

BEFORE THE  
COPYRIGHT ROYALTY TRIBUNAL

In the Matter of            )  
                                  )  
Distribution of Cable        )  
    Royalty Fees            )

Preliminary Statement

The National Association of Broadcasters ("NAB") for and on behalf of various broadcasting stations claiming compulsory royalty fees, in compliance with the Tribunal's directive of May 7, 1980 submits herewith its direct case on issues previously excluded.

We have tried in all instances to identify with specificity the witnesses who will testify. However, because of the shortness of notice and scheduling difficulties it has not been possible to designate a specific witness in all cases. When a witness has been designated, the Tribunal and all parties will be promptly notified.

A FAIR AND EQUITABLE DISTRIBUTION OF  
CABLE ROYALTIES REQUIRES THAT STATIONS  
BE COMPENSATED FOR CABLE IMPORTATION  
OF THEIR BROADCAST DAY COMPILATIONS.

The statutory language and the legislative history of Section 111 of the current Copyright Act make it abundantly clear that any and all copyrighted works included in a distant non-network secondary transmission are eligible for cable royalties -- whatever those works may be.

As was amply demonstrated in the NAB's October 17, 1979 and November 28, 1979 memoranda of law, a station's broadcast day compilation is one such work, and as such is eligible for cable royalties separate and apart from any copyrighted materials selected and arranged by the station. Given that cable systems importing a station obviously benefit from the station's unique selection and arrangement of programming without sharing any of the risks or costs involved, we submit that failure to compensate stations for cable use of their broadcast day compilations flies in the face of Section 111's mandate that this Tribunal reach a fair and equitable distribution of the Cable Royalty Fund.

The NAB will offer two witnesses in support of its claims for cable use of the station's broadcast day compilations. The first, Richard Hughes, Vice President, Programming and Community Affairs at WPIX, will describe the effort and

ingenuity which television stations utilize in order to compile their daily programming. The second, Robert Hughes, Program Director of Radio Station WASH will explain the nature and value of broadcasting compilations created by radio broadcasters.

As Robert Hughes' testimony will show, television stations expend considerable effort and expense in selecting and arranging their programming in order to generate and maintain widespread audience appeal and with that, greater advertising revenue. Once the programming materials making up the station's broadcast day have been selected from the hundreds of syndicated series, movies, documentaries, news programming and sports telecasts have been selected and produced, they are arranged in a manner best calculated to maximize the station's viewership. In order to do so, each program must not only have appeal in its own right, but must be scheduled so as to retain the audience of the program which precedes it and build upon the audience of the program which follows it.

Fundamental is the concept of counter-programming which, as Mr. Hughes will explain in depth, entails counter-acting a strong program carried by a competing station by airing a program during the same time which appeals to a

substantially different kind of audience. This process requires the skill and creativity of many highly paid employees who must not only develop new programming schedules but monitor the selection and arrangement of each broadcast day's programming in order to detect point at which changes are necessary.

The testimony of Robert Hughes will show that this creative process applies as well to the selection and arrangement of radio programming broadcasts throughout the day.

Attached hereto are three exhibits which demonstrate the extent to which the "broadcast day" is utilized by cable systems.

SYNDICATED PROGRAMMING AS  
TO WHICH BROADCASTERS ARE  
EXCLUSIVE LICENSEES.

"Syndicated Program Exclusivity" relates to a situation wherein the local broadcaster, by contract, obtains from a program syndicator:

- (a) the right to broadcast specified programming ("The Mary Tyler Moore Show," for example) for a specified period of time ("the broadcast period") within the local market; and
- (b) an undertaking that the syndicator will not grant, during the broadcast period, another broadcaster or a cable system within that local market, the right to carry the licensed program.

If, during the broadcast period, a cable system within the broadcaster's exclusive local market carries the licensed programming as a distant signal, the local broadcaster should receive cable royalties on account of such distant carriage.

In support of this contention, two things are to be noted: Firstly, the broadcaster purchased exclusive exhibition rights within the local market. Conversely, the program syndicator sold those rights to the local market, both as to television and cable carriage. Secondly, as exclusive licensee within its market, the broadcaster is a copyright owner in accordance with 17 U.S.C. § 201(d)(2).

