidence here.

21 CHAIRPERSON BURG: I am going to overrule the
22 objection.

23 BY MR. KING:

24 Q. I don't want to be misunderstood. I am not saying
25 that all of the stations under the sample were flagship

1 stations.

2 A. I understand that.

3 Q. They aren't and I recognize that. I am simply
4 asking, if you knew how many of the 24 were, and you say you
5 don't know; and I am asking if they all were flagship
6 stations, were you consider that reflective of sports
7 programming, syndicated programming, and locally produced
8 programming throughout the country?

9 A. In terms of the viewing of those qualifying
10 programming by distant cable households, yes.

11 Q. Let's assume that in addition to all 24 stations
12 being flagship stations, we have a situation where any
13 number of the stations carry multiple teams; WOR, for example,
14 carries the Mets, Knicks, the Rangers, and a host of sports
15 teams; and let's assume that you have any number of flagship
16 stations in the same category, would you still contend that
17 that sample reflects, accurately reflects, viewing patterns
18 and broadcast patterns throughout the United States?

19 A. Mr. King, I tried to develop what I thought was
20 a fair and objective process for selecting stations, which
21 stations turned up at random out of that process was the luck
22 of the draw.

23 Q. Well, it may be the luck of the draw; it depends
24 upon whose ox is being gored, I guess.

25 But what I want - - just getting back to my example,

1 if they all turned out to be flagship stations, each of
2 which carried multiple sports teams, isn't it clear that simply
3 in terms of quarter hours of time of broadcast, there would
4 be a substantially larger number of quarter hours for sports
5 in that sample than there would be nationwide; isn't that
6 clear?

7 A. In terms of the signals that are primarily available
8 to distant cable households?

9 Q. Yes.

10 A. In terms of quarter hours, that probably would be
11 true, yes.

12 Q. I mean there's no doubt about it. It is clear.

13 A. If you say so. I'm not qualified to answer on
14 that.

15 Q. Okay. Now, in this particular case, 24 stations
16 were selected, 18 of which were flagship stations; okay?

17 A. I will take your word for it. I don't know that.

18 Q. Do you know how many independent stations there are
19 in the country? I will ask it again.

20 A. I think I already said I don't know the answer
21 to that.

22 Q. Do you know how many sports flagship stations there
23 are?

24 A. No, I do not. I believe it is in our report,
25 but I don't know the number.

1 Q I think it is 66. I am just expressing, I guess,
2 some reaction to the fact that out of 24 stations that you
3 select, 18 are flagship stations. Are you aware that --

4 MR. COULTER: I just want to ask a question.
5 Are all flagship stations independent?

6 MR. KING: Yes.

7 MR. GARRETT: That's not correct, no. I am not
8 sure about the other data he has provided, but that certainly
9 is not correct. Baltimore Orioles, for example, televised
10 over WMAR, which I believe is the CBS affiliate up in
11 Baltimore.

12 COMMISSIONER COULTER: But are most of them, the
13 vast bulk of them?

14 MR. ELDRIDGE: Yes, they are.

15 BY MR. KING:

16 Q Are you, Doctor, aware that the independent
17 stations carry far less locally produced programming than
18 the network affiliates?

19 A No, I am not aware of that.

20 Q Would you agree that if your sample, if you make
21 the assumption that network affiliates have a larger share of
22 time and viewership as respects locally produced programming,
23 and if you assume that affiliates would introduce into your
24 sample, wouldn't it follow that the share allocable to locally
25 produced programming in terms of hour and viewing would increase?

1
2 A. I honestly don't know, Mr. King, because we are
3 talking here about distant signal viewing in cable households.

4 Q. Well, I understand that. But if there's more
5 time, it is obviously the station is being reported there is
6 going to be greater viewership?

7 A. Perhaps. I don't know that for sure.

8 Q. Are you aware that the cable systems can delete
9 locally produced programming when it comes in on a distant
10 signal?

11 A. I'm not aware of that.

12 Q. From an independent station.

13 A. I'm not aware of that.

14 Q. Were you in the room in the latter stages of
15 our proceedings involving the MPAA when Mr. Korn testified?

16 A. No, I was not.

17 Q. I believe in your direct testimony you stated that
18 the sports programming on the distant signal would include
19 a number of sporting events in addition to major league
20 baseball, hockey, basketball, and soccer?

21 A. Yes, I said that.

22 Q. And I think you went on to say that the overwhelming
23 majority of the sports, however, or percentage of the sports,
24 would be attributed to hockey, basketball, baseball and soccer?

25 A. In terms of viewing, that's correct.

Q. Do you have any basis for drawing that conclusion?

1 A. As I said, that was my impression from the time
2 we did the review of the Nielsen study, but I have no more
3 detailed analysis than that.

4 Q. Can you recall what it is you viewed?

5 A. I looked at the program listings that were provided
6 us by Nielsen.

7 Q. Why don't you just tell us what those listings
8 were and consisted of?

9 A. Nielsen provided us a set of lists on a program-
10 by-program basis which stated the name of the program, the
11 station it was carried on, quarter hours it was on the air
12 in that sweep period, and the estimated number of cable
13 households that viewed it.

14 Q. But that data does not break down sports carriage
15 into baseball or soccer or water sports or polo or wrestling
16 or anything else, did it?

17 A. It gave us the name of the program. In many cases
18 you could infer what it was.

19 Q. I'm sorry; I am not exactly clear what it is
20 Nielsen supplied you with.

21 A. Well, if it said "Braves Baseball," then it was
22 a Braves baseball game.

23 Q. Is this data that you received from Nielsen -- at
24 what point in time was this data supplied? Was this after
25 the stations had been selected?

1 A. Yes. This was the first past categorization of
2 the program. This is what we reviewed from Nielsen.

3 Q. In other words, after the stations were selected
4 and you have the statistical attached to the Nielsen report,
5 you then analyzed additional data supplied by Nielsen?

6 A. The first thing Nielsen supplied us with was a long
7 list of programs, so that we could review their categorization
8 into the three categories we have here to make sure that we
9 thought that they had done an accurate job.

10 Q. Was this data supplied before or after the stations
11 were selected?

12 A. After.

13 Q. As I analyze the sports data, you attempt to allocate
14 a royalty share to sports essentially based on two categories
15 of testimony; one is Nielsen and the other is BBD&O.

16 A. That's not true, Mr. King. There's a large
17 amount of other information in our report.

18 Q. I understand that, but what I am trying to do is
19 BBD&O gave a percentage figure of which then the Copyright
20 Royalty Tribunal, if it accepted that figure, could allocate
21 royalties; Nielsen does the same thing. Now, there is an
22 awful lot of other data, and I don't want to be misunderstood,
23 which you will claim and attest to the popularity of sports,
24 but the only two elements of evidence that I can see that
25 would assist us in translating this popularity into dollars

1 or share is the Nielsen data and BBD&O.

2 A. Mr. King, I don't want to try to make up the
3 Tribunal's mind about what kind of formula they should use.
4 I believe they have a very unenviable task in trying to
5 collect together a large amount of data, some of it quantitative,
6 some of it qualitative, some of it totally inferential on which
7 they will come, I hope, to some fair allocation of royalty
8 shares to the various claimants.

9 Q. What I am trying to do is narrow this thing down,
10 and maybe it can't be done; I think it can.

11 Nielsen data indicates that sports viewership
12 has 11 percent; correct?

13 A. Yes, it does.

14 Q. Now, that figure can be used, can be accepted,
15 rejected, but at least it is a way of allocating a share of
16 this royalty pool; right?

17 A. Only if you believe that audience alone is the only
18 measure of value.

19 Q. I understand that. But what I am trying to do is
20 isolate those portions of the presentation which would assist
21 us in assessing royalty shares accurately or with some
22 precision, and you claim apparently that the Nielsen data
23 enables you to do that.

24 A. In terms of the allocation of royalty shares?

25 Q. Yes.

1 A. I never made that statement in my testimony. I
2 believe that the Nielsen data is one important factor that
3 needs to be considered, but it is hardly determinative.

4 MR. KING: I have no more.

5 CHAIRPERSON BURG: Mr. Scheiner?

6 BY MR. SCHEINER:

7 Q. Doctor, to followup on the last series of questions,
8 you do place great confidence in Nielsen's ratings, do you not?

9 A. I believe they are an accurate measure of viewing
10 of distant signal programming in cable households, yes.

11 Q. And if the Nielsen ratings done on the sample you
12 provided were to be used as the measure for distribution of
13 a royalty fund, what would the distribution be for sports and
14 for movies and syndicators?

15 A. I can't tell you, Mr. Scheiner. That's the
16 Tribunal's decision, not mine.

17 Q. I am asking you -- I think you can answer the
18 question, Doctor -- I asked you to assume that the Nielsen
19 material which you provided us were used as the measurement
20 for the distribution of a royalty fund; can you accept that
21 hypothetical question?

22 A. You mean as the sole basis for distribution?

23 Q. Yes.

24 A. If it were the sole basis for distribution, which
25 I believe it is not, I would believe that on that basis the

1 share should be allocated by viewing.

2 Q. What would those shares be?

3 A. 11 percent to sports, I believe, 7 percent to
4 local programmers, and 82 percent to movies and syndicated
5 shows.

6 Q. Is it not 83?

7 A. Mr. Scheiner, I understand that a point is very
8 valuable, but I think that after the July adjustment, the
9 numbers of the 11, 82, and 7, which I presented before, which
10 is in table 4.3 --

11 Q. I'm sorry; Doctor. I am looking at the last
12 summary page.

13 A. Yes, I understand.

14 Q. Four cycle average, and the number there is 83.

15 A. Yes, that's because the data that we have in that
16 chart from Nielsen that you have in your hand does not take
17 into consideration the adjustment for July that I mentioned
18 in my testimony, and that is in table 4.1 of our overall
19 report.

20 MR. GARRETT: That's on page 36 for the Tribunal.

21 BY MR. SCHEINER:

22 Q. I would like for you to explain to me how that
23 random number table works. I poured over it endlessly, and
24 I would find it very, very helpful. First let me ask you this,
25 I am referring to appendix E-6, in your direct testimony you

1 said that the methodology was set out in that appendix. If
2 I were to read that and read that only, and assuming some
3 reasonable intelligence and even some expertise, could I tell
4 what you did from appendix E-6?

5 A. If you had the listing that the MPAA produced to
6 the sharers, yes, I believe you could replicate my results
7 in that appendix.

8 Q. Well, turn to page E-6, I am in the middle of the
9 page, where it says, for instance, the first six digit number
10 in the listing is 776888, which if we translated into a
11 fraction, 9., same number?

12 A. Yes, that's a typographical error.

13 Q. You have no idea how many hours we spent with that
14 typo.

15 MR. GARRETT: Madam Chairman, for the record, we do
16 have an errata sheet that we will submit at the beginning of
17 Mr. Bowen's testimony. That may clear up that problem.

18 BY MR. SCHEINER:

19 Q. That 9 I take it is a zero?

20 A. Yes.

21 Q. You then consulted a list of signals and their
22 related square share proportions and selected the station
23 in whose range the fraction fell. Can you illustrate that for
24 me? What happened? How did you do that, looking at the random
25 number?

1 A. Do you want me to outline the entire procedure
2 from top to bottom?

3 Q. I generally don't know how you did it, and I'm
4 intrigued and would love to find out.

5 A. Okay. We took each of the stations on the list,
6 squared the share of its royalty fees; we summed those numbers
7 up, okay; so that each of those were then given a proportion
8 of the squared share total.

9 The first station on the list was then considered
10 to occupy the interval between zero and whatever its squared
11 share proportion was.

12 Q. I'm sorry. Say that again, please.

13 A. The first -- We then go back to the list of
14 stations, which happen to be in alphabetical order, starting
15 with, I believe, KAAL; we assumed that we would allocate the
16 portion of the interval between zero and one, that little
17 infinitesimal portion that its squared share proportion
18 occupied, to the interval between zero and whatever that number
was, say it was .001.

19 Q. That last number being the squared number?

20 A. That's the proportion.

21 Q. The fraction?

22 A. The fraction of the squared share. For the next
23 station on the list we allocated -- the next alphabetical
24 station.

25 Q. Did you group the stations?

1 A. No, we did not group the stations.

2 Q. Why do you treat them alphabetically?

3 A. That happens to be the way they are on the list
4 that you provided us with.

5 Q. I see.

6 A. The next station then would then occupy the
7 interval from just where the last one ended, say, .001, to
8 whatever the sum of its squared share value and cumulative
9 sum was.

10 So that by going through this procedure eventually
11 every one of the 650 stations occupied some fraction of the
12 line between zero and one, and they did so so that the last
13 station ended up at one; that is, it occupied from .99 something
14 to 1.0.

15 So that you could take any particular six digit
16 fraction between zero and one and look on this list and say,
17 oh, yes, that fraction lies in the interval which belongs
18 to station WAAA, and so forth.

19 Q. I see.

20 A. Does that help?

21 Q. I think so, I think so.

22 In going through this procedure where each station
23 occupies a position on the line going from zero to one --

24 A. Yes.

25 Q. -- did you pick the stations alphabetically and

1 assign it to wherever it fell in that line, or rather did you
2 pick it on the basis of the largest fee generated and then
3 put it in the line?

4 A. No, we did the stations in alphabetical order.
5 It really would make no difference.

6 Q. Make no difference?

7 A. That's right.

8 Q. And each station would fall into the same point
9 on the line?

10 A. They would fall into different points, but the
11 interval on the line that they would belong to would be the
12 same size; it would just be in a different location. It might
13 be between .50 and .51 under one scheme, or .70 and .71 on
14 the other scheme, but they would still occupy .01 on the line.

15 Q. Well, this will clarify it for me and generally
16 abandon this line. By reason of squaring the numbers of
17 amounts of fee generated, did you not have absolute
18 assurance that your sample would predominantly consist of
19 the stations which generated the largest fees?

20 A. The stations that generated the largest fees were
21 more likely to come up in the sample, yes.

22 Q. In what order of probability?

23 A. In proportion to the squared shares.

24 Q. Well, use round numbers, we are dealing with 1,000
25 stations, 100 of which are independents, hypothetically,

1 the chance of any one independent getting into your sample
2 is one out of ten; but when you square your shares the way
3 you have, what are the odds that an independent will get into
4 your sample?

5 A. I can't answer that. It would vary from independent
6 to independent.

7 Q. Do you have any opinion as to whether sports
8 flagship stations typically carry more sports programs than
9 do other stations?

10 A. They carry more sports than stations that don't
11 carry sports. They may or may not carry more stations than
12 nonflagship stations that do carry sports.

13 CHAIRPERSON BURG: Would you --

14 A. There are a number of stations, Madam Chairwoman,
15 that are not flagship stations but that do carry substantial
16 amounts of sports. For example, the regional networks of
17 baseball teams carry the games that are originated by the
18 flagship stations. Those stations may well carry as much
19 sports as the flagship stations. Then there are other
20 stations which are neither flagships nor in regional networks
21 but have no professional sports coverage at all, and they
22 presumably carry no professional sports of the four claimants.

23 BY MR. SCHEINER:

24 Q. But typically and on the average is it not the case
25 that sports flagship stations carry more sports programs than

1 do nonflagship stations?

2 A. I don't know, Mr. Scheiner.

3 Q. Would you have an opinion as to whether persons
4 viewing flagship stations would be viewing more sports
5 programs than persons viewing other stations?

6 A. It might available from the data that we presented
7 in the Nielsen report, but I don't know.

8 Q. Would you turn to table 42 , please, on page 37.

9 As a preliminary question, could you tell us, please,
10 what the term "HUT, Homes Using Television" means?

11 A. I believe it is a definition from the A.C. Nielsen
12 Company, and it refers to what percentage of the total number
13 of households in the United States -- actually I think it refers
14 to the total number of TV sets in the United States which are
15 on at some particular part of the day.

16 Q. Or in any particular market, Homes Using
17 Television?

18 A. Yes, I believe there are market-by-market numbers
19 as well. I'm not sure exactly.

20 Q. Can you tell me what Nielsen means by the term
21 "share"? Will you define "share" for us?

22 A. Well, Mr. Scheiner, I'm not an executive of
23 Nielsen. My understand is that share refers -- can I make
24 the distinction between ratings and shares?

25 Q. Please.

1 A. The rating of a TV program is the proportion of
2 households that are viewing that program at a particular
3 time.

4 The share, as I understand it, is of all of the
5 households that are viewing some TV program, what proportion
6 of them are viewing a particular program.

7 Q. That's my understanding as well, Doctor. Then in
8 order to determine audience share, one has to know the number
9 of homes using television at a particular time?

