

MAY 16 1980

Before the
COPYRIGHT ROYALTY TRIBUNAL
1111 20th Street, N.W.
Washington, D.C. 20036

In the Matter of)
)
Distribution Proceedings)
Concerning Copyright Royalty)
Fees for the Period January 1)
through December 31, 1978)

RESPONSE OF PUBLIC BROADCASTING SERVICE
TO
REQUEST FOR PRODUCTION OF DOCUMENT

This is the response of the Public Broadcasting Service (PBS) to the "Request for Production of Document" dated May 7, 1980 filed by the Motion Picture Association of America, Inc., et al. (MPAA).

PBS is willing to make available to the Tribunal and the parties before the Tribunal relevant underlying documentation and material regarding its evidence and proofs. We so stated in our direct case (see PTV Exhibit 3, Appendix F) and to date we have honored all requests for the inspection of documents -- voluntarily and without the pressure of potential subpoena power on the part of the Tribunal.

The document, which MPAA is now seeking a second opportunity to inspect, is a case in point. In its evidence and proofs, PBS employed a sample of twenty public television

stations (listed in Appendix C of PTV Exhibit 3, a copy of which is attached as Item A for handy reference).

Mr. Rhodes testified that in the selection of this twenty station sample, he took into account a number of different factors, including: (i) the different types of noncommercial educational licensees (community stations, university stations, school district stations and state networks), (ii) stations in large, medium size and small television networks, (iii) UHF and VHF stations, (iv) major program producing stations and stations that are not major program producers, (v) stations with large program budgets and stations with small program budgets, and (vi) stations that were carried by cable systems on a distant basis to a significant degree during the year 1978.

With regard to the last named factor, PBS drew upon a computer printout obtained from bi Associates. This document was furnished to counsel for MPAA during the course of the hearing. This printout was obtained in or about November 1979, nearly six months prior to the modifications, up dates and corrections of the bi Associates data that were reflected in exhibits submitted in March 1980 and that were the subject of testimony on the part of Mr. Wagner and Dr. Shosteck in April 1980. This printout was obviously a rough tool, used solely for the purpose of

generally identifying public television stations that were carried on a distant basis to a significant degree. It was adequate for that limited purpose: Although the dollar figures on this printout for 2 of the 20 stations seemed inordinately high, counsel for MPAA acknowledged on the record (following inspection of the printout) that the dollar figures for the other 18 of the 20 stations correspond with MPAA's information and intelligence concerning the matter.^{*/}

If there were any question concerning the method and basis for selection of the twenty station sample by PBS that would warrant a second inspection of the computer printout by MPAA, then such a further inspection would be assented to voluntarily by PBS. However, no reason has been stated in the pleading filed by MPAA, nor is any reason discerned by PBS, why a second production of the document is needed for this purpose.

* * *

^{*/} Even as to the two stations in question (WPBO and WLVT), the printout was adequate for the limited purpose of generally identifying stations that were carried to a significant degree. If distant carriage fee figures are restricted to cable systems in the home state (plus a nearby neighboring state) of each station, as stated on the record by counsel for PBS at Chairman Burg's request, the dollar figures are still quite substantial (approximately \$75,000 in the case of WPBO and approximately \$130,000 in the case of WLVT) and in line with the dollar figures of the other 18 stations.

It should be underscored that the computer printout in question long antedated -- and was not employed in -- the analysis of PBS arriving at the conclusion that approximately 12% or one-eighth of all hours of distant carriage in 1978 constituted public television programs. That analysis relates to hours, not dollars, and is succinctly described in PTV Exhibit 8 (attached for handy reference as Item B). The work for this analysis (and related analyses more particularly described in PTV Exhibit 3, Appendix F, and PTV Exhibit 9) was performed primarily by PBS research and legal personnel. To the limited extent bi Associates was used in this process (aggregating total hours of distant carriage), this occurred nearly six months after the printout in question was run, utilizing refined data then in the possession of bi Associates concerning which Mr. Wagner and Dr. Shosteck have testified. While there appear to remain some unanswered questions about the ultimate work product of bi Associates, PBS has verified the accuracy of its basic conclusion that approximately 12% of all hours of distant carriage in 1978 consisted of public television programs -- by corroboration of the bi Associates data with an analysis

of corresponding MPAA data. See testimony of Mr. Rhodes on May 5, 1980, transcript pp. 86-89, attached as Item C.

Respectfully submitted,



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May 16, 1980

CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of May, 1980, copies of the foregoing Response of Public Broadcasting Service to Request for Production of Document were served upon parties to this proceeding by first class mail, postage prepaid, addressed to each of the following:

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Gene A. Bechtel

ITEM A

STATIONS SURVEYED
AND
1978 ROYALTIES PAID BY
CATV'S CARRYING THEM DISTANT

<u>Call Letters</u>	<u>Licensee</u>	<u>Location</u>	<u>Special Type</u>	<u>1978 Fees Paid by Cable System Carrying Station</u>
KAET	Arizona State University	Tempe, AZ		57,742.88
KCET	Community Television of Southern Cal.	Los Angeles, CA	Major Producer	163,682.77
KQED	KQED, Inc.	San Francisco, CA	Major Producer	172,738.26
KVIE	Central California Educational TV	Sacramento, CA		60,900.60
WEDW	Connecticut Educational Television Corp.	Bridgeport, CT	State Network	81,176.28
WJCT	Community Television, Inc.	Jacksonville, FL		57,091.97
WUSF	University of South Florida	Tampa, FL		51,065.07
WTTW	Chicago Educational Television Assn.	Chicago, IL	Major Producer	262,531.20
WGBH	WGBH Educational Foundation	Boston, MA	Major Producer	147,720.24
KETC	St. Louis Educational TV Commission	St. Louis MO		108,322.25
KRMA	SD #1 City & Co. of Denver & State of Colo.	Denver, CO		108,098.05
WPBO	The Ohio State University	Portsmouth, OH		1,221,049.01
WLVY	Lehigh Valley Educational TV Corp.	Erie, PA		572,678.30
WDCN	Metropolitan Board of Education	Nashville, TN		29,256.51