The evidence to be adduced during this phase by the broadcasters on the issue of syndicated programming exclusivity will also demonstrate that the option of program deletion provided by FCC regulations is ineffective for the following reasons: Firstly, deletion is only available in certain markets and as to those markets a substantial percentage of the programming imported as a distant signal is exempt because of the grandfathering provisions of the FCC rules. Secondly, it more than occasionally happens that when the local broadcast requests deletion, the cable system fails to comply for a variety of reasons. Thirdly, requests for deletion are ineffective and cumbersome and impractical to monitor.

SPORTS PROGRAMMING  
CLAIMED BY THE BROADCASTERS

On this issue we expect to call two witnesses:  
Mr. Kenneth Hatch, Executive Vice President at KIRO, and  
Mr. Donald Carney, Vice President, Sports and Special  
Events at WPIX.

Mr. Hatch will testify to the reasonable expectation of a broadcaster as to the ownership of copyrights in sports programming. His testimony will be predicated upon his understanding of the contract between Station KIRO and the Seattle Supersonics Corporation. We have chosen this approach because of the impracticality entailed in a detailed analysis of each of the literally dozens of contracts executed between broadcasters and the various sports clubs. Such analysis, in our judgment, should await Phase II of the present proceedings. Attached hereto is a copy of the contract between the Seattle Supersonis and Station KIRO.

Mr. Carney's testimony will be devoted to the effort and skill involved by a station in sports telecasts. His point will be illustrated by use of video cassettes recently made at a New York Yankee baseball game.

Respectfully submitted,

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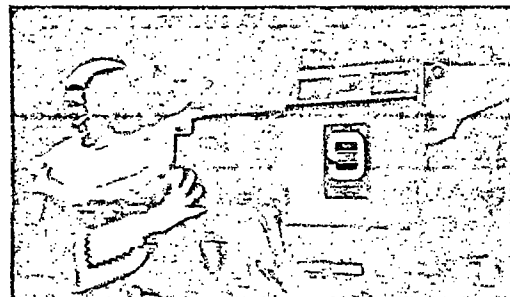


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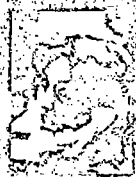
STATION	MARKET	HOUSEHOLD SHARE OF MARKET
WGN	Chicago	19%
KTVU	San Francisco	14%
WSBK	Boston	13%
WPIX	New York	12%
KTTV	Los Angeles	12%
WTGG	Atlanta	12%
WOR	New York	9%

Nielsen Station Index (NSI) Audience Estimates Sunday - Saturday 7 a.m. - 11 a.m., July 6 - July 26, 1978 Reports. Subject to Qualifications Described in Said Reports. Rankings of the Independent TV stations which have been proposed to be carried via satellite.

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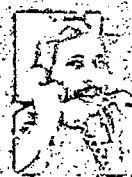
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KIRO RADIO AND TELEVISION

BROADCAST AGREEMENT

THIS AGREEMENT, made this 18 day of August, 1977, is made and entered into by and between FIRST NORTHWEST INDUSTRIES OF AMERICA, INC., and SEATTLE SUPERSONICS CORPORATION, hereinafter jointly and severally called "Northwest," "SuperSonics," or "Sonics," and KIRO, INC., d/b/a KIRO RADIO AND KIRO-TV, hereinafter called "KIRO," covering the following five basketball seasons, '78-'79, '79-'80, '80-'81, '81-'82, and '82-'83, as follows:

WHEREAS, Northwest owns exclusive radio and television broadcast rights in basketball games participated in by the Seattle SuperSonics basketball team in Seattle and other cities, including regular National Basketball League games, preseason and postseason games; and

WHEREAS, KIRO operates a radio station and a television station under the channel and call letter designation of KIRO, Channel 7, in the City of Seattle;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, IT IS AGREED AS FOLLOWS:

1. Northwest represents that it has the right and power to enter into this agreement and to perform and fulfill its obligations and undertakings hereunder. KIRO represents that it has the right and power to enter into this agreement and to perform and fulfill its obligations and undertakings hereunder.