10 A. To use Nielsen's definition of a share, that's
11 right.

12 Q. And in order to make a comparison of respective
13 shares, one has to be dealing with the same number of homes
14 using television, does one not?

15 A. To make comparisons of shares?

16 Q. Yes.

17 A. I don't believe that's true. I think if it is a
18 45 share, it means that it has 45 percent of the homes using
19 television at that time, but it is still 45 percent of those
20 homes.

21 How many homes in the aggregate that constitutes
22 will vary through the course of the day.

23 Q. Now, refer to table 42, please.

24 A. Yes.

25 Q. I believe your direct testimony, in that you stated

1 that sports has, in referring to the 24,000 households for
2 sports, and 12,000 for movies and syndications, was it your
3 testimony that sports has twice the number of households
4 than does movies and syndications?

5 A. Viewing on an average quarter hour basis, yes.

6 Q. Can you run an average of that sort without first
7 specifying the time fram for the homes using television in
8 which the respective categories were shown?

9 A. Yes, I believe so.

10 Q. You can?

11 A. Yes.

12 Q. Suppose that movies were on at 2 o'clock in the
13 morning and got an 80 percent share of 10,000 homes, and
14 sports were on in prime time and got a 20 percent share of
15 100,000 homes, would you consider that an apt and valid
16 comparison, and the conclusion that sports got two or three
17 times the average number of homes a valid inference or conclu-
18 sion to draw from that?

19 A. You mean if I were comparing the sports in prime
20 time to movies at 2:00 in the morning?

21 Q. Yes.

22 A. If I limited my sights to those two comparisons,
23 I would not believe that that's a fair presentation of the
24 data; that's not what we did here, however.

25 Q. In order to make a fair presentation of respective

1 shares, comparative values, would not you find it necessary
2 to compare them in the same time frame?

3 A. I don't know the answer to that, Mr. Scheiner.

4 Q. Would you refer to table 43, please, on page 38.

5 Do you have that before you?

6 A. Yes.

7 Q. The first column bears the caption "share of
8 viewing."

9 A. Yes.

10 Q. Are you using "share of viewing" in the same
11 manner that you defined it as Nielsen uses it?

12 A. Viewing here represents the product of quarter
13 hours and audience size, yes.

14 Q. But you are not using it in Nielsen terms, are you?

15 A. I don't know what Nielsen's term is.

16 Q. Well, you just defined it for me.

17 A. I defined it in the terms that I defined it in my
18 direct testimony. That is what we mean by "viewing" here.

19 Q. Earlier on cross-examination in response to me,
20 I understood you to define a share as the percentage of
21 homes watching television; that's what you defined as a share.

22 A. No. I said that's what Nielsen defined as a share.

23 Q. Using Nielsen's definition, does this caption that
24 I have just referred to, is that using Nielsen's definition,
25 share of viewing?

1 A. Not in the sense that I described to you earlier,
2 no.

3 Q. Do you know whether sports is typically on prime
4 time?

5 A. No. My understanding is that sports is on at
6 various times of the day. I don't know specifically what
7 times of the day it is on.

8 Q. Refer to table 4.4 at page 40, where you refer
9 to the share of viewing superstations. All the stations
10 listed are in your 24 station sample, are they not?

11 A. That's correct.

12 Q. And to the extent that on a comparative basis
13 sports is viewed rather heavily or indifferently, this data
14 is reflected in the Nielsen data that we have referred to
15 earlier; is that right?

16 A. Again, with the one caveat that this data reflects
17 the July adjustment and the spiral bound item does not.

18 Q. I understand that, with that qualification. But
19 if we are dealing with the 24 station sample, the averages
20 that flow from it with respect to comparative viewing, is it
21 not correct that any significance that attaches to the date
22 in 4.4 is contained in the overall Nielsen survey?

23 A. I believe so, yes.

24 Q. And let me be perfectly clear with this; it has
25 no other significance as it relates to the inquiry before us?

1 A. This table here?

2 Q. Yes.

3 A. I don't believe that's true, Mr. Scheiner. As I
4 stated in my direct testimony, we believe that these seven
5 stations are ones that cable operators have chosen to be
6 most valuable to them; that is why it is economically
7 feasible for their carriers to put them up on the satellite.
8 For that reason, we believe that they are important stations
9 to look at.

10 Q. Is not that data fully contained in your sample
11 of 24 stations, is it not?

12 A. You mean the numbers which underlie this table?

13 Q. Yes.

14 A. Yes, they are.

15 Q. Sir, the data that was available to you, can you
16 tell me whether sports is on from 8:00 a.m. to noon, 2:00
17 in the afternoon; or more typically is it on in the heavier
18 viewing hours?

19 A. I can't tell you, Mr. Scheiner.

20 MR. SCHEINER: Thank you. I have no further
21 questions.

22 CHAIRPERSON BURG: Miss Semo?

23 BY MS. SEMO:

24 Q. In your direct testimony you testified that the
25 category sports used in the Nielsen study included collegiate

1 sports; is that correct?

2 A. Yes, it did.

3 Q. In connection with your discussion on pages 30
4 to 45 of the report which concern the Nielsen study, does the
5 term "sports" when used just that way and unmodified by
6 any other term have that same meaning?

7 A. You want me to review 15 pages of the report here?

8 Q. Those 15 pages do refer to the Nielsen report?

9 A. If that's true, when it refers to the Nielsen
10 report, then it includes collegiate programs, yes.

11 Q. I am interested, though, in the use of the term
12 "sports" in those 15 pages which come under the section
13 4.0 cable subscriber viewing.

14 A. Yes.

15 Q. And I would like to know whether or not the term
16 "sports" when used in those 15 pages refers to collegiate
17 sports as well as to professional sports?

18 A. Yes. I just answered that, yes.

19 Q. Your earlier answer was limited to when the term
20 refers to the Nielsen study, and I don't know if each use
21 of the word "sports" refers specifically to the Nielsen
22 study, so I want to set the record straight.

23 A. I believe the answer to the question that you
24 raised is yes.

25 Q. If you could refer to the conclusions that are made

1 in the report and finding 9, which I believe is on page 46,
2 you say that "sports attracts a greater audience by far
3 during an average quarter hour than other forms of distant
4 signal programming," and I believe that refers back to the
5 Nielsen study.

6 A. Yes, it does.

7 Q. Would that finding remain valid if it were
8 restated to include specifically intracollegiate sports?

9 A. If it were restated to include -- it already does
10 include intracollegiate sports.

11 Q. So the finding would remain valid if it were
12 restated to expressly include intracollegiate sports?

13 A. Yes.

14 Q. In your direct testimony you said that there was
15 an overwhelming amount of professional sports, meaning
16 professional soccer, hockey, basketball, and baseball, within
17 the, I guess, the data that Nielsen provided you, and I believe
18 you were asked whether or not you could break down the amount
19 of sports programming into specific types of sports, and you
20 said that you could not, but that there was an overwhelming
21 amount those four professional sports.

22 Can you tell me exactly what the Nielsen data
23 provided you with?

24 A. Well, the first past data from Nielsen provided us
25 with program -by-program listings.

1 Q. For what time periods?

2 A. For the four sweep periods. That's what we
3 reviewed in our evaluation of Nielsen's categorization of
4 programs.

5 Q. Can you get any more specific as to the breakdown
6 of the different sports?

7 A. No, not with the data I have here.

8 Q. Your testimony that the overwhelming amount of
9 sports were those four professional sports that you are
10 representing today; is your testimony that the overwhelming
11 amount of professional sports relates only to those four
12 sweep periods through the year?

13 A. Yes. I can't speak about any other portion of
14 the year. I haven't seen data for it.

15 MS. SEMO: Madam Chairman, I am wondering whether
16 or not we could be provided with copies of those data sheets
17 so we can see the breakdown of what the sports are.

18 MR. GARRETT: Madam Chairman --

19 CHAIRPERSON BURG: I would think -- by experience
20 is that A.C. Nielsen would not release that.

21 MS. SEMO: It was provided to Kalba Bowen from
22 what I understand that.

23 CHAIRPERSON BURG: I understand that.

24 MR. GARRETT: Kalba Bowen commissioned the study.
25 That's why Nielsen released the data to them.

1 MS. SEMO: I am just interested in understanding
2 a little bit more specifically what "overwhelming" means.

3 MR. GARRETT: Madam Chairman, I believe this is
4 all a Phase 2 issue here and we should deal with it at that
5 time.

6 CHAIRPERSON BURG: I think, Miss Semo, if you want
7 to pursue it, why not at the appropriate time file a motion.

8 MS. SEMO: We do not believe that this is just
9 a Phase 2 proceeding. We do think it is important that the
10 record be straight now.

11 CHAIRPERSON BURG: This is a Phase 1 proceeding.

12 MS. SEMO: I understand that, and we would like
13 to set the record straight, as long as the witness is here
14 who has dealt with the material, and he said that he can't
15 be any more specific as to the breakdown.

16 CHAIRPERSON BURG: Are you, therefore, filing
17 a motion to that effect?

18 MS. SEMO: We will be filing a motion at the
19 appropriate time if we are not provided with the copies of
20 the Nielsen study.

21 CHAIRPERSON BURG: Will somebody get me off this
22 merry-go-round?

23 MR. LLOYD: We will respond to the motion when it is
24 filed.

25 CHAIRPERSON BURG: Counsel for sports tells me

1 that they will be respond to the motion when it is filed.

2 MS. SEMO: And I take it that is a representation
3 that they are not going to let me see the data before I file
4 a motion?

5 MR. LLOYD: That's correct.

6 MR. GARRETT: But we do promise to respond.

7 CHAIRPERSON BURG: Would you continue, please,
8 Miss Semo?

9 MS. SEMO: Yes.

10 BY MS. SEMO:

11 Q. It is your testimony -- Is your testimony today
12 limited to section 4 of the report which begins on page 30
13 and has the heading "cable subscriber viewing"?

14 A. Yes.

15 MS. SEMO: I have no further questions.

16 CHAIRPERSON BURG: Thank you. Mr. Southmayd?

17 MR. SOUTHMAYD: Thank you.

18 BY MR. SOUTHMAYD:

19 Q. I am Jeff Southmayd for the Christian Broadcasting
20 Network. Just a few questions.

21 Regarding the Nielsen station index study, of the
22 25 stations in the sample -- I think you noted three were
23 Spanish; is that correct?

24 A. Yes, it is.

25 Q. Are any of these religious specialty stations, do

1 you know?

2 A. I don't believe they are, but I can't say that
3 for certain.

4 Q. Going to the coding process, under which of the
5 three categories did A.C. Nielsen put religious programming?

6 A. I believe that a program, for example, like "The
7 Billy Graham Crusade" would have been listed as a movie or
8 a syndicated show, not a movie.

9 Q. So religious syndicated program would have been
10 put under syndicated programming?

11 A. I believe so, yes.

12 Q. Clearly not sports.

13 A. I presume so. That's probably a matter of opinion.

14 Q. I refer you to table 4.1. I take it the figures
15 here are based on the February, May, July and October
16 sweeps; is that correct?

17 A. Yes, it is.

18 Q. Now, referring you back to the A.C. Nielsen Company
19 report, it notes under survey dates the information was
20 dating from February, May, July and November, 1978, market
21 measurement period.

22 A. Mr. Southmayd, you've found a typographical error
23 that none of us have seen before.

24 Q. Which is correct?

25 A. November is correct.

1 Q So you aren't relying on October figures in table
2 4.1?

3 A That's correct.

4 Q And you are sure about that?

5 A Yes.

6 Q As to the July 1978 sweep, I take it that the
7 major league baseball all-star games in July and was in July
8 of 1978, do you know if that's true or not?

9 A I believe it is. I also understand it was broad-
10 cast by a network, so therefore it doesn't constitute
11 programming here.

12 Q Would it have possibly been carried on cable
13 systems that are a part of this study?

14 A If it was a network program, it would not have
15 been, no.

16 MR. SOUTHMAYD: I have no further questions.

17 CHAIRPERSON BURG: Mr. Koenigsberg?

18 MR. KOENIGSBERG: Thank you, Madam Chairman.

19 BY MR. KOENIGSBERG:

20 Q Just a few questions, Doctor. Your study is
21 concerned with distribution of royalties for cable importation
22 of distant television signals; isn't that right?

23 A Yes, it is.

24 Q Do you know, Doctor, if the copyright law provides
25 for distribution to copyright owners whose works are used on

1 distant radio signals?

2 A. I'm not sure.

3 Q. Your study didn't take any account of distant
4 radio signals, though, did it?

5 A. No. Nielsen doesn't measure that.

6 Q. Now, sir, on page 39 of your statement you note,
7 in talking about the discounting of movies and syndicators, it
8 shows under your theory would be discounted down from 80
9 percent to 70 percent including the subsumed shares of
10 music and PBS. This is on page 39 of the Kalba Bowen statement.

11 I take it then that you are in agreement with the
12 expressed views of Commissioner Koon and others that there is
13 no music in sports programming?

14 A. I'm not -- I don't believe Mr. Koon said that
15 yesterday. I'm not about to try to answer that myself.

16 Q. Well, it is a subject of dispute and I realize
17 that you can't answer the question, so we are going to have
18 to proceed on some assumptions here. If it turns out that
19 music is performed on sports programming, then the conclusion
20 that no portion of music's shares should come out of the sports
21 share on your own theory would be wrong; wouldn't that be
22 true? If music is performed; it is a hypothetical question.

23 A. If music is performed and the Tribunal agrees
24 that some share should go to sports, then presumably that
25 would happen. The Tribunal hasn't decided.

1 Q. Of course. Now, I understand from your
2 discussions with Mr. King and Mr. Scheiner that you don't
3 like using, viewing those figures in table 4.3 as your basis
4 for the division, the sole basis for the division, but it is
5 possible that the Tribunal might find that very useful, isn't
6 it?

7 A. I am sure the Tribunal will find all of our
8 report very useful.

9 Q. If the Tribunal were to use viewing as a measure of
10 value, as the measure of value here, and if it turns out
11 that music comes out of sports under your theory as well as
12 everybody else, I would just like to run through some very
13 simple mathematics to be sure I understand where we would
14 come out.

15 Assuming that music's share would be what music
16 is asking for, 13.5 percent, assuming that came out of
17 everybody equally, then what we would do would be to take off
18 13.5 percent of each of the syndicators, sports and broadcasters'
19 share based on viewing to determine the overall division
20 among everybody; is that right?

21 A. Mr. Koenigsberg, if I accept all of the hypo-
22 theticals in that statement, I suppose you might be able
23 to draw the conclusion that you did.

24 Q. Sir, I understand it is hypothetical. I don't
25 want to -- You are here now and I would like the Tribunal to

1 get the benefit of this -- and the mathematics on that would
2 work out to 13.5 percent for music, 70.9 percent for
3 syndicators, 9.5 percent for sports, and 6.1 percent for
4 broadcasters; is that right?

5 MR. GARRETT: Madam Chairman, I am going to object.
6 I think this is not interrogation of the witness; this is
7 closing argument, which I assume that Mr. Koenigsberg will
8 make at the appropriate time. I object to the question and
9 the whole line of questioning.

10 MR. KOENIGSBERG: Madam Chairman, the witness
11 brought up the share of viewing point, and I simply want
12 to see where it is going to lead the Tribunal --

13 CHAIRPERSON BURG: Mr. Koenigsberg, you'll spare
14 a decision on my part if you will just move on.

15 MR. KOENIGSBERG: All right, Madam Chairman, I'll
16 tell you what, I will withdraw the question and I have no
17 further questions.

18 CHAIRPERSON BURG: All right. Thank you.

19 Miss Weiss?

20 BY MS. WEISS:

21 Q. For the record my name is Jacqueline Weiss for PBS
22 and other non-commercial station producers.

23 I wonder if you would be so kind, Dr. Lemieux, to
24 just do a little mathematics for my benefit, and maybe Mr.
25 Scheiner's as well.

1 Could you square one for me?

2 A. I believe the answer is one.

3 Q. What is the square of a quarter?

4 A. I believe it is .0625.

5 Q. Give it to me in fractions.

6 A. 1/16th.

7 Q. Now, you squared the contribution based on the MPAA
8 data of the fees generated by stations who were carried on
9 form three cable systems?

10 A. That's right.

11 Q. If an independent gets one DFC generally--which you
12 agree with; right?

13 A. Yes.

14 Q. --and he generates \$1,000, and a public television
15 stations gets a quarter DSE, and under the MPAA theory
16 generates \$250, and you square it, how much money will you have
17 for the independent? That's what you've done, is it not,
18 in determining the 25 stations?