STATIONS SURVEYED
AND
1978 ROYALTIES PAID BY
CATV'S CARRYING THEM DISTANT

<u>Call Letters</u>	<u>Licensee</u>	<u>Location</u>	<u>Special Type</u>	<u>1978 Fees Paid by Cable Systems Carrying Station</u>
KERA	Pub. Communication Foundation for North Texas	Dallas, TX	Major Producer	256,949.38
KLRN	Southwest Texas Public Broadcasting Council	Austin, TX	Major Producer	67,437.49
KUHT	University of Houston	Houston, TX		88,729.71
KUED	University of Utah	Salt Lake City, UT		112,104.51
KCTS	University of Washington	Seattle, WA		95,147.66
WMVS	District 9 Area Board of Vocational, Technical and Adult Education	Milwaukee, WI		79,703.19

ITEM B

First Six Months: 1978
Forms 2 and 3 Svstems

PTV Portion of
Distant CATV Hours

Step One (By PBS):

Tabulated total broadcast hours for each continental United States PTV station for February week (260 stations) and November week (265 stations)

Information taken from our "carriage report" files

Step Two (By bi Associates):

Applied total broadcast hours of each PTV station to each instance of distant CATV carriage

Multiply this by 26 to arrive at aggregate distant PTV hours for six month period:

2,007,054 hours

Related Step (By bi Associates):

Obtained total broadcast hours from NAB for commercial stations:

Independents -- full time

Network affiliates -- a percentage of broadcast hours, to delete network program time

Applied these hours to distant CATV carriage, and multiplied by 26 to arrive at aggregate distant hours of commercial stations:

14,048,636 hours

Step 3 (By PBS):

Arithmetic:

PTV Distant Hours	2,007,054
Comm. Distant Hours	<u>14,048,636</u>
Total Distant Hours	16,055,690

PTV share:

12.5%

ITEM C

1. year; is that correct?

2. A That's correct.

3. Q Then, if you go over to the second page, Step 3, there
4. is some arithmetic there that hopefully is explanatory on
5. its face.

6. A Now, that's where you get your 12.5 percent for the first
7. half of the year; is that correct?

8. A That's right.

9. Q And then if you go over on page 9, you will see for
10. the second half of the year figures that tend to run along the
11. same lines, same volume, and it comes out to 12.2 percent;
12. is that correct?

13. A Correct.

14. Q Okay. Now these figures are identified in here as
15. being for Form 2 and Form 3 cable systems; is that correct?

16. A Right.

17. Q Let's go back to Appendix F, where we have some
18. information that is only for Form 3 cable systems, and I am
19. doing that because some of the claimants here submitted proofs
20. just based on Form 3. And Appendix F, if the Tribunal and
21. counsel will leaf through it with me, you have got the divider
22. sheet that says Appendix F. And then you have got a little
23. writeup which identifies some attached tables. And then there
24. is the first accounting period, Forms 2 and 3 systems, one
25. page. First accounting period Forms 2 and 3 systems, a second

1 page. That's where we have our 12.5 percent. Proceed with
2 me, if you will. Second accounting period, Forms 2 and 3
3 systems, one page, second page. Now, we come to where I want
4 to get. First accounting period, Form 3 systems, only. And
5 you can either look at the bottom of that page where it has
6 812,308 hours, or you can go over to the second page, and you
7 can see total public television, 812,000 distant hours, 11.2
8 percent.

9 Now, Mr. Rhodes, it's my understanding that this was
10 arrived at in the very same way that we got the 2,000,000 hours
11 for Forms 2 and 3 systems, except Mr. Wagner's company broke it
12 out for us and only gave us the Form 3 cable systems that carry
13 our stations. And so we have a smaller figure of 800,000. Is
14 that your understanding?

15 A That's correct.

16 Q Now, sir, I am going to ask all concerned here to just
17 flag that 812,000 figure, 812,000 distant educational hours,
18 Form 3 systems always, and hold that and see if it doesn't
19 hold up.

20 Mr. Rhodes, you were here last week, were you not,
21 when there was testimony put in by Mr. Wagner and about his
22 company and its operations?

23 A I was.

24 Q And you shared with the chairman of the Tribunal and
25 some of the rest of us at least some confusion about exactly
how he came up with this first number.

1 A Yes.

2 Q Now, have I asked you, sir, to do a computation of
3 our distant hours for the first six months of 1978, based upon
4 MPAA exhibits as a rough cross check of the accuracy of our
5 11712 percent figure?

6 A Yes.

7 Q Now, sir, in so doing, we started out with MPAA Exhibit
8 XX55, is that correct?

9 A Correct.

10 Q And if it please the Tribunal, I only have my marked
11 up copy, but this is a document which the MPAA put in at some
12 point along the line that shows instances of distant signal
13 carriage by Form 3 cable systems throughout the country, all
14 stations, commercial, non-commercial, and the number of instances
15 of carriage. And I think perhaps before we proceed further,
16 I will show this to you to refresh your recollections.

17 Is that the document that I have identified that we
18 worked with?

19 A Yes, it is.

20 Q Now, sir, in this document you went through, as I
21 understand it, and counted out the number of instances where
22 a Form 3 cable system carried as a distant signal one of our
23 stations. Is that correct?

24 A Right.

25 Q And you came up with how many instances of such
carriage?