2. Northwest grants to KIRO the exclusive right to broadcast by radio in the States of Washington and Alaska all the SuperSonics games, including all regular, preseason and postseason games, both at home and away. Northwest grants to KIRO the exclusive

Reviewed & Approved  
C.F. [Signature]

[Signature]

KIRO RADIO AND TELEVISION

BROADCAST AGREEMENT

Reviewed & Final  
C.F.  
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right to broadcast by television in the States of Washington and Alaska up to a maximum of seventeen (17) regular season games and all the "away" postseason games with the exception of the Super Sonics' games televised by a national television network under contract with the National Basketball Association. Northwest will not authorize any person, firm or corporation other than KIRO to broadcast any of its games whether season, preseason or postseason on radio or television in the authorized broadcast area.

a. KIRO shall determine in its sole discretion which and how many up to the maximum number of seventeen (17) regular season SuperSonics games and which and how many postseason away games it shall televise and whether to televise live or video-taped delayed during the term of this contract.

b. KIRO has the right to set up a network of radio stations and television stations in the authorized broadcast area at no additional charge to KIRO; provided, however, that KIRO cannot authorize a station located within 75 miles of any other NBA franchise to be a part of such network.

c. Three (3) of the telecasts shall originate from midwestern and/or eastern cities, such as Chicago, Milwaukee, Boston, and Washington, D.C.

d. No more than two (2) telecasts may be regular season home games which may be telecast live by mutual agreement. It is understood that these two (2) games cannot be advertised on the air more than twenty-four (24) hours in advance of the game unless special permission is granted by the SuperSonics.

e. KIRO may, in its discretion, delay the radio broadcast of any game.

3. KIRO agrees to pay rights fees to Northwest totalling [REDACTED] per year on the following schedule: November 1 - [REDACTED]; January 1 - [REDACTED]; March 1 - [REDACTED]; May 1 - [REDACTED].

4. The telephone toll lines and all equipment and/or engineering and other personnel for the remote pickups at game locations will be arranged and paid for by KIRO. Northwest shall obtain for and guarantee to KIRO access to all basketball arenas where the Sonics play games covered hereby and the availability of all physical and electronic facilities at such locations necessary for the broadcasts contemplated hereby.

5. The sportscaster(s) for the telecasts and radio broadcasts shall be determined by KIRO with approval by Northwest. Such approval shall not be unreasonably withheld by Northwest. At the discretion of KIRO, the same sportscaster may be used for both radio and television on a simul-cast basis. He or they shall be employed by KIRO, his/their full responsibility shall be to KIRO, and KIRO shall have as to him/them all rights of an employer.

6. Northwest agrees to assist KIRO in the sale of advertising by releasing to KIRO the names of all suppliers, concessionaires or those providing services to Northwest.

7. KIRO agrees that, at no cost to Northwest, it will, to an extent it deems reasonable, promote the SuperSonics games. KIRO also agrees to schedule an amount of Sonics' game information announcements it deems reasonable at no cost to the SuperSonics during each week during the season.

8. Northwest agrees to place a full-page ad, free of charge, in the Sonics' program for the benefit of KIRO Radio and such an ad for KIRO-TV. Any print color production costs will be at the expense of KIRO. Routine black and white print ads in the Sonics' program will be at no additional cost to KIRO.

9. Northwest agrees to have KIRO Radio and KIRO-TV announced as the official Sonics' radio and television station over the public address system at all home games and on all scheduling promotional material and with appropriate graphic representation at all basketball arenas, where allowed.

10. During the term of this agreement, Northwest guarantees to furnish at no cost to KIRO a minimum of ten (10) appearances for radio events from the player personnel or the coaching staff and a minimum of five (5) appearances for television events. Northwest will provide personnel at no cost to KIRO for postgame parties, luncheons or dinners at times and to an extent which Northwest deems reasonable.

11. During the term of this agreement, in the event KIRO wishes to use Sonics' coaches on a pregame, halftime, postgame, or coaches' show, the Sonics guarantee that the fee required by the coach or coaches will not exceed [REDACTED] per appearance for radio, or [REDACTED] per appearance for television. It is understood that it is the radio and television station's responsibility to negotiate with the coaches.

12. It is understood that this agreement shall not be applicable to any basketball game which KIRO is unable to broadcast or the Seattle SuperSonics are unable to play because of acts of God, epidemic, fire, casualty, strike, lockout, labor conditions, riot, war, civil disobedience, mechanical or technical breakdown, regulations of the National Basketball Association, or failure of the services of the telephone company or Western Telecommunications Company or other causes beyond the control of KIRO or Northwest. In any such event, the payments to be made hereunder shall be abated and adjusted on a proportional basis.