19 A. In the example that you give I would have whatever
20 the square of \$250 is.

21 Q. Basically what you have then on this choosing of
22 the 25 stations is you spread major contributors way up and
23 what you consider minor contributors way down; is that right?

24 A. Yes. The stations that contributed more to the
25 royalty pool are more likely to appear in the sample.

1 Q You also stated this morning that it was okay if
2 there was only one network affiliated station in that sample --
3 and correct me if I am wrong, okay, because I know it is a
4 while ago -- because you were looking at the appeal of the
5 programs and it didn't matter whether they occurred on an
6 independent or network affiliate; is that right?

7 A I believe I said that, yes.

8 Q Assume, therefore, that the program that's on an
9 independent is the same as the program distributed on a
10 network affiliated station, isn't that right, or generally?

11 A In terms of the actual programming, it could be
12 "Gone With the Wind," to take a case that has been beaten
13 into the ground, if it is shown on an independent, it is the
14 same spectacular as if it was shown on a network affiliate.

15 Q That's the assumption you make in coming to your
16 conclusions and using the 25 station sample?

17 A Yes.

18 Q 24 station sample. Could you tell me how a sample
19 of 24 commercial stations, program-by-program listings of
20 commercial programming, none public television programming,
21 provides a measure for public television programming?

22 A We didn't state that we tried to make a measure of
23 public television programming. What we have stated here is
24 that we have tried to measure the viewing of distant cable
25 households of qualifying programming.

1 Q. For the 24 commercial stations not including
2 public television stations?

3 A. We believe these 24 stations adequately represent
4 the universal carriage in the sense that's defined by the
5 royalty fees.

6 Q. Are you aware of the fact that the Motion Picture
7 Association study upon which you took your contributions to
8 begin with in developing this 25 station sample indicates
9 that public television programming generated almost five
10 percent of the royalties for form three cable systems?

11 A. I believe that was the figure I heard, yes.

12 MS. WEISS: I have no further questions. Thank you.

13 MR. COULTER: Excuse me, just a slight clarifica-
14 tion. You stated that you weighted the sample deliberately
15 to have stations that contributed more according to the MPAA.

16 THE WITNESS: Would be more likely to appear, yes.

17 COMMISSIONER COULTER: Just to understand in your
18 sampling technique, because when you selected your stations,
19 you didn't give a fraction to all 650 stations; right?

20 THE WITNESS: Right.

21 COMMISSIONER COULTER: So the way they appeared
22 is that the band is wider towards the top between the fractions --

23 THE WITNESS: A station that generated more fees
24 would occupy a wider band.

25 COMMISSIONER COULTER: And that's where a wider

1 random number would fall more likely?

2 THE WITNESS: That's right.

3 COMMISSIONER COULTER: May I make a request?
4 Could we have specifically how many flagship stations are
5 independent? I make a request for that.

6 CHAIRPERSON BURG: Mr. Garrett?

7 MR. GARRETT: Madam Chairman, could I request a
8 brief three or four minute recess? If we have that, we could
9 come back and complete with one or two questions on redirect.

10 CHAIRPERSON BURG: I would be delighted to grant
11 that request.

12 MR. GARRETT: Thank you.

13 (A short recess was taken.)

14 CHAIRPERSON BURG: Mr. Garrett has informed the
15 Chair that they have no further questions, so in that event
16 we will adjourn for lunch and be back here at 1:30.

17 (Luncheon recess taken at 12:10 p.m.)

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RSK/rsk 1

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P R O C E E D I N G S

2

AFTERNOON SESSION

(1:37 p.m.)

3

CHAIRPERSON BURG: Mr. Garrett, you may continue.

4

MR. GARRETT: Thank you Madam Chairman. At

5

this time we will call Mr. Carroll G. Bowen.

6

Whereupon,

7

CARROLL G. BOWEN

8

was called as a witness by the Joint Sports Claimants, was

9

examined, and testified as follows:

10

DIRECT EXAMINATION

11

BY MR. GARRETT:

12

Q Mr. Bowen, would you state your name and position for the record please?

13

14

A Yes. My name is Carroll Bowen. I am vice-president and treasurer of Kalba Bowen Associates, Cambridge based telecommunications consulting firm.

16

17

Q And when was Kalba Bowen Associates first founded?

18

19

A In 1972. Dr. Conrad Cass Kalba, a communications planner and I, joined together for the purpose of providing some consultative services for our municipalities in the Northeast that were having cable franchising. This reflected work that was underway at our respective institutions at that time. And the period since, we have done a good bit of consulting in the cable television area.

20

21

22

23

24

Q And have you done consulting in areas outside of

25

2

1 cable television, Dr. Bowen?

2 A. Yes. Our work falls into three broad areas.
3 Broadcast cable for one; telecommunications; or broad-band
4 services generally for a second; and third data resources --
5 data products.

6 Q. Mr. Bowen, could you briefly describe some of
7 the cable-related research, planning, and consulting assign-
8 ments for which you have been responsible?

9 A. May I refer to notes in so doing? For the past
10 eight years we have had 17 cable-related projects.

11 I would sort these into four broad categories.
12 Regulatory consultation for municipalities, for state cable
13 associations, and for the FCC.

14 In the cable management and cable marketing area,
15 we've had four projects ranging from an assessment of sizeable
16 cable systems for prospective acquisitions to undertaking the
17 marketing of new services over cable systems.

18 Trade associational work. Over time, I see that
19 we have worked for two of the three networks, the NCTA --and
20 I forgot to mention, in addition to FCC and NTIA

21 A third area is new products --cable or broadcast
22 products. New delivery mechanisms for getting the video
23 programming to the viewer --consumer. Five projects in that
24 area.

25 And last, a miscellaneous category into which,
we put some of the more advanced technological impact on the

1 way in which cable operates. For example--advance pay cable
2 systems.

3 Q Mr. Bowen, when you refer to the NCTA, you mean
4 the--?

5 A The National Cable Television Association.

6 Q And the NTIA--?

7 A The NTIA is the National Telecommunications and
8 Information Agency, Department of Commerce.

9 Q And have you personally been involved in these
10 projects?

11 A In 13 of the 17, I have been either prime, or
12 I was responsible for marketing the researcher/consultative
13 effort. I have been privy to them all.

14 Q And prior to forming Kalba Bowen Associates
15 Mr. Bowen, what positions did you hold?

16 A I was a book publisher. I have been concerned
17 with copyright for a great many years. I've spent about as
18 long as a book publisher as I have been concerned with the
19 cable television business.

20 Q Mr. Bowen, the Joint Sports Claimants have
21 submitted to the Tribunal in these proceedings, a Kalba Bowen
22 Associates report entitled, "The Comparative Value of
23 Nonnetwork Distant Signal Sports Programming on Cable
24 Television." Are you responsible for the preparation of
25 that report, sir?

A Yes I am, and with my colleague, Dr. Peter Lemieux.

4

1 Q And was this report prepared at the request
2 of the Joint Sports Claimants?

3 A Yes it was.

4 Q When were you first retained by the Joint Sports
5 Claimants?

6 A I believe it was January of 1978, in which we
7 were retained by the Office of the Commissioner of Baseball.

8 Q And do the findings and conclusions contained in
9 this report Mr. Bowen, represent your findings and conclusions
10 on the issues addressed?

11 A Yes they do. I would say the report represents
12 the product of research, which we observed, analyzed --in
13 instances, which we undertook at least in aspects of designing
14 it for others to perform, and research which we were able to
15 monitor during the course of these past two years.

16 Q And I assume that it also represents the product
17 of your experience in the field of cable television during
18 the past decade or so?

19 A Well, it is easy to exaggerate the impact of ones
20 own experience on a document such as this. But, yes. Our
21 firm has grown with cable for the past decade, and it would
22 be ridiculous to suggest that we haven't -- There isn't much
23 evidence of that in the document as it exists.

24 Q Mr. Bowen, do you have any changes to make with
25 respect to your report?

5

1 A. I hope you have it, because I forgot to bring
2 the list of typos.

3 MR. GARRETT: At this time Madam Chairman, we
4 would just like to introduce J-S-C or Joint Sports Claimants
5 Exhibit Number 1, which is a list of corrections on the report.

6 Q. Mr. Bowen, do you have any other changes to make
7 in your report?

8 A. No, I do not.

9 Q. And do the corrections which we have, submitted
10 on this page, in any way alter the conclusions contained in
11 your report?

12 A. No, they do not.

13 Q. Briefly, Mr. Bowen, could you describe the
14 principle issue which is addressed in your report?

15 A. The principle issue as seen from the very beginning
16 of our consultation with the Office of the Commissioner of
17 Baseball, and ending and culminating in this proceeding, is
18 to try and determine some basis for assessing the relative
19 value of three broad categories of television programming.

20 These broad categories ultimately came to be
21 grouped as sports, movies and syndications, and local
22 programming.

23 Q. Are there any types of television programming
24 which are not included in one of these three categories,
25 Mr. Bowen?

A. By our view, there are not. We find these all
embracing.

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6 1 Q. Mr. Bowen, as you are aware, the Performing
2 Rights organizations--such as ASCAP, BMI, and SESAC;
3 as well as the owners of certain cartoon characters, have
4 also filed claims before the Tribunal in these proceedings.

5 How do the works for which these groups are
6 claiming, fit within your three broad programming categories?

7 A. We did not regard the contributions --evident
8 contributions of music and cartoons as program types. We
9 regarded them as elements of programs, which in turn, would
10 be categorized into program types.

11 Q. And your objective here sir, was to compare the
12 value of the three programming categories?

13 A. The three broad programming categories, yes.

14 Q. As opposed to the elements of each of these
15 programming categories?

16 A. Yes.

17 Q. Mr. Bowen, as you are also aware, the Public
18 Broadcasting Service has filed a claim before the Tribunal
19 in these proceedings. Would you explain to the Tribunal how,
20 in your opinion, these programs for which PBS is claiming,
21 fit within the three programming categories you have outlined?

22 A. PBS in our view was a mode delivering or clustering
23 a certain category of programming. But once again, those
24 categories were reducible to programs that were produced
25 locally, or programs that were not produced locally. And
our view was, those programs that were not produced locally,

7

1 more appropriately, fell into the movies --or specifically,
2 syndication area of programming.

3 Q Mr. Bowen, would you briefly describe the
4 conclusions you have reached as to the comparative value of
5 the three programming categories?

6 A Yes.

7 Q First with respect to sports programming?

8 A Well, it seems to us very clear from our report,
9 that sports programming by the measures that we have used
10 and reported in the report, are much greater --have a very
11 high value for the cable subscriber and cable operator importing
12 distant programming on distant signals.

13 And this value obviously, relates to the time
14 there that this sports programming is proportionately
15 attractive to cable operators, relative to the rather small
16 amount of time that it occupies. Similarly, an audience,
17 sports programming --particularly to cable subscribers and
18 cable operators is disproportionately attractive.

19 Q All right now. What conclusions have you reached
20 with respect to the value that cable operators place on
21 your local programming imported on distant signals?

22 A This is simply not what cable operators seek to
23 buy with a distantly imported television signal. Therefore,
24 the report clearly indicates the relatively low value that is
25 placed upon local origination, local news, public affairs
programming, by those operators importing the signal distantly.

1 Q How does this value compare with the amount
2 of time that the local programming occupies?

3 A Local programming occupies a rather considerably
4 higher share of time than it does esteem by the cable operator.

5 Q How does it compare to the amount of audience
6 that it draws?

7 A They are perhaps, equally low.

8 Q Finally Mr. Bowen, would you summarize your
9 conclusions with respect to the value that cable operators
10 place on distant signal movies, and distant signal syndicated
11 programming, such as series?

12 A As the report shows, and as the conclusions
13 indicate, movies are very attractive to cable operators and
14 cable subscribers when available on distant signal importation.

15 Therefore, we feel that the evidence offered is
16 congruent with our expectation that movies and sports, are
17 those most highly prized programs for cable operators and
18 cable subscribers alike.

19 Syndications I fear, we can offer no such case
20 for, neither on evidence --They are on a great many hours,
21 as you will see from the data, but the relative value is
22 considerably less.

23 Q Mr. Bowen, the Joint Sports Claimants have also
24 presented to the Tribunal in these proceedings, a study
25 undertaken by the advertising agency of Batten, Barton,
Durstine and Osborn --or, BBD&O. Are you familiar with

1 the conclusions of this study sir?

2 A. Yes I am.

3 Q. And very briefly, what does the BBD&O study show
4 as a comparative value that cable operators placed on distant
5 signal programming?

6 A. The bottom line represents the cable operator
7 universe to respond to the question: "If they had \$100.00
8 to spend on programming available through distant signal
9 importation; how would they spend it?" They have chose
10 to spend \$66.00 on movies. This is all repetitious of
11 Mr. Neiman's presentation yesterday. --\$66.00 on movies,
12 \$27.00 on live professional sports, \$5.00 on syndicated
13 television programming, and \$2.00 on local programming and
14 public affairs.

15 Q. Mr. Bowen, do you have any opinion as to these
16 findings?

17 A. Yes. I found them unexpectedly low vis-a-vis'
18 sports. I would have guessed on the basis of our experience
19 with the industry, on our consultation for and telephone,
20 and other discussions with cable operators, perhaps most
21 significantly, was discussions early on with the resale
22 common carrier of a selected and very popular independent
23 station, that sports and movies would have shared --Let's
24 say, granted \$100.00, would have shared \$40 or \$45 each,
25 and perhaps, \$10 would have been left over for local program-
ming and for syndication. So I found the results unexpectedly

1 low. I won't say disappointingly, because it suggests that
2 my expectation may have been unrealistically high.

3 Q Mr. Bowen, briefly, could you describe on
4 what you base your conclusions as to the comparative value
5 of these types of distant signal programming?

6 A Well clearly, the unrepresented constituents here
7 for these whole proceedings have been the cable subscribers
8 themselves, and the cable operators who make the purchasing
9 decisions that enable those cable subscribers to see what
10 they wish to see.

11 Cable subscription is a purchasing decision by
12 a subscriber of some dimension. One hundred dollars a year
13 is being asked of a cable subscriber. That commitment in
14 most households is not taken cavalierly.

15 Clearly from the standpoint of a cable subscriber,
16 a subscriber is going to wish to see things which he or she
17 could not see off air, or in some otherwise un-aided manner.

18 For the cable operator, the issue is slightly
19 different. The cable operator's task is to provide program-
20 ming that will attract cable subscribers, but by the same token,
21 not just to attract that subscriber; but to sustain him or
22 her, so that the buying decision is perpetuated, and year
23 after year, the subscriber buys not only initial service,
24 but more services.

25

11

1 The factors that we chose to look at therefore,
2 tended to relate to two broad issues--namely, what kind of
3 programming was available for cable operators to select among
4 for their distant imported signals; and that, translates to
5 a simpler question: What stations did they choose to import?
6 But mind you -- The prior question was, what programming was
7 available on those stations? --And then, the subsequent
8 question is, what stations were the vehicle for that
9 importation?

10 And secondly, how does the cable operator use
11 the availability of that programming and those signals once
12 he was able to make the importation?

13 So those were the two factors that we considered
14 most fundamentally.

15 Q. Mr. Bowen, do you believe there is any simple
16 or precise --or mechanistic way, of measuring the value that
17 cable operators place upon each of these three types of
18 distant signal programming?

19 A. It would be hard for me to answer "yes" after
20 we have spent two years in the process. No. I fear there is
21 not simple and mechanistic solution to establishing the
22 value for cable operators and cable subscribers.

23 Q. And so, what you are saying Mr. Bowen; if I
24 understand your earlier testimony correctly, is that one
25 really needs to look at a variety of factors that are

12

1 relevant, the attitudes and practices of cable subscribers
2 and the cable operators?

3 A. Yes. That was our procedure.

4 Q. Now. In going through your report Mr. Bowen,
5 there are a great number of factors that you certainly have
6 taken into consideration. And for the Tribunal's benefit,
7 I believe all of these are summarized on pages II - IV of
8 the Kalba Bowen report.

9 We have already presented some witnesses, and
10 we will present others, and other testimony that will go
11 into some detail on these factors. But at this time, I wonder
12 if I could just go through very briefly with Mr. Bowen, the
13 general nature of his findings.

14 Mr. Bowen, you referred a little earlier to your
15 examination of the programming makeup of those television
16 stations which are imported most frequently by cable systems.
17 Could you just briefly describe the findings on that score
18 for us?