13. Each of the parties hereto is granted the right by the other to advertise radio broadcasts and the telecasts of the SuperSonics games to be made by KIRO and may mention the names "SuperSonics" and/or "Radio/Television Station KIRO" in connection therewith. Said right also shall extend to the sponsor or sponsors of the broadcasts contemplated by this agreement.

14. All program and commercial material provided or furnished by sponsors for the telecasts shall conform to the standards of KIRO, the Television Code of the National Association of Broadcasters, and applicable federal, state and local laws and FCC regulations relating to television.

15. Northwest will be given one (1) logged thirty (30) second spot to be used on radio during the broadcast of each game to be used for promotion of enterprises in which Northwest has an ownership interest, such as but not limited to the SuperSonics Racquet Club, Universal Gym, and Microsonics. This copy must be approved by KIRO and must not be competitive with KIRO game sponsors.

16. Northwest and KIRO each warrants to the other that the broadcasting of material furnished by them (including ad lib or other remarks of any performer furnished by Northwest) will not violate any rights of others, and each agrees to indemnify and save the other, its officers, directors, agents, stockholders, employees or affiliated companies harmless from any and all claims, damages, liability, costs and expenses, including reasonable counsel fees, arising from the broadcasting of such material.

17. Northwest agrees to assist in the promotion of the radio and telecasts providing KIRO without charge, with thirty (30) tickets for each home game to be used by KIRO for advertising and promotional purposes. Northwest will further provide to KIRO

eight (8) season ticket plus 200 tickets for their employees for a particular game, plus an additional 1000 tickets for a KIRO night which KIRO can use in contests or in any other manner which it sees fit. In addition four (4) VIP front row tickets will be made available to KIRO depending on availability on a trade basis, which Northwest may use for advertising the Sonics. The trade shall be at regular station and ticket rates.

18. Referring to radio advertisers only, if a sponsor buys the network for a minimum of ~~\$34,500~~, Northwest will give him four (4) season tickets and 200 tickets during the season to be used by such advertisers for their employees for which 200 tickets advertisers will pay taxes and service charge not to exceed ~~\$1.00~~ per ticket. Northwest will give smaller radio advertisers two (2) season tickets.

19. As to all tickets provided hereunder, the locations and dates shall be mutually agreed between the parties.

20. KIRO-TV is granted an option to televise any of the sold-out home playoff games in which the Sonics participate which are not carried on CBS National TV at a fee of ~~\$17500~~ to be mutually agreed upon for each game so carried on television.

21. KIRO, in accordance with FCC Rules and Regulations, shall have the right to cancel any radio broadcast or any telecast, or any portion thereof, in order to broadcast or telecast any program which, in its absolute discretion it deems to be of public importance. If any SuperSonics game is not broadcast or telecast at its scheduled time due to said interruption, KIRO may join such game in progress. If KIRO's broadcast license terminates in any fashion during the term of this agreement, KIRO's obligations under this agreement shall terminate.

22. Northwest shall have the right to assign, with the prior written consent of KIRO, its rights hereunder; provided, however, that such assignment shall not relieve the Sonics of its obligations hereunder and providing, further, that the assignee shall assume in writing and in favor of KIRO all Sonics' obligations.

23. Wherever herein things may be done or rights exercised upon mutual agreement, or with the approval of the other party, no party may withhold its agreement or approval unreasonably.

24. This agreement and all broadcasts pursuant hereto shall be subject to the Communications Act of 1934, as amended, and to all rules and regulations of the Federal Communications Commission. KIRO may interrupt any broadcast or portion thereof to carry news or announcements relating to disasters or emergencies, whether national or local. This agreement is further subject to the terms and conditions of a television network affiliation contract between CBS and KIRO, and KIRO shall not be required hereunder to take any action which is deemed by CBS to be contrary to the terms of such network contract.

EXECUTED this 18 day of August,  
1977.

FIRST NORTHWEST INDUSTRIES OF  
AMERICA, INC.

By [Signature]  
Its Exec. V.P.

SEATTLE SUPERSONICS CORPORATION

By [Signature]  
Its Exec. V.P.

KIRO, INC., d/b/a KIRO RADIO and  
KIRO-TV

By [Signature]  
Its PRESIDENT