19 A. This is summarized in some sense in the Tables
20 2-1 and 2-2, which are part of the document, pages 10 and 11.
21 I won't go through them in detail; no doubt we will come back
22 to them, and some you have seen already --one of them, you
23 have seen already and discussed.

24 Q. Excuse me. When you we have seen already, are
25 you referring to the testimony of Commissioner Kuhn?

13 1 A. Thank you, yes. It was Exhibit 4 in the
2 commissioner's testimony yesterday. Bear in mind again,
3 cable operators know what programming is going to get them
4 subscribers, and within the tolerance --at least before
5 the leap-frogging rules were relaxed in 1976, cable operators
6 were very constrained as to what distant signals they might
7 reasonably import. With the relaxation of the leapfrogging
8 rules, and more recently, with the technological availability
9 of the communications satellite, a cable operator is in a
10 position to go down the buffet and select his programs in
11 the vehicle of a station's signal and broadcast day. Is in
12 a position to shop stations, if you please.

13 The shopping and buying of signals, we feel is a
14 very effective reflector of marketplace circumstance vis-a-vis'
15 the programming world, even though it is packaged in the-- or
16 available through the 20-hour broadcast day let's say of a
17 television station.

18 The importance of Table 2-1 in our estimation is
19 that these stations had very substantial numbers of cable
20 subscribers back before the relaxation of leapfrogging. In
21 short, their program package, and their broadcast day, was
22 very attractive to cable operators and their programming
23 thereby, to cable subscribers, well before the advent of FCC
24 relaxation or the advent of technological breakthroughs such
25 as represented by the satellite.

1 In the second chart, 2-2, there is simply a
2 reflection and on this point, it has been made redundantly,
3 so I won't dwell on it. A reflection that there is a very
4 high congruence between acceptability, or if you please,
5 purchase by cable operators, of those signals which have
6 programming that's attractive to their potential or current
7 subscribers. And the results of this market experience these
8 past several years, is reflected in that chart as well.

9 These after all, have further measure. We have
10 a better tracking system now for knowing how cable operators
11 use distant signals to the advent of the copyright filing
12 requirements, and as you see at the heading, these stations
13 are characterized by being the major --those stations which
14 cause the major cable contributions to be made.

15 The very substantial number of x's on that chart
16 reflecting carriage of the four major sports claimants is
17 part of the program story that is represented by the very
18 wide spread acceptance of the programming on these stations.

19 Q. Mr. Bowen, in going through your report it appears
20 that you also rely heavily upon the promotional value which
21 cable operators place on certain types of programs. Would
22 you describe the findings on this please?

23 A. The findings are easy to describe. The representa-
24 tion in more difficult. The findings are, as indicated
25 earlier, that a cable operator knows what programming is

1 going to attract subscribers. How then does he convey
2 the attraction which he deduces of his own business experience
3 really works? Does he use it to market his service effectively?

4 Persistently in the promotion is to generalize
5 movies and sports features. Equally persistently, the local
6 news and public affairs is nowhere to be found; with
7 occasional reference to selected syndications, particularly
8 children's programs is found to be effective --and I presume
9 is effective, because they appear in the promotions.

10 But it was in our effort to represent how cable
11 operators promote that we put in Appendix C and D, very
12 splendor representations from a very substantial base, the
13 C-TAM (phonetic) files, and there's ample other evidence of
14 how cable operators promote the product that would permit
15 that use of the term, once they have access to those stations,
16 and indeed, the process is facilitated by some of the stations,
17 WTBS now, formally TCB, provides mats to local cable operators.
18 We have some of these which we can --or one of these that we
19 can show if you care to see them.

20 I think the point to be made is that in a
21 presentation such as our report with a few annexes, it's
22 difficult to make the case with persistent statistical
23 reliability that this is what they always do. To the best of
24 our effort to represent honestly what we have found, this is
25 what they always do. They promote and feature movies and sports.

1 Q Mr. Bowen, you referred to C-TAM as the files
2 sir; could you--?

3 A Sorry--

4 Q Could you explain what that means?

5 A Cable Television Marketing Association. It was
6 first an informal, and now is a formal cable marketing and
7 administrative forum.

8 Q Mr. Bowen, in reaching your conclusion, did
9 you also examine the various representations that cable
10 operators have made, both in the course of official proceedings,
11 and elsewhere?

12 MR. SCHEINER: Madam Chairman, in light of your
13 ruling this morning, is this the appropriate time to consider
14 argument on the request for official notice?

15 CHAIRPERSON BURG: I would think not, Mr. Scheiner.

16 MR. GARRETT: Would you like me to repeat the
17 question Mr. Bowen?

18 THE WITNESS: No, I know the substance of it.

19 A We started --Have always been talking with
20 cable operators--MSO's, multiple systems operators and
21 managers. But shortly after our commencement to work on
22 this project with the Office of the Commissioner of Baseball,
23 we got on the phone with a large number of cable operators--
24 on television program marketing people, et cetera, and
25 ways to represent the substance of those conversations has

17

1 been something of a challenge as well for this particular
2 report. But let me indicate the elements we have reviewed.

3 We have reviewed our own transcripts obviously,
4 of telephone conversations with operators, service suppliers,
5 resale common carriers. We have reviewed such documents as
6 has been brought together for purposes such as the FCC filings
7 on --docket number which I forget. There are --as part of
8 our thinking, though not part of our report, there is a
9 substantial number of other interrogations, discussions,
10 conferences, panels, et cetera, that composed the raw material
11 for the report. And we drew a very small selection from that,
12 particularly, in the FCC material which is a huge docket.

13 Q And in forming your conclusions Mr. Bowen, have
14 you also relied upon certain studies of viewing which have
15 been prepared by you and the A.C. Nielsen Company?

16 A Yes, of course.

17 Q And these are the studies to which your colleague,
18 Dr. Lemieux testified to earlier this morning?

19 A Yes.

20 Q Are there any other factors Mr. Bowen, that you
21 have also relied upon in framing your conclusions?

22 A Well, there are other elements certainly. There
23 was very little basic research that had been done in the
24 area of, why cable subscribers subscribe that were a part of
25 the open literature. Most of such work is done on a proprietary

18 1 basis for a cable system, or a cable operator -- or MSO's more
2 characteristically, and we trolled through the waters of
3 such publicly available literature as there was, and then in
4 response to suggestions from the vice-president of research
5 at NCTA and the directors of two regional cable associations,
6 we sought out two studies which are referenced in the report.

7 Briefly, one of which you will hear -- have an
8 opportunity to hear more about when Mr. Schultz testifies;
9 the other, a report by Peter Hart Associates for NCTA, not
10 for the energy principle here. Apart from those, I don't think
11 I have any other particular sources to cite.

12 Q. Mr. Bowen, just a couple of final questions here.
13 First of all, do you believe that the amount of time that
14 a program is broadcasts, is an adequate or a sole measure
15 of value that that programming has to cable operators on a
16 distant signal basis?

17 A. With regard to cable operators and cable sub-
18 scribers, and establishing value in that context, the answer
19 is no. It's also no in the context of the broadcast program.

20 Time obviously -- without programming, there is
21 not viewing. But time of and by itself, is not a measure of
22 value anywhere in the television broadcast business.

23 Q. And for value, on the basis of your experience
24 in the publishing field Mr. Bowen?

25 A. I was reminded of a . . . Oh no. We won't digress.

19

1 That 500-page novel I think might be regarded as possibly,
2 possessing the same value as a 250-page novel. The measures
3 of value are taken in another act in the publishing field,
4 and they would be the number of copies that are sold, or
5 the presence of that author on the publisher's list, or
6 other authors that will follow the arrival of that author
7 on the publisher's list.

8 Q Mr. Bowen, do you believe that the amount of
9 audience that any particular program or programming type
10 attracts on a distant signal basis, is a adequate or sole
11 measure of value of that program to the cable operator?

12 A No. Once again, of and by itself, it's not
13 an adequate measure. Audience is important. In the cable
14 context specifically, unless potential or actual subscribers
15 are going to watch programming it is valueless to the cable
16 operator. But again--that's only part of his concern.

17 There are demographic issues. There are a host
18 of other possible reasons for valuing programs for the cable
19 operator --the demographic makeup I cited.

20 Q Mr. Bowen, were you in the room yesterday when
21 Mr. Neiman of BBD&O testified?

22 A Yes, sir.

23 Q And do you recall at that time, that Commissioner
24 James had questions as to the relative rankings of the top
25 twenty multiple system operators --or MSO's in '78 and '79?

A Yes I do.

1 Q And have you compared the document which
2 illustrates the relative rankings of these twenty MSO's
3 in the two years in question?

4 A We compared the top twenty, yes, to see what
5 changes had occurred between the 1978 interval and the date
6 in which Mr. Neiman's material was drawn, which was early
7 in '79.

8 Q And could you just briefly describe the con-
9 clusions?

10 A Well, the issue is whether the cable industry --
11 the sample I should say, from which Mr. Neiman's research
12 drew its result, had substantially altered, or in any way,
13 altered between the time that --the year 1978 for which this
14 Tribunal is concerned, and this proceeding is concerned, and
15 the date --the availability of material which Mr. Neiman
16 consulted to draw his sample.

17 As you will see, Times Mirror --the footnote
18 really says it all. Times Mirror bought a Texas based multiple
19 systems operator --C-P-I in March of '78 and took one leap
20 on the list of the top twenty MSO's in the country. But save
21 for that, which was more a change of ownership and title, than
22 a change of substance --I mean, CPI Properties still operated
23 successfully, widely, there was no change in the sample.

24 MR. GARRETT: Madam Chairman, let the record
25 reflect that I have handed to members of the Tribunal a
document entitled, "Top 20 Multiple Cable System Operators

1 1978 and 1979." We will mark as JSC --or Joint Sports
2 Claimant's Number 2. I believe this summarizes the data
3 which Mr. Bowen has spoken to.

4 Q Mr. Bowen one final question. Commissioner
5 James also during the testimony of Mr. Neiman yesterday,
6 asked whether the amounts of sports programming that were
7 available to cable system operators in 1978, would have been
8 any different than the amounts available today in 1980.

9 Do you have any opinion to express on that matter?

10 A Was the question the commissioner was raising
11 concerned with the sort of program environment? The array
12 of program that was available in the two periods? Or was
13 it specifically addressed to sports?

14 COMMISSIONER JAMES: I'm sorry. Would you
15 repeat the question?

16 THE WITNESS: Yes. Yesterday when Mr. Neiman
17 was testifying and you asked for --among other things, that
18 comparison or sample, you also asked what program environment
19 as I recall, how it might have changed over a period of a
20 year.

21 COMMISSIONER JAMES: Right.

22 THE WITNESS: And were you specifically concerned
23 with sports, or was your question addressed to all programming?

24 COMMISSIONER JAMES: All programming. In other
25 words, my question is directed towards, in 1980 you are

22 1 asking a programmer a specific question, and would he say
2 the same thing in '78 that he is saying in 1980 for everything?

3 THE WITNESS: Yes. Obviously, there have been
4 some changes. I might point out that some of those changes
5 were in prospect a long time. One of the changes is the
6 advent of three more stations on satellite. But we could
7 also cite the application to the FCC to put those stations
8 on satellite was already in process in late '77, and would
9 have been considered in '78.

10 So I think the reasonable answer to your question,
11 is that the rough proportion of programming on the signals
12 that were available by terrestrial means as well as by
13 satellite hasn't changed very much. In other words, a fraction
14 of programs in our three broad categorizations, probably
15 hasn't changed substantially over a period of time.

16 Now, there are as I indicated, more stations
17 available by satellite, and that means they are endemically
18 available. They are not available only my micro-wave where
19 you are fortunate enough to have micro-wave. More of those
20 stations are available now. But, the environment in which
21 those stations operated --the market environment, was virtually
22 identical in the two periods we are talking about here, the
23 year '78 and early '79.

24 I don't know that that addresses your question?

25 COMMISSIONER JAMES: That addresses it.

23

1 MR. GARRETT: Madam Chairman, I have no
2 further questions. If members of the Tribunal would like
3 to question Mr. Bowen?

4 CHAIRPERSON BURG: Who has some questions?

5 MR. SCHEINER: Mr. Bowen, I do have a number of
6 questions. I would be grateful, if Mr. King had gone first.
7 By circumstances, I will pick up the ball.

8 CHAIRPERSON BURG: Mr. Scheiner keep your voice
9 up please.

10 MR. SCHEINER: Okay.

11 CROSS-EXAMINATION

12 BY MR. SCHEINER:

13 Q I do have a number of specific questions Mr.
14 Bowen. Now, let me share with you the basic problem that
15 I have with your direct testimony.

16 I have to face up to writing findings of fact,
17 in which I will urge conclusions on the Commission, and I've
18 heard no facts in your testimony. So when I examine you,
19 let's talk about specifics. That's a general alert to govern
20 my cross-examination.

21 Now. . . You are kind of in the role of a
22 clean-up hitter. You're assessing----

23 THE WITNESS: D-H.

24 MR. SCHEINER: What?

25 THE WITNESS: D-H, designated hitter.

1 MR. SCHEINER: Designated.

2 Q And your testimony in effect is based upon the
3 alleged, expert opinions and surveys conducted by others;
4 is that correct?

5 A I think I heard the word "alleged."

6 MR. SCHEINER: My question, that's why.

7 THE WITNESS: Yes. There were some other words;
8 were there? These are matters of opinion, aren't they Mr.
9 Scheiner? It seems to me if I might respond to your question--

10 MR. SCHEINER: No, no. It's a very simple
11 question, sir.

12 THE WITNESS: Would you permit me to respond?

13 MR. SCHEINER: Sure.

14 THE WITNESS: Facts and opinion constitute what
15 we have rendered in the report that bears our name that is
16 over our letterhead. I will try and be responsive to both,
17 your questions of fact and opinion.

18 Q To the extent that it is demonstrated on this
19 record, that surveys done by others and referred to in your
20 testimony, are not reliable, are not credible, I presume
21 that you will withdraw your reliance on such other surveys
22 and opinions; is that right?

23 A I don't think it's mine to accept or withdraw.
24 We presented the substance and summary of the work that
25 you have before you. We're --the firm is not here to sit in

25 1 judgment on this. Surely, the Tribunal sits in judgment
2 on the viability or unviability, or reliability or unreliability
3 of the truth or allegation about the work that is represented.

4 Q. Now, let me give you a specific. You have reviewed
5 and relied upon the survey of Mr. Schultz' video probe?

6 A. Mr. Schultz' firm is Video Probe Index, yes.

7 Q. You have reviewed it and relied upon it; right?
8 Have you?

9 A. Yes. We have known Mr. Schultz for a period of
10 time. We----

11 Q. I'm talking about a survey.

12 A. All right.

13 Q. You have reviewed and relied upon the Video
14 Probe Survey; have you not?

15 A. Yes.

16 Q. And you have no criticisms, no reservations of
17 that survey; is that correct?

18 A. That portion of that survey which was pertinent
19 to our concern here, and which alone, we represent, is that
20 part by which we will stand. Yes.

21 Q. If that's a fine survey, then you have no criticism
22 and no reservations; is that correct?

23 A. I am in no position professionally to make a
24 judgment. If you are leading me to do so, fine. That's
25 an ideology you might find by Mr. Schultz. Mr. Schultz will
testify, and you will have a better opportunity to ask such

1 questions of him. But for our purposes, we are wholly
2 content that he proceeded in an honorable, up-right, and
3 accountable fashion in soliciting the information that he
4 sought. His report was indeed, commended to us by Kathy
5 Hilton --then Hilton, pardon me, at the National Cable
6 Television Association; it was credentialed by those who
7 bought it and/or participated in it, and if I'm being asked
8 to reject any part of that part of Mr. Schultz' work which
9 is represented here, the answer is no, I cannot reject it.

10 Q. Now let me repeat my question, and hopefully,
11 you can answer it. Do you have any reservations, criticisms,
12 qualifications on Mr. Schultz' work?

13 A. This is addressed I fear Mr. Scheiner to the
14 wrong individual in our firm.

15 Q. Then you are not endorsing Mr. Schultz' work.
16 We will rely on Mr. Schultz for that; is that correct?

17 A. No. You should have asked my colleague, Peter
18 Lemieux, who is professionally qualified to offer a critical
19 opinion of Mr. Schultz' work. I am not.

20 MR. SCHEINER: Well this is addressed to counsel.
21 Dr. Lemieux's testimony was directly solely and exclusively
22 to the Nielsen surveys. It is this witness' testimony, who
23 is sponsoring, endorsing, and relying on the Schultz video
24 probe exhibit, and I am trying to find out, whether he in fact,
25 is endorsing and relying on it; and apparently, the answer is,

1 ask somebody else, don't ask me.

2 MR. GARRETT: Madam Chairman, I believe he has
3 already answered the question.

4 CHAIRPERSON BURG: Well, if he hasn't. If there
5 is some doubt about that, would you answer it now please
6 Mr. Bowen?

7 THE WITNESS: Could you restate the question?
8 Or may I hear the question again please?

9 CHAIRPERSON BURG: Restate it.

10 Q. In your testimony you make reference to and
11 rely upon Mr. Schultz' video probe index survey. My question
12 to you is, do you have any reservations, any qualifications
13 with respect to that survey?

14 A. Is your question also specified to that portion
15 of the study that is represented in our report?

16 Q. To the extent that you have referred to it, and
17 relied upon it; do you have any reservations, qualifications
18 of any nature?

19 A. Not in the way in which we have quoted it and
20 cited it, and excerpted it for this report. No, sir.

21 Q. I don't know that it was made clear on your
22 direction examination, but the document which appears as
23 your written testimony above your signature. Was it prepared
24 by you?

25 A. Are we referring to the same document?

Q. I'm referring to the document, "The comparative

1 value of non-network distant signal sports programming on
2 cable television," over the names of Carroll G. Bowen and
3 Dr. Peter H. Lemieux; was that document prepared by you?

4 A. I believe I am repeating my direct testimony,
5 when I say that in response to a question from counsel,
6 I answered, "yes by me, and by my colleague, Dr. Peter H.
7 Lemieux."

8 MR. SCHEINER: So I apologize, I did not so hear
9 your testimony.

10 Q. Tell me how this was prepared? Did you prepare
11 a draft of it?

12 A. We began many many months ago --as I pointed out,
13 January of '78. I do not recall the date of commencement
14 of each fraction that ended up in this report. But parts of
15 this text go back some distance. This particular report
16 was cast in the final form I believe rather, not too long
17 before the deadline for filing with the Tribunal proceedings,
18 and as I recall, Dr. Lemieux and I, were the sole authors
19 of the final report.

20 Q. Was it submitted to counsel for review and
21 revision?

22 A. Counsel -- We have been working with Arnold and
23 Porter for almost as long as we have been working for the
24 Office of the Baseball Commissioner.

25 MR. GARRETT: Your next question?

1 MR. SCHEINER: Has the question been answered?

2 MR. GARRETT: I believe it has been answered.

3 MR. SCHEINER: May I have the answer read back
4 please? --No. I have it in mind.

5 Q The question was, was it submitted to counsel
6 for review and revision, and the answer is, you have been
7 working with counsel for a long time.

8 Now, would you like to answer my question?

9 MR. GARRETT: Madam Chairman, I object. I think
10 that has answered the question as far as he's entitled to
11 pursue the matter. Mr. Bowen's workings with us are on a
12 privileged basis in preparation for the proceedings here.

13 And anything that occurred between us was
14 work product.

15 CHAIRPERSON BURG: I am going to overrule that
16 objection Mr. Garrett.

17 THE WITNESS: Let's put a little history if
18 we may to my answer. Consultation with understanding the
19 questions that needed to be addressed, and a general awareness
20 of what it was that was relevant for the Tribunal and for
21 the making of the decision which is the Tribunal's, and must
22 be made by them, needed legal interpretation for us from
23 the very beginning.

24 This is not our turf as you are well aware. To
25 the extent that our drafts, our --even indeed, the character
of our research was admissible --whatever that may mean in

30

1 legal terms, was pertinent to the proceedings and so on,
2 yes of course we were guided by or reviewed by counsel. We
3 would have been wasting our client's money and theirs if we
4 had not.

5 But as far as a word-by-word --If your question
6 is: Did they write the report, Mr. Scheiner? The answer
7 is no. We wrote the report. If your question is, did they
8 read our drafts of our report, the answer is yes. Are they
9 responsible for our final report? No.

10 Q Does that conclude your answer?

11 A Does that answer your question?

12 Q No, sir. Did they revise your report?

13 A No, sir.

14 Q In no respect?

15 A Not from our final draft.

16 Q All right, look at page 1 of your report. The
17 second sentence on the page, "Our objective has been. . ."
18 and it goes on. Is that your language or counsel's language?

19 A I will be with you in a moment. . . I recognize
20 it as having been our text for some several drafts.

21 Q Would you be good enough to answer my questions?
22 It may have been your text for 18 drafts. The question is,
23 who wrote it?

24 A To the best of my recollection, we wrote it.

25 Q Look at page 47. The paragraph starting third,
and let me alert you, that a very close paraphrase of that

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31 1 same language appears in counsel's memoranda. I now ask you,
2 who wrote that paragraph? You or counsel?

3 A. Again, to the best of my recollection we did.

4 THE WITNESS: May I make a comment Mr. Scheiner?

5 MR. SCHEINER: Sure.

6 THE WITNESS: When one lives in and among lawyers
7 for a considerable period of time, one occasionally picks up
8 certain stylistic traits of a lawyer, and I think particularly
9 in the telecommunication process, it is possible that lawyers
10 occasionally use our text. I am not in a position to say
11 that each and every word in this report had its sole
12 authorship either from Dr. Lemieux or from me, or from our
13 office. But I am in a position I think to say, that I have
14 picked up the phrase "with respect to" in the last 18 months.

15 I don't think I used it very frequently before
16 I began my association with this current proceeding.

17 MR. SCHEINER: Mr. Bowen, I only put these
18 questions because so much of this text reads like the text
19 of an advocate, and that's the reason for my question.

20 Q. Let's go back to page 2. The same sentence that
21 I referred to earlier, there is a reference to sports,
22 particularly "live professional sports programming," is one
23 of the categories.

24 THE WITNESS: Where are you?

25 MR. SCHEINER: I'm sorry. Page 1.

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THE WITNESS: Oh yes.

Q. Do you have it before you sir?

A. Yes I do.

Q. Can you tell me who you represent or on whose behalf you are here in this proceeding?

A. On behalf of the Joint Sports Claimants, sir.

Q. And what types of sports do you include within Joint Sports Claimants?

A. I believe that's a matter of record; is it not.

Q. No, I think not.

A. I see. I stand corrected. As I say, we were retained first by the Office of the Commissioner of Baseball, they were subsequently joined in this proceeding, and there are others who could give you a more exact answer than I, as to when and in what order, by the NBA, the National Hockey Association, and the North American Soccer League.

Q. Sir, you were here yesterday I believe when I put my so called, laundry list to Mr. Kuhn. I don't want to go through it, but I included tennis, and bowling, and wrestling and boxing, and so on; you remember that?

A. Yes. He excepted golf as I recall.

Q. Are those sports events or programs included among the Joint Sports Claimants, whom you represent?

A. The four claimants obviously, are restricted to those four sports. Now, how is your question directed to me?

33

1 Q Do you represent the other sporting events and
2 programs on my laundry list, other than the four that you
3 talked about?

4 A Mr. Scheiner we are retained by the claimants.
5 We do not represent them. What they in turn represent by
6 way of other claimants, I have no knowledge of.

7 Q Aside from the four groups whom you have identified,
8 do you have any knowledge of claimants before this Tribunal
9 for the other types of sporting events?

10 A I believe I am aware that the NCAA has filed
11 a claim, yes.

12 Q And going down my laundry list once again, golf
13 and wrestling, and boxing, and football, and so on?

14 A I simply-- I don't know.

15 Q Would you refer to your so called "Executive
16 Summary." Roman numeral IV --the green sheet, second
17 paragraph.

18 THE WITNESS: I am sorry. I have three pages
19 in my summary; not four. Will you provide me with a fourth?

20 (Mr. Garrett provided the requested document.)

21 THE WITNESS: Which paragraph Mr. Scheiner?

22 MR. SCHEINER: The second paragraph sir, the
23 one that starts, "When the Nielsen data is reviewed. . ."
24 --"is viewed" --rather.

25 Q Could you refer me to the Nielsen data that you

1 are referring to? --The reason for the question sir, is
2 I don't think it exists; okay. Now tell me where it is?

3 A. Well let's see. . . Excuse me, may I pause
4 to read? I think I would like to answer this by pointing
5 out that we first begin to look at Nielsen data in our
6 work for our clients in either late '78 or early '79.

7 We began first by taking a look at two or three
8 stations in specific sweep weeks for which the data could
9 be backed out. And we then proceeded to look at more
10 stations. I think we actually got a seven station signal
11 months in one survey, and then 14, before the sort of
12 full-fledged study began.

13 The reason I use history in this regard is that,
14 the educative process for us as well as the claimants with
15 a Nielsen procedure and organization grew a pace. The
16 only appropriate and possible answer to your question, is
17 that all Nielsen data is available on a quarter-hour segment
18 basis, and therefore, comparisons within a quarter-hour or
19 outside of that quarter-hour, are possible only in the context
20 of doing violence-- or at the risk of doing violence to the
21 way Nielsen reports its information.

22 Now, I'm not sure. Is your question, where in our
23 report is the substantiation for that part of the executive
24 summary?

25 MR. SCHEINER: Yes, sir.

35

1 THE WITNESS: I see, thank you. May I consult
2 with my colleague, Peter Lemieux as to the propriety of
3 bringing up again Table 4-4 or 4-5?

4 MR. SCHEINER: If the Tribunal has no objections.

5 THE WITNESS: Peter would---

6 MR. LEMIEUX: I'm sorry. I wasn't listening.

7 MR. SCHEINER: In that event. Do you want
8 to take a recess?

9 THE WITNESS: Thank you.

10 (Laughter.)

11 CHAIRPERSON BURG: Just for that Mr. Scheiner,
12 we will not recess. Mr. Lemieux go up there and talk to
13 the man, we'll sit here and wait.

14 MR. SCHEINER: Madam Chairman, I need a nicotine
15 fix.

16 CHAIRPERSON BURG: All right, so do I. Recess.

17 (A short recess was taken.)

18 CHAIRPERSON BURG: Mr. Scheiner, may I be
19 permitted to end the recess now?

20 (Laughter.)

21 CHAIRPERSON BURG: Mr. Bowen.

22 THE WITNESS: Yes, may I respond to your question
23 now Mr. Scheiner? To the question --reference the second
24 item on page 4, the paragraph beginning, "When the Nielsen
25 data is viewed time segment by time segment, and program
by program--that is, when one compares sports programming

36 1 with other programming at comparable times on the same
2 station, it is again clear, that sports was more popular than
3 any other form of distant signal viewing fare."

4 And your comment was that there was no substanti-
5 ation for it in the report. My colleague, Peter Lemieux,
6 who is far wiser in these matter than I am, asks that we
7 both turn to page 42 for the response to that.

8 On page 42, as you see it uses WTCG --no, WTBS
9 as the example illustrating that statement. As you will
10 read down, you will find for example, the Atlanta Braves
11 baseball telecast, reached an average quarter-hour audience
12 of some 126,000 non-DMA cabled households, and then he
13 underscores the comparison that I think you were seeking
14 the answer to.

15 There was not a single program broadcast by
16 WTCG during July whose peak audience reached the average
17 figure for sports, and he goes on to draw some other comparative
18 data. But that is the answer--we fee, to your question.

19 Q Sir, that answer merely anticipates another
20 question I think, because I did not find any Nielson data
21 in the material you furnished to support the statement you
22 have just read.

23 MR. GARRETT: Madam Chairman, we presented Dr.
24 Lemieux this morning, and at some length, testified about
25 Nielsen and what the data showed. I don't understand why

1 or what value there is to the Tribunal to go through all
2 of this data once again. Mr. Scheiner had his opportunity
3 to examine Dr. Lemieux this morning about any aspect of
4 the Nielsen data that he chose.

5 COMMISSIONER JAMES: Counselor, are you making
6 an objection?

7 MR. GARRETT: Yes I am.

8 CHAIRPERSON BURG: I am going to sustain that
9 objection.

10 MR. SCHEINER: Will you entertain argument on
11 that point? --I happen to think it's just plain dead wrong.
12 Will you entertain argument on it?

13 COMMISSIONER JAMES: I think the Chair understood
14 my position. I think they should be overruled. I would
15 like to hear some more information on it.

16 CHAIRPERSON BURG: The Chair reverses.

17 MR. GARRETT: I am sorry. Madam Chairman, are
18 you reversing your decision on the objection or on whether
19 to hear oral argument on this question?

20 CHAIRPERSON BURG: I am reversing my decision on
21 the objection Mr. Garrett.

22 FURTHER CROSS-EXAMINATION

23 BY MR. SCHEINER:

24 Q The pending question sir, is where do I find
25 any support in the Nielsen data that you have submitted for

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1 that claim of 126,000 homes for WTCG programming?

2 A. My recollection is that there is no break out
3 of that data.

4 Q. The answer then, clearly is that----

5 THE WITNESS: Excuse me. May I correct myself?
6 I used the term "break out." There obviously is an analysis
7 that supports the statement. The summary that we provided
8 on the Nielsen data, does not break such material out on
9 a quarter-hour by quarter-hour basis.

10 Q. If I understand your answer sir, there is no
11 supporting data for that statement in the Nielsen material
12 that you furnished?

13 A. Am I correct in saying, yes Peter? --Yes, the
14 answer is yes.

15 Q. Further am I not correct sir, addressing the
16 same paragraph; there is no data to support the comparison
17 of sports programming with other programming at comparable
18 times on the same station? There is no data that you have
19 furnished in that respect?

20 MR. GARRETT: Madam Chairman, let me make another
21 objection. If I stand I will get a better response.

22 If I understand Mr. Scheiner's questions, what
23 he is concerned about, is that the underlying data which
24 supports these particular conclusions, has not been provided
25 to the Tribunal. And that is absolutely correct. In the

1 fashion that the underlying data which supported Mr.
2 Cooper's studies A and B have not been presented to the
3 Tribunal.

4 I think his questions as to what is in the
5 summary report, or what is in the more detailed Nielsen
6 analysis, to which the NCAA asked us to furnish earlier today,
7 are irrelevant. And I ask that you not allow him to continue
8 his line of questioning on this matter.

9 MR. SCHEINER: If counsel is prepared to strike
10 that executive summary conclusion, I will withdraw the question.
11 But if that is to remain in here, I clearly have the right
12 to examine the witness on the bases relied upon, and to test
13 those bases. It turns out, there are none.

14 CHAIRPERSON BURG: Mr. Coulter has a question
15 for you.

16 COMMISSIONER COULTER: Mr. Scheiner, excuse me
17 for interrupting you. I just wanted --Maybe, I am wrong.
18 On this paragraph 2 that you are referring to. Unless you
19 want to quibble about the word "popular" and I would rest
20 corrected by you Mr. Garrett, or you, or Mr. Bowen, but on
21 page 37, that Table 4-2 --I mean, isn't that "households
22 per quarter of an hour, isn't that a time segment?

23 MR. SCHEINER: The answer is clearly, unequivocally
24 negative.

25 COMMISSIONER COULTER: Why?

MR. SCHEINER: Because what you have on the

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1 table you referred to, total times covering the entire
2 range of the period analyzed and reported by Nielsen.

3 What you do not have is --and I now go back to
4 paragraph 2 "a comparison of sports programming with other
5 programming at comparable times." You don't have that.
6 You can have a movie at 2 o'clock in the morning and a baseball
7 game at 8 o'clock at night as far as the data referred to
8 in Table 4-2.

9 COMMISSIONER COULTER: But the opposite would
10 also be true.

11 MR. SCHEINER: Absolutely, and all that does
12 is establish you don't have comparable times.

13 COMMISSIONER COULTER: But wouldn't it average
14 over a period of time?

15 MR. SCHEINER: No sir, it would not, because
16 sports programming is typically carried in prime time, or
17 generally in prime time, and movies start at 10 o'clock in
18 the morning and go to 3 o'clock the next morning. So you
19 don't have comparable times at all. That's a basic fallacy
20 of Table 2, but it relates to the pending question. There is
21 no place in this data where you get comparable times from
22 Nielsen.

23 CHAIRPERSON BURG: Is it not true that certainly
24 a number of baseball games and telecasts in the afternoon,
25 and there are movies on many televisions stations --there are

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1 movies programmed in the afternoon?

2 MR. SCHEINER: You do not have a baseball game
3 at 8 o'clock in the morning or at 3 o'clock in the morning.
4 You typically have them at night and sometimes in the
5 afternoons, unless you have a 17 inning game.

6 MR. GARRETT: Madam Chairman, the reason these
7 comparisons or averages are in there is because I assume
8 that Mr. Scheiner and his clients are claiming for those
9 programs that are on at 2:00 in the morning, 8 o'clock in
10 the morning, or 3 o'clock in the afternoon, or whatever.
11 He's claiming for all of them I assume, and I think it's only
12 fair that we can present evidence that compares our programming
13 no matter what time it is on in the day and its average
14 viewing audience with his total programming.

15 MR. SCHEINER: Mr. Garrett is absolutely correct.

16 MR. GARRETT: On the other hand, what we have
17 over here is an objection --what I have been raising as
18 an objection to his line of questioning, as to whether or not,
19 there is data in this report to support what is in the
20 executive summary. Now, Mr. Bowen has already testified that
21 there is such data to support that. Mr. Scheiner may or
22 may not agree with that. As I understand his objection though,
23 is that he wants the underlying data on which that is based,
24 and I believe that issue has already been dealt with this
25 morning.

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MR. SCHEINER: Mr. Bowen, testified that there was no such thing.

CHAIRPERSON BURG: What is your objection again?

MR. GARRETT: The record will show exactly what he testified; that's true.

CHAIRPERSON BURG: What is your objection? What did you just ask?

MR. SCHEINER: Madam Chairman.

CHAIRPERSON BURG: Yes.

MR. SCHEINER: I think you put the question to me, is there a question pending? --What is it? I don't think there is a question pending. I think it was answered and the record will show what the answer was.

Second, I have been asked by counsel for Sports to correct an ambiguous comment that I made. I said that the witness had stated there was no Nielsen data to support that statement. I had intended to say, that there was no Nielsen data before us. There may or may not be such data. The only thing I intended to convey was that it's not a part of this case, and had not been furnished to us. I am not suggesting that there is no Nielsen data which shows the comparison program by program. Of course, there is. But there is no question pending.

CHAIRPERSON BURG: All right, then why don't you proceed, Mr. Scheiner.

1 FURTHER CROSS-EXAMINATION

2 BY MR. SCHEINER:

3 Q. Mr. Bowen, would you refer again to the executive
4 summary, Roman numeral V, the very last phrase on that page,
5 where it says "Any necessary payments," going over to the
6 next page. Do you have that before you?

7 A. Yes.

8 Q. Am I correct sir, that there is no data of any
9 kind with respect to PBS --with one exception that I will
10 get to. Strike that. . .

11 Programs --sports programs are broadcast by
12 PBS stations; are they not?

13 A. That's true, there are some.

14 Q. Now with that, a broadcast of such programs by
15 non-commercial educational stations, are reflected in the
16 testimony of Mr. Joel Nixon and Mr. Bayne (phonetic); is that
17 correct sir?

18 A. Yes.

19 Q. With that exception, do you have any other data
20 of any nature whatsoever, with respect to PBS programming?

21 A. No sir, I think not. Let me review my call
22 though before I call the question answered. . .

23 Mr. Lemieux has reviewed with you the sampling
24 procedure, which by the luck of the draw, led to a sample
25 without public broadcasting representation. There is

1 no Nielson data, nor was there any Nielsen survey of any
2 public broadcast station?

3 Q Okay fine.

4 MR. GARRETT: I'm sorry, did you want to add
5 something to that?

6 THE WITNESS: I was thinking simply of the
7 context of that last summary --once again, there are two issues
8 in that paragraph Mr. Scheiner. One deals of course with
9 the music and cartooning issue as elements of programming
10 and PBS, and the notion that PBS programming included in local
11 programming is not exactly the way I realized I expressed it
12 in my direct testimony.

13 My direct testimony suggested that PBS programming
14 is divisible into two parts. There is a local segment, and
15 there is a non-local segment, which might be more appropriately
16 categorized as syndicated programming. And I just wanted
17 to draw that distinction, because the text here states
18 specifically that, "PBS programming would be included only
19 in local programming," and I don't think that is congruent
20 with my direct testimony.

21 Q To the extent that PBS or non-commercial stations
22 carry sports programs, did you make any provision for such
23 broadcasts in your analysis of the Sports Claimants?

24 A To my knowledge, I don't even know the number of
25 games that are involved, but I think I have been advised

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1 that it is relatively few. Now, there are some public
2 broadcast stations that are --not flagships, but how should
3 I say--part of network --sports network broadcasts. I have
4 a feeling I had better find my notes on that subject before
5 I answer further.

6 Q I take it the answer to my question is "no" you
7 made no provision for the broadcast of such programs by
8 non-commercial educational stations?

9 A Provision in what sense, sir?

10 Q In any sense. Fees generated or any other sense.

11 THE WITNESS: You mean in this paragraph?

12 MR. SCHEINER: No, no. Anywhere in your report.

13 A No sir, that's not correct. We examined where
14 the sports telecasts of our sports were carried, but I don't
15 recall --and I'm not sure that I have the notes here, but
16 I can find them --is to get a numerical reference of the
17 number of telecasts that were actually made on public
18 broadcasting. So, I can't --I don't think it's appropriate
19 to say we ignored them, no. But the number I believe was
20 a relatively small number.

21 Q Well, I refer to the statement of Joel Nixon,
22 who is director of broadcasting for the National Hockey League.
23 And on pages 3 and 4, he lists 9 non-commercial stations
24 which carry hockey games.

25 A Does he give the number of games?

1 Q No sir, he does not.

2 A I'm sorry, I have neither Mr. Nixon's testimony
3 in front of me here, nor do I have my notes on the number
4 of games that were involved. If it's germane, I'll seek
5 them?

6 Q Not at the moment.

7 A All right.

8 Q Would you turn to page 4 of your statement?

9 --This is Arabic 4.

10 A Yes.

11 Q The first sentence says, "Perhaps most signifi-
12 cantly, the attractiveness of sports programming. . ." and
13 the sentence continues; do you have that before you?

14 A Yes.

15 Q Do you indeed, attribute that a strange signifi-
16 cance to the Nielsen findings?

17 A Let me see. . .

18 Q Namely--it is the most significant?

19 A "Perhaps most significantly."

20 Q All right. Is there anything more significant
21 in your view?

22 A In supporting the case of the attractiveness of
23 sports programming?

24 Q Yes, sir.

25 A Insofar as viewing is concerned, no sir.

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1 Q. All right. And what does that Nielson study
2 show for the viewing of movies and other syndicated programs?

3 A. It shows wide spread viewing and wide spread
4 availability as measured in time --of movies and syndicated
5 programming. It's available in the Nielson summary.

6 Q. And the number is 83 percent, and as corrected,
7 82 percent; is that correct?

8 A. Eighty-two percent, yes.

9 Q. And would you agree that that is perhaps most
10 significant as it relates to the viewing of movies and other
11 syndicated programs?

12 A. Well, granted the vast amount of time that is
13 occupied by programming in question, yes indeed, I would
14 say movies and syndicated programs are significantly viewed,
15 yes.

16 Q. Sir, in addition to time --The combination of
17 time and viewing, results in the percentage of 82 percent;
18 right?

19 A. Yes.

20 Q. So we are talking about more than time; are
21 we not?

22 A. If you are talking about the number of households,
23 yes. Viewing is measured in households; correct? May we
24 return to the Nielsen?

25 MR. SCHEINER: By all means, that's just what
I am doing.

1 MR. SCHEINER: And when you do, would you turn
2 to the last page of the Nielsen study, bearing the caption,
3 "A.C. Nielson Comparative Viewing Study for Cycle Average 1978"
4 and in the column, "Viewing Average Households."

5 THE WITNESS: Pardon me a moment. Bob I don't
6 have this.

7 (Mr. Garrett provided a document to the witness.)

8 Q. Do you have it now sir?

9 A. Yes, thank you.

10 Q. In the column's percentage, viewing average
11 households for sports and syndicated programs respectively,
12 they reported numbers are 10 percent and 83 percent. It
13 was later corrected I understand to 11 and 82?

14 A. Yes.

15 Q. My question to you is, with reference to the
16 reported percentage for syndicated programs, would you
17 agree that perhaps that too, is a most significant number?

18 A. From the standpoint of movies and syndications,
19 certainly.

20 Q. Okay, thank you. Would you turn to page 5 of your
21 written statement? I'm referring to Table 1-1.

22 A. Yes.

23 Q. What is the source of the data set out in that
24 table?

25 A. It was done in-house, Kalba Bowen Associates. It

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1 in the industry.

2 Q Well sir, I am aware of that. My question is,
3 does SRDS furnish advertising rates per minutes, rather than
4 for thirty seconds?

5 A I'm sorry. Your question offers a correction.
6 Will you add to the list of corrections on page 5 in the
7 text, that the comparison of prime time advertising rates
8 per minute for sports and non-sports programming on independent
9 television stations should read, "per thirty seconds."

10 Q Are you now telling me that----

11 THE WITNESS: Because that's the way in which
12 the information was recorded. This was a mistake.

13 Q Are you now telling me that the numbers set out
14 in the table based on your modest and informal survey are
15 for thirty seconds, and that these are the numbers for thirty
16 seconds?

17 A That is correct. This was the data supplied by
18 the clubs to us as a product of an initiative through the
19 commissioner's office.

20 Q Who furnished this data?

21 A The baseball clubs and/or the flagship stations
22 of those clubs.

23 Q To the extent that this data was furnished by
24 the baseball clubs, what information would they have for
25 the numbers set out in column 2?

49 1 was a survey, modest, informal, as you know it's not
2 comprehensive, but it's an accurate reflection of the documents
3 we were given through the assistance of --Perhaps I have
4 answered your question.

5 Q It comes as a great surprise to me, I had assumed
6 that you were relying on some type of industry data like
7 Standard Rate and Data?

8 A Yes, that would be one possible source.

9 Q You did rely on that; didn't you?

10 A In instances, possibly for checking this information
11 which was provided by the clubs themselves to us, because in
12 some instances it was not available from some other sources.

13 Q Sir, I have found these numbers startling and
14 shocking, and I was leading with my chin when I put the
15 question to you. I am pleased to learn this is not official
16 data; is it not as SRDS data relied upon by the industry,
17 but rather, this is a modest and informal, in-house analysis
18 done by Kalba Bowen; am I correct in that?

19 A You are correct. Is it without merit so by?

20 Q Right now it is.

21 A I see.

22 Q Let me ask you, does SRDS furnish advertising
23 rates per minute?

24 A Yes of course, and Standard Rate and Data is
25 --as you know, one of the authoritative sources of information

51 1 A. Presumable, from their flagship stations. I
2 don't know why I say "presumably" because we've had occasion
3 to talk to at least two of them. The WGMN information.

4 We were trying -- May I set the context in
5 which this information was solicited Mr. Scheiner?

6 MR. SCHEINER: Yes please.

7 THE WITNESS: We were trying early on to
8 establish parameters of value of sports programming, and
9 there were several of these that we considered. It was
10 rather difficult to get data on several of them.

11 One is the cost of the program --you know, the
12 rights costs, the costs of production of a sporting event
13 and so on, vis-a-vis' the alternative programming costs in
14 the time of a rain-out, or in the time of a postponement
15 or something like that. In other words, what would be the
16 total cost per hour of the programming --or sporting event
17 vis-a-vis' the cost of its alternative.

18 Now, another way of looking at value was to see
19 how the marketplace judged the value of adjacencies or
20 advertising in sport programming period and what that rate
21 was when an alternative to the sporting event ran in that
22 same period. And this was not a long standing systematic
23 study --a colleague of ours who was a student at Harvard
24 Business School, got a list of clubs that would cooperate
25 with us, and got on the phone and got their rate cards from

1 the station and the comparable information --got the rate
2 cards from the stations and got information on comparable
3 periods of time.

4 Characteristically, in the period of time in
5 which sports was not running, a movie or a syndicated program
6 would be thrown on in place of the postponed or rained out
7 event. These representations of the different add rates
8 that obtained in those circumstances.

9 Q. Does that conclude your answer?

10 A. Yes for the moment.

11 Q. Are these sports rates and dollars for one type
12 of sports rather than another?

13 A. Oh, I think they were all drawn for baseball,
14 yes sir.

15 Q. Baseball?

16 A. Yes I think so.

17 Q. Would the rates for basketball and hockey be
18 different?

19 A. I would imagine they would, but I'm really not
20 put in a position to answer.

21 Q. Well, you said that they're different; they
22 would be lower, would they not?

23 A. Not in Portland, Oregon, no sir. They would
24 be much higher.

25 Q. How about soccer?

A. Soccer? You have access to a man that has very

1 good information there.

2 Q We're not talking about Portland, Oregon.
3 We're talking about Chicago, Philadelphia, San Francisco,
4 Boston----

5 A I'm sorry. Your question was theoretical.

6 Q No, no. I'm direction myself to your data.

7 A To these six cities; is that correct?

8 Q Yes.

9 A And these six stations?

10 Q Right.

11 A You are asking me if soccer would have a lower
12 rate? At the moment I am not aware of which of these
13 stations soccer is on, but I will have to refer to another
14 chart.

15 Q The fact of the matter is, this data was obtained
16 for baseball; was it not?

17 A I think I so said that, yes.

18 Q Right. Now, I'm asking you for these stations,
19 would soccer and basketball, and hockey bring lower rates?

20 A You are asking me to speculate on what the
21 difference might be? I'm really not in a position to say.

22 Q Well, I'm doing more than that Mr. Bowen. You
23 purport to give us information about sports rates and dollars.
24 Sports rates compared to non-sports rates. I am startled
25 by the numbers in both columns, and I am asking you to support
it, and explain it. I'm not asking you to speculate.

1 A. Yes.

2 Q. If you can't support it and explain it, we
3 can evaluate the weight and the reliance we can place on this,
4 sure.

5 A. Now, you heard my explanation did you of how
6 it was that we acquired the data, and you heard what it
7 was comparing--that is to say, baseball against a rain-out
8 or a postponement, or programming running in what otherwise
9 would be standard baseball program time; correct?

10 (No response.)

11 THE WITNESS: Excuse me. Do I have your
12 attention?

13 MR. SCHEINER: Yes.

14 THE WITNESS: Did you hear the explanation of
15 how the data was acquired and what it was comparing --that is,
16 to say spots adjacent to or during a baseball event, and
17 spots adjacent to or during alternative programming such as
18 movies or syndications used in that same time period? Then,
19 I don't think you should find the numbers as startling
20 contrasting as you seem to, because they represent --I would
21 say, a reasonable expectation of perceived value.

22 Q. Let me hypothesize something to you. Your baseball
23 representative goes to SBK, and he says, "What are you paying
24 for non-sports?" And the guy says, "I'm paying nickels and
25 dimes for non-sports." You are getting overpaid to a fair-the-

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1 well; is that a possibility?

2 A. I presume you are building an argument, so
3 let me agree until I hear what the argument is.

4 Q. No--That's my argument. How reliable is this
5 information for other types of programming?

6 A. Very substantially reliable, and the illustration
7 you used --may I cite the effectiveness of the Boston Brewens
8 as a draw on WSBK; that their add rates in fact, are probably
9 higher than the Red Sox --it's a shorter season, fewer games,
10 fewer adjacencies?

11 Q. Do you know that for a fact, sir?

12 A. I would like to check it before I say "yes."

13 Q. Let me tell you what this RDS says about the
14 rates for the station you are talking about?

15 A. For both sports?

16 Q. It doesn't distinguish. It says, --and you can
17 check this-----

18 THE WITNESS: That was my comment incidentally,
19 sir.

20 MR. SCHEINER; Sir?

21 THE WITNESS: I was merely showing a contrast
22 between two sports. You were belittling the other sports.

23 MR. SCHEINER: No, it doesn't distinguish between
24 sports and anything else. SRDS has a \$700.00 thirty second
25 rate for syndicated programs --and my notes are not all that

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1 clear to me, subject to check, a \$220.00 rate according
2 to my notes for tennis; do check that.

3 THE WITNESS: Well, may I comment?

4 MR. SCHEINER: Certainly.

5 MR. GARRETT: Excuse me. First of all, can
6 you tell me where are these notes that you are reading from
7 derived from?

8 MR. SCHEINER: SRDS.

9 MR. GARRETT: And what year?

10 MR. SCHEINER: I can't answer that at the moment.
11 Madam Chairman, may we take a moment?

12 CHAIRPERSON BURG: Yes.

13 (Whereupon, a short pause was taken.)

14 COMMISSIONER BRENNAN: May I ask the Chair at
15 this point to clarify a matter. The Tribunal previously
16 indicated that it would direct the claimants at the conclusion
17 of Phase I to file proposed allocations and proposed findings
18 of fact, and conclusions of law. The Tribunal has also
19 indicated that if necessary, we will conduct a rebuttal
20 period as part of Phase I.

21 Is it the Chairman's intention to require the
22 submission of the proposed findings to occur subsequent to
23 the completion of the rebuttal portion of Phase I?

24 CHAIRPERSON BURG: I think Mr. Brennan that I
25 had originally or initially said that conclusion of these

1 hearings on May 1, but that does not end this phase of
2 the evidentiary hearing, so if the parties are in agreement,
3 we will request that information at the time of the rebuttal
4 for this phase. --Or at the conclusion of the rebuttal.

5 MR. ELDRIDGE: May I ask a question on that?

6 CHAIRPERSON BURG: Yes.

7 MR. ELDRIDGE: Would there not be some time
8 following the immediacy of the conclusion of the rebuttal
9 to prepare the findings and conclusions that are based upon
10 the record of same? It couldn't possibly be done at the
11 moment of conclusion.

12 CHAIRPERSON BURG: Mr. Eldridge, we are talking
13 about the different elements of this, and I wanted each
14 party to ascribe a percentage, besides and in addition to
15 their own, to every other phase, be it MPAA Broadcasters,
16 PBS, et cetera, et cetera, in fact let me read what I think
17 covers everything.

18 "Motion Picture Association, broadcasters, sports,
19 including the college sports, music, PBS, NPR, cartoon
20 characters," and let's thrown in a miscellaneous. MPAA of
21 course, would include syndicated programs too. I don't know
22 the dates yet in terms of when that rebuttal period will be
23 scheduled --but yes, we can allow a couple of days on the end
24 of that to facilitate the submission of this particular
25 request.

1 MR. ELDRIDGE: Well, what I was saying was that
2 in the event that with the findings of fact spread out by
3 various parties and claimants here, presumably, you might
4 like it logged, to the transcript of proceedings, which is
5 normally done in formal findings of fact and conclusions that
6 are submitted in legal proceedings, so that they could be
7 traced to the record or documents, and that's why I was
8 wondering when you said, "at the conclusion of the proceeding,"
9 I thought you were suggesting that when we recess at the
10 conclusion of rebuttal, you would expect them to be handed
11 up, and I didn't know how we were going to do that.

12 CHAIRPERSON BURG: No.

13 MR. ELDRIDGE: And we would have some reasonable
14 period I presume following the receipt of the transcript in
15 order to make this speak intelligent for the Commission.

16 CHAIRPERSON BURG: That's right.

17 MR. ELDRIDGE: Thank you.

18 COMMISSIONER COULTER: Madam Chairman, just as
19 a point of clarification, within the category of sports, you
20 mentioned college. While that would come in within the broad
21 characterization of sports, would you also expect there to
22 be specific percentage of----

23 CHAIRPERSON BURG: Yes, I want a specific
24 percentage attributed to all of these elements.

25 Mr. Scheiner are you prepared to continue?

THE WITNESS: Excuse me, may I correct Mr. Scheiner?

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1 I think I may have contributed some misinformation in my
2 statements of these six stations here that were taken from
3 a survey which has --3, 6, 9, incomplete surveys----

4 MR. SCHEINER: I didn't hear that.

5 THE WITNESS: I beg your pardon. I'm commenting
6 that in column 1, sports rates, the lower rate in two
7 instances, is a rate attributable to other sports. In the
8 first instance, it was a basketball rate, and in the second
9 instance, it was a hockey rate.

10 All of the figures from the right-hand column,
11 non-sports rates and dollars, were taken from Standard Rate
12 and Data, except for WPHIL and KTBU, which came from the
13 stations.

14 FURTHER CROSS-EXAMINATION

15 BY MR. SCHEINER:

16 Q. All right now, let me----

17 THE WITNESS: Did you catch my corrections?
18 Or should I repeat them?

19 MR. SCHEINER: I heard them. I heard you.

20 Q. Let me tell you what our --Now, you're talking
21 about this RDS for 1979?

22 A. Yes.

23 Q. Well let me tell you what our review of SRDS
24 for 1979 shows. For WPIX no published rates.

25 A. We must have gotten it from a rate card, but my

1 notes said it came from Standard Rate and Data.

2 Q. For WSNS in Chicago two rates, I believe without
3 dollars. An "A" rate and a "B" rate. For WSBK in Boston,
4 \$700.00 as I said earlier for a thirty second spot in a
5 syndicated program, and \$220.00 for a thirty second spot
6 in the World Tennis Association match.

7 THE WITNESS: Excuse me sir, but I don't understand
8 how those are comparable to either Red Sox or Brewens' rates?

9 MR. SCHEINER: I am telling you the only rates
10 that are published in SRDS-----

11 THE WITNESS: But I told you that we did not
12 get our sports rates from the-- As you know, most of
13 these rates are negotiated. I mean the position for example
14 of the major--brewers or something like that vis-a-vis'
15 sports is I'm sure well-known to most people here. It's
16 a highly negotiated figure. It's not a published figure.
17 It involves all kinds of trade-offs --The fact that the
18 sports rates are not openly available in the literature
19 Mr. Scheiner, I didn't realize was your question. If that
20 is your question, there is a very good reason why they
21 are not. We sought them the only way we could get them,
22 through the cooperation of the clubs.

23 Now, I am in a position to assure you that the
24 SBK information was gained from the station and is accurate
25 for those two sports. Perhaps, my mode of presentation
might have made this much clearer -- in the report that is.

Accurate Reporting Co., Inc.

(202) 726-3801

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1 Q And you can reduce this highly negotiated
2 rates to the dollars that you have expressed here?

3 A Well, this is what the clubs and the stations
4 made available to us, yes.

5 Q In a modest and informal survey? Right?

6 A Yes.

7 Q Turn to page 6 of your statement, and particularly,
8 the last paragraph on that page.

9 A Yes, sir.

10 Q You talk about in effect, demographics. Do you
11 have any information and any opinion on the demographics of
12 movies?

13 A I don't think so, sir.

14 Q You are not aware that movies are generally
15 regarded as having the most desirable demographics for
16 advertisers?

17 A I don't think I have any information on that.

18 Q Turn to page 7. And I am referring to the
19 first full sentence on that page, and particularly, "The
20 desire of the advertiser for identification with the team."
21 Do you see that?

22 A Yes I do.

23 Q That is a desire for identification with a local
24 team; is it not?

25 A If it's a national product and a team enjoys a
national repute, I should think it would be equally applicable

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1 to national advertisers and nationally seen sports and
2 sports figures.

3 Q Are you suggesting that --Let's go back to
4 Atlanta, that there is a particular desire on the part of
5 advertisers in Washington to achieve an identification of
6 their product with the Atlanta Braves?

7 A I'm sorry. I wasn't aware that we were at
8 Atlanta when the question began, so I missed the thrust of it.

9 Q What I'm trying to find out is the relevance
10 of an advertiser desire for identification with a local
11 team, to the question that we are dealing with here, namely,
12 distant carriage of signals; is there any relevance at all?

13 A Well, there is certainly relevance with --and
14 I understand your question. To the extent that sports figures,
15 like movie stars in compensation and PERCS and so on, are
16 really, increasingly nationally known --national figures
17 emblazoned on ads, and WTBS, and viewed significantly if
18 one can use a technical terms in a non-technical sense,
19 coast-to-coast, and to the extent that Mr. Turner succeeds
20 in selling advertising coast-to-coast, which is not clear
21 he is managing to do, it then seems to me there is --it's
22 possible to take this statement, which draws its base
23 obviously from the general preference sir, of Gillette for
24 boxing in the old days; for beers, and other male-oriented
25 products perhaps, consumable products, to --I'm sorry. I felt

1 I had lost your attention. Beers have been identified
2 with most of the baseball advertising that I have known
3 regardless of setting.

4 Q. Okay, do you watch baseball?

5 A. Yes, I enjoy it.

6 Q. Are you from Boston, sir?

7 A. Yes, but I was a Cardinal fan long before I
8 started dying for the Red Sox.

9 Q. You do watch baseball?

10 A. Yes.

11 Q. Can you tell me some of the players on the
12 Atlanta team?

13 A. I can tell you the players on the Atlanta Hawks,
14 because I watch more basketball.

15 Q. We're talking about baseball.

16 A. Yes.

17 Q. Can you identify with any of the ball players?

18 A. Well let's see . . . May I have a brief recess
19 to sort of get myself in the Atlanta mood?

20 MR. SCHEINER: No. I'll withdraw the question.

21 THE WITNESS: All right.

22 Q. Page 8, sir.

23 THE WITNESS: Page sir?

24 MR. SCHEINER: Eight.

25 Q. And particularly the sentence that reads, "Cable

1 systems import a vastly greater percentage of sports stations
2 than non-sports stations."

3 THE WITNESS: I am sorry, where are you Mr.
4 Scheiner?

5 MR. SCHEINER: Page 8, paragraph 2-0 of---

6 THE WITNESS: Yes, second sentence.

7 Q The basis for that statement?

8 A May I refer you to Table 2-1 or 2-2, page 10, 11
9 for the first as I recall, and 13 for the second.

10 Q I just looked at it. That clearly does not
11 give me any data to support the conclusion that is stated
12 there.

13 A Well, now I suppose it would have been systematic
14 and thorough of us to have done all importations on all
15 stations, but we let the market do it for us.

16 Q Yes, we did it for you.

17 A You did it? Oh, okay.

18 MR. SCHEINER: I would like to furnish a copy
19 to the reporter, and have it marked as MPAA XXII.

20 Q Sir, look over the top page.

21 THE WITNESS: Yes, may I ask a question about
22 it?

23 MR. SCHEINER: Yes.

24 THE WITNESS: What was the universe of these
25 stations drawn from the MPAA 688 list?

1 MR. SCHEINER: This is the exact data base
2 that you have previously testified that you have relied
3 upon --I think it's referred to in a footnote on page 11.

4 THE WITNESS: Page 11, yes.

5 MR. SCHEINER: You have seen this data before;
6 have you not?

7 THE WITNESS: The 688, yes indeed sir.

8 Q. And where did you get that data from?

9 A. I think I first saw it in a joint negotiation
10 meeting in the days when contestants or claimants were
11 talking about negotiation at a negotiated settlement.

12 Q. It was furnished to you by MPAA?

13 A. Oh--I'm sorry. Yes, sir.

14 Q. It's the very same material, sir, that you saw
15 way back then and you relied upon in your testimony.
16 --Subject to check.

17 MR. GARRETT: Madam Chairman, let me object to
18 that. I don't know whether Mr. Scheiner plans to call a
19 witness to explain what all this is.

20 What he has done is taken a document which Mr.
21 Bowen apparently does recognize, and compiled with it all
22 sorts of other data; I have no idea. I don't know whether
23 Mr. Bowen has any idea of how all this data has been compiled.
24 I think it's highly improper to have Mr. Scheiner here
25 presenting testimony on our case. I think he has a chance
to do his rebuttal and he can do it at that time.

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MR. SCHEINER: May I explain?

CHAIRPERSON BURG: All right.

MR. SCHEINER: Very simply. This is the underlying material I previously identified as material furnished to Mr. Bowen and employed by him in the sample that he drew. While second, if you take a look --beneath the cover page, if you look in the left-hand column, the symbols are indicated in letters are taken directly from their own exhibits in this proceeding----

CHAIRPERSON BURG: Are you talking about the "HHS" and so forth?

MR. SCHEINER: Right, indicating hockey, soccer and so on. Taken directly from their exhibits, and what we have done is as the footnote on the cover page indicates, the, "Number of systems carrying signal" are circuled in the attached and so on. --Subject to check.

MR. GARRETT: Madam Chairman, I still have the same objection, and I think that this is the type of testimony that should be presented in the rebuttal case. He can bring his witness back, whoever prepared this document, he can explain exactly how it has been done. I think it's terribly unfair to have the witness testify here to something that somebody else has prepared.

CHAIRPERSON BURG: Mr. Bowen, do you recognize all of this material and are you indeed, familiar with it?

THE WITNESS: I am sorry, I am still on the

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1 cover page Madam Chairman. I have questions I would
2 address to either Mr. Scheiner or whoever prepared it before
3 we got into an examination of 33 pages of data. What is
4 your pleasure?

5 CHAIRPERSON BURG: My pleasure is to overrule
6 the objection and let's get into it and see if we have
7 any problems at that point.

8 THE WITNESS: May I ask, is the live professional
9 sports stations, were defined as what? Are you assuming
10 the flagship stations, the network stations? Any station
11 that carried any sport?

12 MR. SCHEINER: No. Those carrying major league
13 baseball, NHL, NBA, NAL service.

14 MR. GARRETT: Madam Chairman, I just have some
15 more clarifications also. On the data we provided, we did
16 not include the regional network stations that also carry
17 baseball, or hockey, or basketball, and I wondered if your
18 list that you prepared here Mr. Scheiner or whoever had
19 prepared it for you, does include the regional and network
20 stations? Where did you get that data?

21 MR. SCHEINER: The answer to your question is,
22 the -- information was obtained from the document filed by
23 you in this proceeding, witness statements of representatives
24 of major baseball listed in the other clubs, and if we return
25 to the instance of baseball to Exhibit 3, you will see other

1 captioned, "local and regional television stations, major
2 league team games 1978."

3 THE WITNESS: May I approach the bench and take
4 a look?

5 (Whereupon, a short pause was taken.)

6 THE WITNESS: It might be appropriate Madam
7 Chairman, for counsels to talk with each other.

8 CHAIRPERSON BURG: Mr. Garrett, are you--?

9 MR. GARRETT: He may proceed with the next
10 question.

11 FURTHER CROSS-EXAMINATION

12 BY MR. SCHEINER:

13 Q Once again subject to your check, the materials
14 furnished to you in MPAA XXII, indicates that the instances
15 of distant signals carriage of live professional sports
16 stations, is 1,702; and the instances of distant signal
17 carriage of other stations is 2,008 to 1; and if the underlying
18 data supports that, it would suggest that your claim on page 8,
19 that cable systems import a vastly greater percentage of
20 sports stations than non-sports stations, is seriously in error.

21 MR. GARRETT: Excuse me, Madam Chairman----

22 Q Is that correct sir?

23 MR. GARRETT: Excuse me before the answer, one
24 other question if I might. You note here your two comparisons
25 are instances of distant signal carriage; and I assume that
means a-- Well, tell me what that means as long as we're

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1 testifying as to this document?

2 MR. SCHEINER: Are we off the record?

3 Allen, would you tell him please? --May we briefly, Madam?

4 CHAIRPERSON BURG: Off the record.

5 (Whereupon, a short discussion was held
6 off the record.)

7 CHAIRPERSON BURG: On the record.

8 MR. COOPER: I am Allen Cooper. An instance
9 of distant signal carriage is where a cable system on a
10 statement of account has indicated the carriage of a
11 particular signal as a distant signal and pay a copyright
12 royalty---

13 MR. GARRETT: And I assume that if the cable
14 system has paid \$10.00 in cable royalty fees, that it would
15 be treated the same as a cable system that paid \$100,000.00.

16 MR. COOPER: That is correct.

17 MR. GARRETT: So in essence, it really rejects
18 the sort of fee generated approach that you have developed?

19 MR. SCHEINER: Excuse me. I'll object to that.

20 MR. GARRETT: Well, he objects though, but that's
21 a fact. He's treating all cable systems exactly alike.

22 MR. SCHEINER: No, no. Madam Chairman, I am
23 addressing --and simply addressing, this one line statement,
24 I will not clutter the record----

25 CHAIRPERSON BURG: Proceed Mr. Scheiner.

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MR. SCHEINER: There is a pending question which finished with, if all of this stuff is correct, your statement to the contrary is seriously in error; right?

THE WITNESS: If all of this stuff is correct, my statement-- I think I would reasonably beg leave to check the data, and may I ask two more questions, just on the facing page; does this include substitutions?

MR. SCHEINER: Stations listed as distant signals.

THE WITNESS: So there would be no carriage of sports in places like----

MR. SCHEINER: May I suggest this Mr. Bowen?

THE WITNESS: Yes.

MR. SCHEINER: That when you check it, have a little side-bar conference with Allen, and he will answer all of your questions.

THE WITNESS: We've done so before, we'll do so again.

MR. SCHEINER: Okay?

THE WITNESS: Yes, sir.

MR. GARRETT: Madam Chairman, will we have an opportunity to call Mr. Cooper back to the stand at some point to go over this?

CHAIRPERSON BURG: No, nor will Mr. Scheiner have an opportunity to call Mr. Bowen back to the stand at any time after today.

1 MR. GARRETT: I think we should just let the
2 record reflect our objection with use of this data without
3 having been properly introduced into evidence and properly
4 sponsored.

5 FURTHER CROSS-EXAMINATION

6 BY MR. SCHEINER:

7 Q Mr. Bowen, turn to page 13.

8 A The table Mr. Scheiner?

9 Q Table 2.2.

10 A Yes.

11 Q I note that-- Let's take CTVT Fort Worth. You
12 may check this sir, but we have, "Nielson four months cycle
13 average shows 170 quarter-hours sports programs on that
14 station; and for KMEX it shows 430 quarter-hours of sports
15 programming. Do you know what those programs consist of?

16 A No sir, as a matter of record, I don't. I can
17 speculate on this. You admire speculation so much, so I
18 might offer some---

19 MR. SCHEINER: No. I'm not interested in your
20 speculation.

21 THE WITNESS: You are aware that KMEX is a
22 Spanish language station?

23 Q What about KTVT, is that a Spanish language
24 station?

25 A Not to my knowledge.

1 Q. What about WMEW, is that Spanish language?

2 A. In no way.

3 Q. Okay, my question is. . . Is it also true,
4 that you don't know whether there are any claimants for
5 the sports programs carried by those stations.

6 A. I have your word for it that sports is carried,
7 and I have testified that I don't know what the sports are.

8 In the case of the KMEX, we know that there is
9 a good bit of importation, Mexican football, which is soccer,
10 and one of the two stations that I would have to approach
11 the bench and get clarification from counsel on this, is
12 there is shared carriage of one or another of the sports on
13 the Dallas-Fort Worth stations.

14 Q. Would you turn to page 15? And particularly,
15 footnote 7 on page 15.

16 A. Yes, sir.

17 Q. You there make reference to the idea exchange,
18 and you testify that based upon your review of the CTAN
19 handbook, it is your opinion --I'm sorry, it says "our
20 opinion." Is that your opinion?

21 A. I would say "ours" as a firm. We take and
22 subscribe to cable magazines and other sources.

23 Q. But is it in addition, your opinion as well?

24 A. You recall, I testified that both Dr. Lemieux and
25 I are authors of this report.

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1 Q Well, who is the author of this statement?

2 A I haven't the foggiest idea. It might have been
3 mine, it might have been Mr. Lemieux's; but it certainly
4 was one of ours.

5 Q I see. Well, let me ask you if the representation
6 is made that whoever authored this reviewed the CTAN handbook
7 and gave the opinion that the material attached to this
8 written statement is representative of one of the many
9 marketing devices; are you in a position to support that
10 statement?

11 A If that includes the rest of the statement
12 Mr. Scheiner?

13 Q Of course, of course.

14 A And we also review cable television trade press,
15 cable promotions in local newspapers, door hangers, other
16 promotional devices used by cable systems; yes, sir.

17 Q I too reviewed the handbook----

18 A For which year, sir?

19 Q I believe. . . I'm not quite certain, but----

20 MR. GARRETT: Is that subject to check?

21 MR. SCHEINER: I think counsel is getting a
22 little giddy, Madam Chairman.

23 MR. GARRETT: It's the line of questioning.

24 Q Is it not the case that the . . . Is not the
25 Idea Exchange a thick fat book that runs some two or three
inches; huh?

1 A. The form that I saw it in was more loose-leaf,
2 and it ran --yes, that or more.

3 Q. And is it not true that because it was so
4 repetitive from year to year that it hasn't been published
5 in the last couple of years?

6 A. Oh no, no, sir. It's a very valuable document.
7 They are highly prized, and they disappeared because it
8 was too expensive for the organization to continue to put
9 them out.

10 Q. Has it been put out in the last year, or is
11 it the prior years that is being circulated?

12 A. Well, the one I checked was for '78. I don't
13 know --I assume there is a '79, there may very well be.

14 Q. When you checked the handbook, did you find a
15 separate section under the tab brochure?

16 A. They are organized as you are aware, by door
17 hanger, newspaper ad, et cetera, et cetera.

18 Q. All right, I found the following promotional
19 items listed under the section "Brochures," Horse Racing,
20 Golf, Dog and Horse Shows, Pro-tennis, Olympic Boxing,
21 The Outdoorsman, and Roller Skating; did you find the same?

22 A. I don't recall, sir.

23 Q. Under "Direct Mail" I found World Team Tennis,
24 Dog Shows, Golden Glove Boxing, Wimbledon, Inside the NFL,
25 World Team Tennis, Boxing, and Gymnastics; did you find
the same?

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1 A. No, sir.

2 Q. None of these sound familiar to you?

3 A. The last one in particular does not sound
4 familiar to me.

5 Q. Do any of them sound familiar?

6 A. I can't say that I saw those documents, no.
7 But I can comment that I have seen an ad very recently in
8 Cablevision that had similar lists of other sports --perhaps,
9 I should listen to your question and then respond.

10 MR. SCHEINER: Yes, perhaps you should.

11 Q. Let me repeat the question. Did you go through
12 this CTAM handbook and examine the material under the
13 several captions, "Brochures, Direct Mail, Newspaper, Radio,
14 and T.V."?

15 A. I'm sorry. Is that a repeat of your earlier
16 question?

17 Q. Yes, yes.

18 THE WITNESS: May I hear the first question
19 please?

20 MR. SCHEINER: YMu said you thought you should
21 have listened to the question, so I repeated it.

22 THE WITNESS: Mr. Scheiner, that's not gracious
23 or accurate.

24 MR. SCHEINER: Oh--I'm sorry. The hour is
25 getting late, and maybe I am a little testy, and I apologize.

THE WITNESS: I understand the substance of

1 your question. My criticism was directed to your
2 suggestion that I was not being attentive; I do not think
3 you asked the question prior, and I'm trying to be responsive
4 to it now.

5 Now, I went through a CTAM handbook which is
6 a loose-leaf compilation, which is segregated by different
7 kinds of promotion, and I did it for the year 1978; that was
8 but one of my activities. I also examined a compilation
9 prepared for us in our office of a number of trade press
10 advertisements. From local cable sources, we have clippings
11 of various promotions that are used by various cable systems.

12 It was on the basis of that review, that I
13 have drawn some of the generalizations I have drawn about
14 how cable promotes sports and other programming in its market.

15 Q Do you have in mind my earlier question? Once
16 again, I ran through the list of different types of sports
17 events that appeared under the different tabs in the CTAM
18 manual; do you have that question in mind?

19 A Yes.

20 Q When you reviewed the handbook, did you find
21 those same listings?

22 A The same headings that you cited or the same
23 listings of other sports?

24 Q Other sports. Yes, I made no particular note
25 of those precise sports. I am aware that they are advertising

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1 more than the four sports that----

2 MR. GARRETT: Madam Chairman, if I might? --A
3 point of clarification here. Are the sports that you are
4 referring to here Arthur, sports that were carried on a
5 distant signal basis as opposed to something such as ESPN or
6 HBO?

7 MR. SCHEINER: Bob, I did my best to check that
8 very carefully, and to the best of my ability, they are
9 sports on a distant signal carrier --subject to check.
10 But I did my best to do that.

11 THE WITNESS: I might say that ESPN mats supplied
12 make up a great deal of the sports that you instanced.

13 Q. It's been pointed out to me Mr. Bowen that,
14 ESPN did not start until sometime in '79; is that correct?

15 A. I don't know the date of the volume that you
16 were examining Mr. Scheiner.

17 Q. I'm referring to the reference under "NCTA
18 Findings to the 1978 - 1979 Cable Services Report," and the
19 quoted statement that appears there; do you have that?

20 A. Yes, sir.

21 MR. SCHEINER: Sir?

22 THE WITNESS: Yes, sir. Pardon me.

23 Q. Do you have a cable services report with you?

24 A. No, I do not.

25 Q. Do you know what the reference was to the types

1 of sports events covered by that quoted material?

2 A. I don't recall them, sir.

3 Q. Do you know whether it was distant signal over
4 the air re-transmission, or perhaps, other paid services?

5 A. I would assume, it was comprehensive. I don't
6 think it was probably specific to distant signal imported
7 services, but that's conjecture. I don't know.

8 Q. To the extent that --I have it before me now
9 Mr. Bowen.

10 A. This is which sir, the cable services---

11 Q. The Cable Services Report----

12 A. For '78 and '79.

13 Q. Would it help you if I were to furnish it to
14 you?

15 A. Apparently, I don't see it being brought into
16 view on my table.

17 Q. Is not the quoted material prefaced by a variety
18 of sports programs originated by cable systems, and therefore,
19 quite unrelated to the subject matter of this proceeding?

20 A. I'm sorry, would you permit me a moment to
21 refresh my memory?

22 CHAIRPERSON BURG: Maybe we could contribute
23 cable royalties to charity; how does that strike you?

24 (Laughter.)

25 THE WITNESS: And the lawyers fees.

(Laughter.)

1 THE WITNESS: What is your question Mr. Scheiner?

2 Q The question as I recall it, was not the quoted
3 material prefaced by some references to cable originated
4 sports program, and therefore, quite related to the subject
5 matter of this proceeding?

6 A Cable originated, sir?

7 Q Yes.

8 A I'm not aware of---

9 Q Well---

10 THE WITNESS: Well, let me read the entire
11 passage. It says, "On the professional and collegiate side
12 of Cable Television Scoreboard, regional and national coverage
13 of major league events is taking many shapes," this is dated--
14 actually issued in '79, and dated '78/'79, "Two regional
15 sports networks have begun operation in the Northeast and
16 Southwest; Madison Square Garden events and other sports
17 centered games are being networked nation-wide via satellite;
18 and the sports events," and there begins our quotation, "the
19 sports events covered by independent broadcast stations
20 are also being relayed to large cable television audiences
21 by satellite transmission," I believe that is the end of
22 our quotation.

23 Now, I am not aware that our selection of that
24 particular clause out of that rather illustrative sentence
25 of different indications of interests in sports, is --I see

1 nothing in the context we've said it, that would alter
2 the substance of its truth. They say that sports is popular,
3 and this is what the----

4 Q Excuse me, sir.

5 A Yes.

6 Q First paragraph it says, "The sports services
7 fell into two categories, locally produced coverage of
8 community teams, and top collegiate and professional events,
9 not offered by local broadcast T.V. stations." Correct?

10 A That is the second sentence of the first
11 paragraph, sir.

12 Q That is true. Did I read it correctly?

13 A I was looking, trying to find what you were
14 reading because I was looking at the first sentence.

15 Q Sir, take your time and read this page; am I not
16 correct that there are included among the types of sports
17 programs listed --are programs originated by cable systems,
18 and also programs on a non-broadcast pay basis; is that
19 correct?

20 A No sir, I don't believe so. I know of no cable
21 systems --I think the answer should be that the second
22 part of your statement is true.

23 Q But the first part is not?

24 A But the first part is not. I'm not aware of
25 cable originations, except for an occasional high school
event --things of that sort, I am not aware of a substantial

1 body of originations of telecasts.

2 Q Mr. Bowen, I wasn't talking about a substantial
3 body. I was talking and read the example of coverage of
4 community teams, I think if you read this with some care
5 as I urged you to, you would find references to high school
6 basketball and so on.

7 Now, do they extend that there are these two
8 types of programs? Neither of them falls into the category
9 of off the air distant signal, that we are concerned with
10 in this proceeding; is that correct?

11 A Yes, sir. What we quoted from however, was
12 not that paragraph, and not that section. What we quoted
13 from was the section labeled, "Professional and Collegiate"
14 is that correct?

15 MR. SCHEINER: Madam Chairman, rather than
16 persist in this unfruitful line of examination, if I deem
17 it appropriate, I will furnish an exhibit at some later
18 stage of the proceedings covering this very topic.

19 May I proceed at this point?

20 CHAIRPERSON BURG: (Nodded her head in
21 the affirmative.)

22 FURTHER CROSS-EXAMINATION

23 BY MR. SCHEINER:

24 Q Turn to page 28. I am inviting your attention
25 to the first full paragraph which discusses the Peter Hart

1 and associates study, in the middle of the paragraph you
2 quote according to Hart, some 54 percent of those responded
3 that it was extremely or quite important for the cable system
4 to offer imported professional and college sports. Do you
5 see that?

6 A. I do

7 Q. You go on to say, that you consider this result
8 again, most significant; is that correct.

9 A. Yes. Could I have a copy of the Hart report
10 up here so I could see the chart from which that is taken?

11 (Counsel provided the report to the witness.)

12 Q. Do you have it, sir?

13 A. Yes sir, yours.

14 Q. What does that report say about-- I'm sorry.
15 There is a pending question. But I think the question was,
16 do you regard this again, as most significant?

17 A. Yes, and for these reasons. It references page 6
18 of the Hart report which is otherwise identified. And page 6
19 offers a list of responses to a question as to what people
20 would want in additional cable programming; and the first
21 response is, having a channel which would provide first-run
22 movies and concerts --and it must be understood that the
23 Hart survey was really a prepaid cable survey sponsored by
24 the National Cable Television Association, and though it's
25 not specified, I think the clear inference to the people

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1 being questioned, and there's backup to suggest this, is
2 they were talking about pay services in that first instance.

3 So when one sees that 75 percent of the respondents
4 found this important, it's in the context of getting first-run
5 movies and concerts on I presume, some pay service.

6 The second one, was improving reception for
7 local area stations. 63 percent of the respondents found
8 that very attractive and we know that's one of the reasons
9 people subscribe to cable.

10 And the third ranking answer to what you would
11 like in additional cable services, was having a channel
12 which provides professional and college sports events from
13 other major cities.

14 Now, it's in that context that we have found
15 this particular result significant.

16 Q I now refer you to. . . page 4, and ask you
17 to read please the underscored portion from the Hart report;
18 what does that say?

19 A "Knowledge of Cable Television"? --Oh, your
20 marking.

21 MR. SCHEINER: My marking.

22 THE WITNESS: Oh, your marking. This is in
23 a section called, "Attitudes Toward Cable Television," and
24 it deals with the extent to which those being interviewed
25 were aware of cable television and its services, and they
cite:

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1 The type of program for the underscored section Mr. Scheiner
2 has given me, reads, "The type of program mentioned most
3 frequently is movies or home box office,"which is a pay
4 movie et cetera service, "volunteered by 20 percent of all
5 responses; followed by sports, 5 percent; uncut or uncensored
6 movies, 3 percent; programs not on regular television, 3 percent;
7 movies without commercials, 2 percent; and special shows or
8 events, 2 percent."

9 Q All right now, would you do the same for me
10 for the material that I underscored of the Hart report?

11 A Page 5 summarizes, "It shows the major advantage
12 seen in cable television is that it would provide greater
13 choice in programming, few disadvantages are seen except
14 for the cost," and then it goes on to summarize how the
15 respondents --perhaps, I should read the rest of the paragraph,
16 ". . . when respondents are asked to volunteer the major
17 advantages of having cable television, 80 percent can volunteer
18 at least one advantage when asked to volunteer. Some major
19 disadvantages of having cable television, just 50 percent
20 can volunteer comments; suggesting that 30 percent see neither
21 advantage or disadvantage. Volunteered advantages out-numbered
22 the volunteered disadvantages by a 3-to-1 margin," I guess
23 that's what you get with some kinds of research.

24 Q Did I underscore all of that?

25 A I'm setting the context for your choice of
underscore, which I presume you will permit.

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1 THE WITNESS: "Most of the advantages volunteered
2 relate to increased choice" that is, additional programming,
3 "43 percent said there would be more choices, channels, shows,
4 and variety; and 47 percent mentioned different types of
5 programming," and then they break it down into the different
6 types of programming that were volunteered in that study,
7 more movies, 13 percent; first-run movies or HBO--that's
8 clearly the pay channel, 9 percent; sport, 8 percent--I think
9 we did rather well on that one. Programs from other cities
10 or areas, 5 percent; local shows, 2 percent; news, 2; uncut
11 movies, 2; children's show, 2; specials, 2; drama, 1, and
12 the end of the underscore in the document is "documentary,
13 is 1 percent."

14 In other words, as I read it Mr. Scheiner,
15 we score evenly with first-run movies or HBO on a pay
16 service, which I don't think is all together bad.

17 MR. SCHEINER: May I have a two minute recess?

18 CHAIRPERSON BURG: Mr. Scheiner, it has been
19 a long week, and it has been a particularly long day. This
20 may be as compelling as this drama is, I think I would like
21 to adjourn for the weekend, and resume at 10 o'clock on
22 Monday morning.

23 (Whereupon, the Tribunal adjourned at
24 4:16 p.m., Friday, April 25, 1980.)

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